

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

COMPLAINT NO: CC006000000100286

Sarojkumar Sahu

...Complainant.

Versus

M/S Nirmal Lifestyle (Kalyan) Pvt. Ltd.
(Lifestyle City Kalyan- Spirit A)

...Respondents.

MahaRERA Regn: P51700005234.

Coram: B.D. Kapadnis, Member II.

Appearance:

Complainant: In Person.

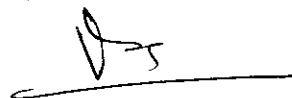
Respondents: Adv. Mr. Tushar Kadam.

Final Order

23rd January 2020.

The complainant booked flat no. 806 in respondents' registered project 'Lifestyle City Kalyan- Spirit A' situated at Kalyan. They agreed to hand over the possession of the flat on or before June 2016 with grace period of six months. The respondents failed to hand over the possession of the flat on agreed date. Therefore, the complainant seeks the refund of their amount with interest under section 18 of RERA by withdrawing from the project.

2. The respondents have pleaded not guilty and filed their reply to contend that the project is delayed because the Hon'ble Bombay High Court in Public Interest Litigation No. 182 of 2009 restrained Kalyan-Dombivali Municipal Corporation on 13.04.2015 from approving any proposal/project for construction of building and vacated it on



25.04.2016. Therefore, the project is delayed by 19 months and this reason was beyond the control of the respondents. They contend that the agreement specifies that the agreed date of possession can be extended due to force majeure and shortage of building materials. They further contend that in one of the cases Hon'ble Chairperson of the Authority has taken the view that the interest on account of delay should run from the revised date of possession disclosed at the time of registration of the project and reliance has also been placed on Minal Anil Bhosale-V/s- Shree Prakash Creative Buildcon JV wherein Appellate Tribunal moulded the relief by extending period of possession. They have revised proposed date of completion as 31st December 2019. Hence they request to dismiss the complaint.

3. Heard both the parties.

4. Following points arise for determination and my findings recorded thereon are as under:

POINTS	FINDINGS
1. Whether the respondents have failed to hand over the possession of the flat on agreed date?	Affirmative.
2. Whether the complainant is entitled to get refund of his amount with interest?	Affirmative.

REASONS

5. In the agreement executed by the respondents, they have specifically agreed to hand over the possession of the booked flat on or before June 2016 with grace period of six months. The parties themselves have computed the period of grace period of six months due to unforeseen circumstances and uncertainty which may obstruct the



construction of the project in time. The agreement has been executed under Maharashtra Ownership Flats Act 1963. Section 8(b) thereof specifically provides that if the promoter is prevented by 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. After taking into consideration these facts, I am convinced that the respondents were liable to hand over the possession of the flat on or before 31.12.2016 in any circumstance. Admittedly, the respondents have failed to hand over the possession of the flat on agreed date.

6. The respondents contend that they have received the O.C. of building. Hon'ble Bombay High Court in Neelkamal Realty Suburban Pvt' Ltd.-V/ s-Union of India has clarified the fact in Para-119 that under the provision of Section 18 of RERA 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. After going through these observations, there remains no doubt in my mind that actual date for computing the delay shall be the date of possession mentioned in the agreement and it cannot be computed from the revised date unilaterally declared by the promoter at the time of the registration of the project. It is true that whenever the ends of justice demand, the relief can be moulded by the Authority and therefore I have considered the grace period of six months in computing the agreed date of possession.



7. There is no dispute between the parties that the complainant has paid the consideration amount Rs. 35,25,527/- mentioned in payment statements marked Exh. A filed by the complainant. The complainant claims Rs. 11,450/- paid by him towards loan processing fees on 09.12.2015 and Rs. 1,300/- for document handling fee on 08.02.2016 Rs. 6,272/- collected on 16.12.2015 towards stamp duty plus surcharge for loan. The respondents have denied their liability to reimburse these amount. I find that the complainant will have to be restored to the position which he held before booking the flat. Therefore, the respondents are liable to reimburse these amount which he had to bear for availing of the loan from the bank.

