

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI**

Complaint No. CC006000000100429

1. Babita B. Jain

2. Dinesh B. Jain

.... Complainants

Versus

1. M/s. Universal Builder & Developers

2. Naresh Kumar Mehta

3. Dilip Kumar Mehta

4. Summermal M Shah

.... Respondents

Project Registration No. P51900002907

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – 1/MahaRERA

Adv. Nilesh Gala appeared for the complainants.

Adv. R K Mishra appeared for the respondents.

ORDER

(21st January 2020)

1. The complainants have filed this complaint seeking directions from the MahaRERA, to the respondents, to execute the agreement for sale with the complainants with the date of possession as July, 2012 under section-13 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") with respect to purchase of additional area of 700 sq. ft. in the respondents' project known as **"Neo Galaxy"** bearing MahaRERA registration No. P51900002907 situated at Girgaon, Mumbai.
2. The complainant further prayed for additional reliefs from the MahaRERA viz., compensation of Rs. 41,666/- per month towards the licence fees, Rs. 1,00,000/- towards rental loss, Rs. 1,00,000/- towards the cost of complaint and mental trauma etc. along with penalties. The complainants also sought for revocation of the registration of the respondents under section-7 of RERA.



3. The complaint was heard finally today, when the parties appeared through their respective advocates and made their submissions. During the course of hearing, the respondents have filed their reply on the complaint on record of MahaRERA.
4. It is the case of the complainants that, they have purchased an additional area of 700 sq. ft. in addition to the area of 1200 sq. ft. in the respondents' project for a consideration amount of Rs. 9,450/- per sq. ft. amounting to a total of Rs. 66,15,000/-. Out of the said consideration, the complainants have paid Rs. 33,34,500/-, while the balance consideration was to be paid at the time of possession along with occupancy certificate. However, till date, the respondents have failed to execute the registered agreement for sale with the complainants. The complainants further stated that, since the respondents have accepted more than 10% of the consideration amount without entering into the agreement for sale, they have violated the provisions of section-13 of RERA. At the time of allotment, the possession was promised by the respondents as July 2012. However, during the registration of the project with MahaRERA, the respondents have stated the date of possession to be 31/12/2021. The complainants further stated that, they have been living on rent waiting for the possession of which has not yet been handed over by the respondents. The complainants have, therefore filed the present complaint seeking the reliefs as stated above. महा-रेरा
5. The respondents, on the other hand, have resisted the claim of the complainants and stated that the complainants have not come before MahaRERA with clean hands and tried to mislead the Authority by presenting the material facts on record. The respondents further stated that the present complaint is not maintainable before MahaRERA on the grounds mentioned below.


6. The complainant No.2 has no right to file this complaint as his name is not reflected in the NOC issued by MHADA with reference to the re-development project. Further, the complainants have submitted false declaration to MahaRERA at the time of filing of this complaint that no permission is pending before any other Court. However, the complainant No.1, is the managing committee member of the society, namely Shree Jaya Building Premises CHS Ltd. and the said the society had filed suit before the Hon'ble High Court of Judicature of Bombay, bearing commercial suit No. 95 of 2016 and the name of the complainant No.1 is reflected at Sr.No.23 of the said suit. Since the matter is subjudice before the Hon'ble High Court at Bombay, the present complaint is not maintainable before MahaRERA. Moreover, in the said suit, the Hon'ble High Court has also appointed architect M/s. Sethgiri and Associates as Court Receiver and called upon to report with regard the status of this project from the said architect. Hence, the respondents prayed for dismissal of this complaint.
7. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the prevent case, the complainants have approached MahaRERA seeking execution of agreement for sale for additional area adm. 700 sq.ft. by mentioning the date of possession as July 2012 along with the other amenities and car parking. Admittedly, the complainants are the original members of the society namely, Shree Jaya Building Premises CHS Ltd. On perusal of the documents submitted by the respondents on record and MahaRERA, particularly the commercial suit bearing No. 95 of 2016, it appears that the said society had filed commercial suit before the Hon'ble High Court of Judicature at Bombay for various issues as stated therein. In the said suit, the complainants are joined as party defendants. The said society has prayed for termination of the power of attorney and the development agreement entered into with the respondents/promoters. On the ground of non payment of rent,



completion of the project in time bound manner, failure to provide agreed area of a new premises after buying additional area etc.

8. In view of the said fact, the MahaRERA is of the view that since the parallel proceeding is subjudice before the Hon'ble High Court of Judicature at Bombay with regard to the present project registered with MahaRERA, it would not be just and fair to take any decision at this stage. The contentions of the complainants in this regard that, they have been joined as defendants in the said suit and hence the MahaRERA can decide this complaint, cannot be accepted as the society had filed the said suit on behalf of the members of the said registered society by raising identical issues as raised by the complainants in this complaint.
9. In view of these facts, the MahaRERA feels that the present complaint is not maintainable at this juncture. However, the complainants would be at liberty to approach MahaRERA after final order is passed by Hon'ble High Court in the aforesaid suit.
10. With these directions, the complaint stands disposed of.

महा-रेरा


(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA