

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI

1. Complaint No. CC00600000078582

Mr. Vincent Dsouza..... Complainant

**Versus**

1. M/s Jailaxmi Construction
2. M/s Krishna Infrastructure
3. M/s. Prithvi Buildworth Constructions .... Respondents

2. Along with  
Complaint No. CC00600000078583

Ms. Nancy Mendonca .....  
Complainant

**Versus**

1. M/s Jailaxmi Construction
2. M/s Krishna Infrastructure
3. M/s. Prithvi Buildworth Constructions .... Respondents

3. Along with  
Complaint No. CC00600000078584

Mrs. Jacintha Martin Machado .....  
Complainant

**Versus**

1. M/s Jailaxmi Construction
2. M/s Krishna Infrastructure
3. M/s. Prithvi Buildworth Constructions .... Respondents

Project Registration No.P51700006513

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

Adv.Vishal Chavan a/w Adv. Shweta Kamble appeared for the complainants.

Mrs. Snehal Kalsaria appeared for the respondent No. 1.

None appeared for the respondent No.2.

Adv. Narendra Yadav appeared for the respondent No. 3.

**ORDER**  
(25<sup>th</sup> August, 2020)



(Through Video Conferencing)

1. The complainants above named have filed these three separate complaints seeking directions from the MahaRERA to the respondents to execute registered agreement for sale with them under section-13 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") and also to handover the possession of their flats and also to pay interest under section-18 of the RERA in respect to booking of their flats in the respondents' project known as "Prithvi Sneh" bearing MahaRERA project registration No. P51700006513 at Village Ghodbunder, Dist. Thane.
2. These complaints are filed in respect of the same project and same advocates have appeared for the complainants. Hence same were clubbed together and heard on several occasions and same was closed for order. However, thereafter it was noticed by MahaRERA that though the complainants have joined respondent No. 1 and 2 from whom they have purchased the said flat they have neither appeared nor filed any reply on record. Hence in compliance of principles of natural justice these complaints were again heard by MahaRERA after issuing summons to the respondent No. 1 and 2. Accordingly the matter was again heard, However the final order could not be passed due to non-availability of physical file as the office of MahaRERA was closed in view of the lockdown declared by the State as well Central Government due to Covid-19 pandemic.
3. The MahaRERA has now issued Standard Operative Procedure dated 12-06-2020 for hearing of complaints through Video Conferencing. Accordingly, these complaints were again scheduled for hearing today as



per the SOP dated 12-06-2020. Both the parties have been issued prior intimation of this hearing and they were also been informed to submit their written submissions, if any. Accordingly, the complainants appeared through their advocate, the respondent No. 1 appeared through Mrs. Snehal Sawant Kansaria and Adv. Narendra Yadav appeared for the respondent No. 3. However none appeared for the respondent No. 2. The MahaRERA heard the arguments advanced by both the parties and also perused the record.

4. It is the case of the complainants that they have purchased their respective flats in the project known as “Sneh Crown” developed by the respondent No.2 promoter on the plot of land owned by respondent No. 1, situated at land bearing old survey No. 221, Hissa No. 1 and 2 and area admeasuring 300 sq. m. forming the portion of survey No. 139, Hissa No. 1, at Village Ghodbandar, Taluka and Dist. Thane. In the year 2013, the complainants came across the advertisement of respondent No.1 and hence they approached respondent No.1, who is the owner of the land. The respondent No. 1 represented that it is the owner of the land and Mira Bhayander Municipal Corporation has sanctioned the plan to construct the building and it is entitled to sell flats in the said building known as “Sneh Crown”. By virtue of the said representation, the complainants have booked their flats and paid substantial amount to the respondent No. 1. After regular follow up with the respondent No. 1 for refund or execution of agreements for sale, the respondent No. 1 and 2 jointly executed the agreements for sale with the complainants on 10/010/2017. However same are not registered nor possession has been handed over to them. The complainants further stated that the

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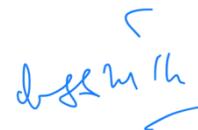
respondent No. 3 is also jointly and severally liable to register the agreements for sale with them as the respondent No. 1 assigned the project to respondent No. 3, which has registered the project with MahaRERA in the name of “Prithvi Sneh”, which is in total violation of section-15 of the RERA and the permissions obtained by respondent No. 3 are the same permissions which are obtained by the respondent No. 1. Further there is one building standing on site of the suit property. The complainants further stated that if this Authority comes to the conclusion that the respondent No. 1 has not registered this project with MahaRERA, then direction may be given to respondent No. 1 and 2 to get the said project registered with MahaRERA. On the basis of these facts, the complainants prayed to allow these complaints.

5. The respondent No. 1 though appeared through Mrs. Snehal Sawant Kansaria for hearing today, has not uploaded/filed any reply/written submission on record as per the SOP through email etc. However, the respondent No. 1 has stated that due to pendency of civil suit and the injunction granted by the Hon’ble Court, she has been restrained from carrying out further constructions or alienate to any other person and the said suit is still pending. Hence she could not carry out construction at site and also could not register the agreements in favour of the complainants. She further stated that as soon as the said injunction is lifted the agreement for sale would be registered with the complainants. However, during the course of hearing she has agreed to refund the entire amount paid by the complainants.
6. The respondent No. 3 has also uploaded its reply on record of MahaRERA on 24-08-2020 and disputed the claim of the complainants. It further



stated that, these complaints are false and not maintainable against them and hence the same are liable to be dismissed. The complainants have never purchased any flat in the present project registered with MahaRERA nor paid any amount towards the booking of their flats. It further stated that it has purchased FSI of building No. 2 from the respondent No. 1 and started the project in the name of 'Prithvi Sneh' vide registered agreement dated 05/01/2015. The permissions such as commencement certificate stands in the name of the respondent No.1. The respondent No. 3 further stated that the respondent No. 1 has sold the FSI for building No. 1 to the respondent No. 2, in which the complainants have booked their flats. At the time of purchasing the said FSI, the respondent No. 1 has not disclosed the said transaction with these complainants. Hence the respondent No. 3 prayed for dismissal of these complaints.