8. The complainant claims Rs. 5,059/- paid towards filing fee of his earlier complaint no. CC006/339 which has been settled by the parties. I do not find that this claim of complainant is legitimate. So far the filing fee of the present complaint and its cost is concerned I find that the complainant is entitled to get Rs. 20,000/- towards the cost of the complaint.

9. The complainant has paid Rs. 2,29,500/- on 14.12.2015 for stamp duty. As per Sections 47 & 48 of Maharashtra Stamp Act, the complainant can claim refund of stamp duty within five years of the registration if the agreement for sale is cancelled without taking the possession of the flat. Hence, I find that the complainant is not entitled to get its reimbursement for the time being. However, he will be entitled to get its reimbursement if the respondents would fail in satisfying his claim within five years of the registration of the agreement.

10. Since, the respondents have defaulted in handing over the possession of the flats on agreed date, the complainant wants to withdraw from the Project. Respondents have incurred liability to refund the amounts and reimburse the amount of registration charges, expenses



incurred for obtaining loan with simple interest at prescribed rate from the date of their payments till their refund. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.2%. The complainants are also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.

ORDER

The respondents shall refund the amounts mentioned in the payment format marked exh. "A" except the amount of stamp duty Rs. 2,29,500/- and filing fee of Rs. 5,059/- of CC006/339 with simple interest 10.2% per annum from the date of the receipt/payment till refund.

The interest already received by the complainant shall be set off.

Payment detail marked Exh 'A' of complainant shall form part of this order.


The respondents shall pay the complainants Rs. 20,000/- towards the cost of each complaint.

The charge of the aforesaid amount shall be on the booked flat of each complainant till satisfaction of their claim.

Each complainant, on satisfaction of his claim shall execute the deed of cancellation of the agreement and the respondents shall bear its cost.

It is clarified that if the complainant's claim is not satisfied within five years of the registration, the respondents shall reimburse the amount with interest.

Mumbai.
Date: 23.01.2020.


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

Name of Complainant: Sarojkumar Pramod Sahu

Complaint No. - CC006000000100286

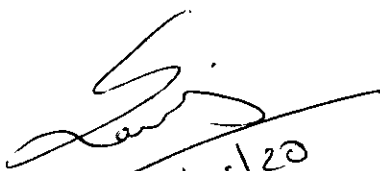
Ref. A
Member

Payment Particulars

Sr. No.	Date	Amount (INR)(Rs.)	Purpose	Receipt No. / Cheque No. With Bank Name
1	24/05/2015	45000.00	Token Amount towards Consideration Value	3694 / 477592 - Citi CC
2	21/06/2015	200000.00	Earnest Amount towards Consideration Value	3961 / 015123 - ICICI
3	05/07/2015	298251.00	Earnest Amount towards Consideration Value	3991 / 015124 - ICICI
4	23/10/2015	120434.00	L. C. K for change in flat from Riveria C to Spirit A toward Consideration Value	No Receipt/015125 - ICICI
5	14/12/2015	229500.00	Stamp Duty	No Receipt/ 015128 - ICICI
6	14/12/2015	33184.00	VAT	No Receipt/ 015130 - ICICI
7	31/01/2016	1273662.00	Disbursed through Loan towards Consideration Value	201502685/358471-HDFC
8	31/01/2016	110338.00	Disbursed through Loan towards Service Tax	358470 - HDFC Loan
9	15/09/2017	500000.00	Disbursed through Loan towards Consideration Value	2017001167 -RTGS
10	10/10/2017	715158.00	Disbursed through Loan towards Consideration Value	2017001222 -RTGS
11	09/12/2015	11450.00	Loan Processing fees to HDFC Bank	15127 - ICICI
12	18/02/2016	1300.00	Document Handling and Filling Fee at KDMC office	71/570 - Cash Paid
13	16/12/2015	6273.00	Stamp Duty Plus Surcharges for Loan	15131 - ICICI
14	06/11/2017	5059.00	RERA Complaint Filing Fees - CC006000000000339	Paid online through ICICI
15	06/08/2019	5059.00	RERA Complaint Filing Fees - CC006000000100286	Paid online through ICICI
Total		35,54,668.00		

Rs. 35,54,668/-

Not disburse except Sr.no. 11, 12, 13, 14, 15


23/01/20


23/01/20