

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

1. COMPLAINT NO: CC006000000151225.

Mr. Vignanshanker Mahesh Raval &

Mrs. Pinal Vignanshanker Raval. ... Complainants.

2. COMPLAINT NO: CC006000000161239.

Prahalad Ray Mundra.

... Complainant.

3. COMPLAINT NO: CC006000000171579.

Sunil Agrawal.

... Complainant.

4. COMPLAINT NO: CC006000000171482.

Dimpy Soni Abhishek Soni.

... Complainant.

5. COMPLAINT NO: CC006000000171567.

Nagma Khatoon Khan.

Saifullah Khan.

Affan Khan.

... Complainants.

6. COMPLAINT NO: CC006000000171805.

Mohan Vaidyanathan.

... Complainant.

**Versus**

M/s. CCI Projects Pvt. Ltd.

... Respondents.

MahaRERA Regn: P51800003067.

(Wintergreen)

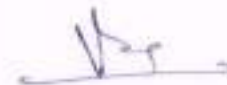
**Coram:** Shri B.D. Kapadnis,  
Member-II.

**Appearance:**

Complainant: Present in person at Sr. No. 1.

Adv. Mr. Vivek at Sr. No. 2 and 3.

Present in person at Sr. No. 4.



Adv. Mr. Anand Mamidwar at Sr. No. 5.  
Adv. Mr. Avinash Pawar at Sr. No. 6.  
Respondents: Adv. Abir Patel a/w AR  
Anushree Ambekar.

**FINAL ORDER**  
**31<sup>st</sup> July, 2020.**

The complainants are the allottees of the respondents' registered project situated at Borivali, Mumbai. The complainants have been seeking interest on their investments as the respondents have failed to handover the possession of their respective flats on the agreed dates. The necessary information provided by them is as under.

Sr. No.	Complainant Name	Flat No.	Agreed Date of Possession	Consideration	Last Payment Made on
1	Vignanshankar Raval	C - 3B	31.03.2018	Rs. 1,45,52,028/-	29.06.2017
2	Prahalad Ray Mundra	C- 6C	30.06.2017	Rs. 1,85,88,726/-	15.03.2018
3	Sunil Agrawal	C- 7D	30.06.2017	Rs. 1,88,78,571/-	15.03.2018
4	Abhishek Soni	C- 9E	30.06.2017	Rs. 1,37,94,000/-	16.03.2018
5	Nagma Khatoon Khan	C- 4B	31.12.2017	Rs. 1,31,88,375/-	14.03.2018
6	Mohan Vaidyanathan	A - 5C	28.02.2016	Rs. 1,47,32,306/-	12.03.2018

2. The respondents have pleaded not guilty. They have filed replies to contend that they have registered the project because it was ongoing when RERA came into force. They have denied complainants' claims broadly on following facts/grounds –

a. The time line of its completion is December 2019 which is subject to the extension. Therefore, they contend that as per the verdict of Hon'ble Bombay



High Court given in the case of M/s. Neelkamal Realtors Pvt. Ltd. V/s. The Union of India, the liability of the promoter would commence to pay the interest only after crossing the date of completion ratified by the RERA Authority. Therefore, the complainants are not entitled to get the interest on their consideration for delayed possession under Section 18 of RERA.

b. The respondents contend that as per clause 17 of the Agreement they were entitled to get reasonable extension. The project got delayed because of the reasons which were beyond their controls. Therefore, the period stands reasonably extended by 51 months because of the mitigating circumstances. The respondents have informed the allottees about the revised dates of possession by sending the letters from time to time.

