

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000055876.

Mr. Manoj Dhake.

... Complainant.

Versus

M/s. Nirmal Lifestyle Limited.

... Respondents.

MahaRERA Regn: P51800006781.

(Nirmal Lifestyle Discovery, Mulund West)

Coram: Shri B.D. Kapadnis,
Member-II.

Appearance:

Complainant: Adv. Mr. Vikramjeet
Garewal.

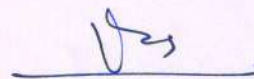
Respondents: Adv. Mr. Tushar Kadam
i/b Ms. Vaishali Mohite.

FINAL ORDER

06th July, 2020

The complainant has filed this complaint under Section 18 of the Real Estate (Regulation and Development) Act 2016 for claiming interest on his investment on account of delayed possession of his booked shops / offices bearing Nos. 1602 and 1603 situated in the respondents' registered project 'Nirmal Lifestyle Discovery' situated at Mulund West. The complainant contends that the respondents agreed to handover the possession of the shops by December 2016, however, they have failed to hand it on the agreed date. Therefore, he has been claiming interest on the amount of Rs. 7,54,000/- paid to the respondents.

2. The respondents file their reply wherein they contend that, complainant is not entitled to get the relief because he is the investor. There was a grace period of six months beyond the agreed date of possession,



December 2016. They could not complete the project in time because they had to revise their plans as the concept of fungible FSI was introduced by the sanctioning authority in 2012. Therefore, they deny their liability to pay the interest claimed by the complainant. They further contend that, they are entitled to get the relief of deferred payment (moratorium) on account of Covid-19 crisis as has been notified by MahaRERA by its notification bearing No. 13 of 2020 dated 02nd April 2020 and No. 14 of 2020 dated 18th May, 2020. They have been undergoing and suffering unusual crisis amounting to force majeure and hence they pray for moratorium period for paying the interest.

3. I have heard the learned Advocates of the parties on virtual platform. Both the parties have certified that, the audio and video quality of their video conferencing is good.

4. On perusal of the agreement executed by the respondents in complainant's favour, I find that the respondents agreed to handover possession of the shops / offices by December 2016, however the parties have contemplated that there shall be a grace period of six months. As per the Section 8 (b) of the Maharashtra Ownership Flats Act, the date of possession cannot be extended beyond six months even if the promoter is prevented from completing the project in time due to the reasons beyond his control. After taking into consideration factual and legal aspects of this matter, I find that respondents were obliged to handover possession of the shops/ offices by 30th June 2017. Since the respondents have failed to do so till date, the complainant is entitled to get interest on the amount paid by him towards the consideration of the said shops (excluding the amount of taxes, stamp duty and registration charges) from 1st July 2017 paid prior thereto and from the dates of subsequent payments till getting the possession of the booked shops. The prescribed rate of interest is 2% above



SBI's highest MCLR. It is currently 7% p.a. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint.

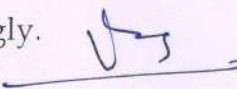
5. It is true that the industry has been undergoing a tremendous crisis due to spread of Covid-19 pandemic and therefore MahaRERA has issued the notifications to which the respondents have referred to whereby the MahaRERA has declared that this crisis amounts to force majeure and the memorandum period for the purpose of making the payment on the interest accrued payable to the allottee or the promoter, as the case may be, will be differed during this moratorium period. It is also submitted on behalf of the respondents that, the set off, of amount which have become due from the complainant may be given. I have no hesitation to grant this relief. Therefore, the following order:

ORDER

- A. The respondents shall pay the simple interest at the rate of 9% p.a. on the amount of consideration paid prior to 30th June 2017, from 1st July 2017 and from the dates of subsequent payments till the possession of the shops are handed over to the complainant.
- B. The respondents shall pay Rs. 20,000/- to the complainant towards the cost of the complaint.
- C. The parties are entitled to the relief of moratorium period as per the notifications issued by this Authority from time to time.
- D. The parties are permitted to adjust their respective claims and give set-off provided that if the amount payable to the respondents is adjusted then the respondents shall issue credit note thereof to the complainant.

The complaint is disposed of accordingly.

Date: 06.07.2020.


6.7.2020.
(B. D. Kapadnis)
Member-II,
MahaRERA, Mumbai.