7. The MahaRERA has examined the records as well as the arguments advanced by both the parties. From the record it appears that the respondent No. 1 which is a proprietary firm of Mrs. Snehal Kansaria is the owner of the plot of land bearing Survey No. 221/1, 221/2, 221/3, 139/1, 141/1P of Village Ghodbunder, Thane. The respondent No. 2 and 3 are the promoters to whom the respondent No. 1 has sold the FSI. The respondent No. 3 has registered this project with MahaRERA by purchasing the FSI from the respondent No. 1. Admittedly, the complainants have booked their flats with the respondent No. 1 and 2 on the basis of the permissions obtained by the respondent No. 1 in the year 2013 and the money has also been paid to the respondent No. 1. The complainants have contended that the respondent No. 1 represented that it has rights to sell the flats and based on the said representations the



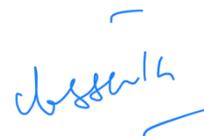
booking have been done. During the course of hearing the respondent No. 1 admitted the payment made by the complainants and also showed willingness to registered agreements for sale or to refund the entire amount paid by them. The respondent No. 3 on the other hand denied the claims of the complainants and stated that there is no privity of contract between it and the complainants, nor the money has been paid to it and therefore they are not the allottees of the project registered by it with MahaRERA.

8. However, from the webpage information uploaded by the respondent No. 3, prima facie it appears that all mandatory permissions such as IOD/ commencement certificate uploaded by the respondent No. 3 stands in the name of the respondent No. 1, who is the owner of the project plot of land. However, the said crucial fact has not been disclosed by the respondent No. 3 to MahaRERA by adding the name of the respondent No. 1 as promoter / owner of the project land. It shows that the respondent has violated the provision of section 4 of the RERA and the relevant Rules and Regulations made thereunder. Being the owner of the land the respondent No. 1 was the necessary party to the said project.
9. With regard to the claim of the complainants, the MahaRERA is of the view that the complainants have put their hard earned money for booking of their flats and paid substantial amount to the respondent No. 1. The said booking was done on the basis of the representation made by the respondent No. 1 that it has the rights to sell the flats, inspite of the fact that the respondent No. 1 had sold the FSI of the said plot of land to the respondent No. 2 and 3. Based on the said representation the complainants have paid the amount to the respondent No. 1. Till date

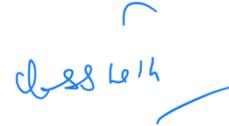


the respondent No. 1 has neither handed over possession of the flats to the complainants nor refunded the amount paid by them. It shows that the respondent No. 1 has kept the complainants in lurch by taking huge amount and tormented the complainants viciously from the year 2013. Even after commencement of RERA the respondent No. 1 did not even bother to get the project registered, which is not permissible under RERA. In the matter of Neelkamal Realtors Vs. State of Maharashtra & Ors in Writ Petition No. 2737 of 2017 decided on 6th December, 2017, the Hon'ble Court discussed the eventualities creeping in and the suffering of the allottees/flat purchasers. Complying the said observations in the judgement it squarely meets that allottees need to be compensated by way of interest for any inaction on the part of the promoter.

10. From the record, it also appears that the respondent No. 1 has not registered the project with MahaRERA and even the complainants have not produced any cogent documentary proofs to show that they are the allottees of respondent No.3. Therefore the MahaRERA feels that the respondent No. 1 is responsible for the allotment made in favour of the complainants. Moreover, the complainants have also admitted that they are not the allottees of the respondent No. 3, who has registered this project with MahaRERA. However, they stated that since there is violation of section 15 of the RERA, the respondent No. 3 is also jointly liable to execute the agreements with them. The said contention of the complainants cannot be accepted since nothing has been brought on record to show that the said transfer of development rights from the respondent No. 1 to 3 has been done after commencement of RERA. Therefore the MahaRERA cannot issue directions under section 13 of the RERA to the respondent No. 3.



11. The complainants in this case have stated in their complaints that they were pursuing the respondent No. 1 for either refund of the money or for execution of the agreements for sale in the year 2017. During the course of hearing the respondent No. 1 shown its willingness to refund the entire money paid by the complainants along with interest. The MahaRERA therefore feels that nothing survives in these complaints.
12. Considering the aforesaid facts and circumstances of this case, the following order is passed:
- a) The respondent No. 3 is directed to add the name of the respondent No. 1 in the project registered with MahaRERA as owner-promoter.
  - b) The respondent No. 1 is directed to refund the entire amount paid by the complainants along with interest.
  - c) To decide the quantum of compensation under section 12 of the RERA, these complaints are referred to Ld Adjudication Officer/ MahaRERA, Mumbai.
13. With these directions, all three complaints stand disposed of.



(Dr. Vijay Satbir Singh)

**Member - 1/MahaRERA.**