The respondents further contend that it is a financially stressed project suffering from financial crisis. M/s. India Bulls, their financier, failed to advance the loan of Rs. 130 Cr. because of the lack of liquidity in the market. They have applied for getting the benefit of Last-Mile Revival Scheme announced by the Government of India. The respondents applied to get the funding to the extent of Rs. 180 Cr. which is sanctioned as per SBI Cap. Therefore, they contend that if the interest would be paid to 643 allottees of the project for delayed possession out of this fund, it would not be possible for the respondents to complete the project.

c. The complainants have paid the last payments as shown in the table hereinabove. The complainants have paid the money even after passing the agreed date of possession and thereby they have acquiesced the delay.

d. The role of the Real Estate Regulatory Authority is not just like a court but it is a regulator. Therefore, this Authority has passed a common order in Complaint No. CC006/78611 and others for preserving the rights of other allottees and it permitted the respondents to utilise all the funds towards the completion of the project so that the project sees the light of the day.





e. There is a lockdown which has been extended by the Government from time to time because of the spread of Covid-19 pandemic. Therefore, the construction activities have been badly affected. This Authority has also extended the period of completion by six months for the projects whose completion was to expire after 15.03.2020.

Therefore, the respondents submit that they are not liable to pay the interest as prayed by the complainants.

3. Heard both the sides on virtual platform. They have highlighted the points pleaded by them. I shall consider them one by one.

**Material date for possession.**

4. Adv. Mr. ABIR submits that RERA is prospective in nature it does not permit the reliefs claimed by the complainants. The respondents have mentioned the proposed date of completion at the time of registration of the project and it is the material date for giving possession of the flat. The respondents would be liable if the flats are not constructed on or before the revised date. He has also brought to my notice Neelkamal Realtors Suburban Pvt. Ltd. V/s. Union of India 's judgement holding that provisions of RERA are prospective. He submits that the project is near to its completion and during extended period of registration it would be completed. If the refunds or interest are allowed at this stage, it would badly affect the project. I find myself unable to agree with the view canvassed by Mr. Abir because Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. V/s. Union of India has clarified in Para-119 that under the provisions of Section 18 of RERA, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under RERA promoter is given facility to revise the date of completion of project and declare the same under Section 4. RERA does not contemplate re-writing the agreement.



It is observed by the Hon'ble High Court in the same judgment that through RERA is prospective in nature, some of its provisions like section 12,14,18 and 19 are retroactive. After going through these observations, there remains no doubt in my mind that actual date/s for computing the delay shall be the date of possession mentioned in the agreement/s and it cannot be computed from the revised date unilaterally declared by the promoter at the time of registration of the project.

**Extension of agreed period for possession.**

5. The agreements have been executed under Maharashtra Ownership Flats Act 1963. Section 8(a) relates to allottees' right to claim refund on account of delay in giving possession and sub clause(b) thereof specifically provides that if the promoter is prevented by the causes beyond his control from completing the project on agreed date, then the period can be extended for first three months and thereafter if the said reason is still existing then it can be further extended for three months. Therefore, the law itself has put the optimum limit on extension of time, if the promoter is really prevented by the reasons beyond his control from constructing project in time. Section 88 of RERA allows it to operate. Project is still under construction and more than six months from the agreed date of possession have already passed therefore there is no reason to look into the reasons of delay. Even if one inclines to consider them, one finds that the allottees have already paid more than 90% of the total consideration long back. They allege that the respondents have siphoned off the money of the project. It is respondents' responsibility to raise the funds and to complete the project in time. Allottees cannot be made to suffer for their mismanagement/siphoning/wastage of their funds. Financial crisis and crunch contended by the respondents cannot be said to be the ground for delay. The Hon'ble Supreme Court have held in Fortune Infrastructure V/s. Trivor D'lima (2018) 5 SCS 442





that the reasonable period of possession is only three years. In view of this factual and legal aspects of the matters, I do not follow the view canvassed by the respondents.

**Allottees' acquiescence of delay.**

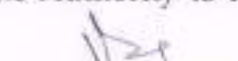
6. Mr. Abir submits that the allottees were informed about revised dates of possession from time to time. They have made the payments even after the agreed dates of possession have been crossed. This shows that they have acquiesced the delay. I find that slab wise payments were to be made by the allottees. Even after investing big amount they are found in a pipe which permits to march ahead only and does not permit to take about turn. They being needy persons are found in helpless condition. They went on paying the respondents for early completion of their flat. Therefore, this conduct of the complainants does not amount to their acquiescence. In my opinion, when the statute imposes strict duty for completing the project as per time line and speaks about the consequences of delay, allottees' consent for condoning delay must be unequivocal and it must be in writing. No such document is produced before me. The payment made after crossing of the agreed date of possession as demanded by the promoter, cannot be construed as their consent for delaying the project. After taking into consideration these facts, I am convinced that the respondents were liable to handover the possession of the flats on or before the agreed dates mentioned by the complainants in any circumstance. Admittedly, the respondents have failed to handover the possession of the flats on agreed dates.

**Role of the Authority: interim order.**

7. Mr. Abir has also brought to my notice para 115 of Neelkamal Realtors Suburban Pvt. Ltd. V/s. Union of India 's judgement holding that it is the duty of Real Estate Regulatory Authority under RERA to see that the projects are completed. In fact, these observations relate to sections 6 and 8 of RERA which



provide that on the lapse of registration or its revocation, the Authority to adopt the course of action laid down by section 8 of RERA for completing the project. It is not meant for protecting the errant promoters and to save them from their mischiefs and misdeeds. Section 34 (f) of RERA imposes duty on the Authority to ensure the compliance of obligations cast on the promoters, allottees and real estate agents under the Act, rules and regulations framed thereunder. Respondents have drawn my attention to common interim order Complaint No. CC006/78611 and others to convince me. It is the order of the Authority passed on 22/01/2020. It shows that the Authority directed the respondents to complete the project on or before 31<sup>st</sup> December, 2020 and the relief for interest on account of delayed possession is not granted at that stage with the observation that it would be considered at appropriate stage as the funds are to be utilized for completion of the project. The legal right to claim interest on consideration amount for delay cannot be defeated and the Authority has not denied the said right of the allottees but it refrained itself from granting it at that interim stage in those complaints only. Those complaints are still pending for the decision. This order is not applicable to the present complaints. Seven months have passed but according to the complainants, respondents are not sincere to complete the project as time lined in the order. This Authority has considered the difficulties explained by the respondents and asked them to complete the project by December 2020. It is fact due to lockdown on account of outbreak of Covid - 19 pandemic, the market has gone down and therefore, the moratorium period for making payments has been specified by the Authority by its circulars/notifications issued from time to time. The direction to pay interest if given subject to moratorium period, in my opinion will not affect the project at all. These are the only efforts which can be made by the Authority to take the project to completion.





### **Complainants' entitlement u/s 18 of RERA.**

8. Section 18 of RERA confers right upon the allottees either to continue in the project and claim interest on consideration amount paid to promoter for every month of delay till getting possession of their flats or they can withdraw from the project and claim refund of their amount with interest and/or compensation. The complainants want to continue in the project and they have exercised their legal right to claim interest on consideration amount. Respondents are liable to pay the complainants simple interest at prescribed rate on consideration amount paid by them till getting possession of their flats with occupancy/completion certificate. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 7% p.a. The complainants are entitled to get Rs. 20,000/- towards the cost of the complaint. Consideration paid up to date/s of agreed possession shall carry the interest from those date/s and from the date/s of subsequent payments. However, the payment will be regulated by the moratorium period specified by this Authority by its circulars issued from time to time. Therefore, the order-

### **ORDER**

1. The respondents shall pay the interest at the rate of 9% p.a. on the amount of consideration paid till the date of possession from those date/s and they shall pay the interest at the same rate from the dates of the subsequent payments of consideration till handing over the possession of the flats to the complainants with completion/occupancy certificate.
2. The respondents shall also pay each complainant Rs. 20,000/- towards the cost of his/her complaint.
3. The parties are permitted to adjust their respective claims and pay the balance.
4. The respondent shall issue credit note if any amount is adjusted against the amount which is due to it.






5. The payments shall be subject to moratorium period specified by this Authority from time to time.

Uploaded at Mumbai.

Date: 31.07.2020.

  
31.7.2020  
(B. D. Kapadnis)  
Member-II,  
MahaRERA, Mumbai.