

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

COMPLAINT NO: CC006000000192787.

Mr. Mukesh Vilaychand Patil

Mrs. Harsha Mukesh Patil

... Complainants.

COMPLAINT NO: CC006000000193340.

Mr. Vivek Mittal

Mrs. Yukti Mittal

... Complainants.

**Versus**

Nirmal Lifestyle Ltd

...Respondent.

MahaRERA Regn: P51800003188.

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

**Appearance:**

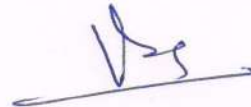
Complainants: Adv. Mr. Nitin Kaskar.

Respondent: Adv. Mr. Tushar Kadam.

**FINAL ORDER**

**09<sup>th</sup> December, 2020**

The complainants have been seeking refund of their amount under section 18 of RERA by contending that the respondent has failed to handover the possession of their flats on agreed dates. The necessary facts pleaded by them are as under:



Name of the complainant	Flat No.	Agreed date of possession
Mr. Mukesh Vilaychand Patil CC006000000192787	2208	June 2016 + Grace period of 6 months
Mr. Vivek Mittal CC006000000193340	105	June 2016 + Grace period of 6 months

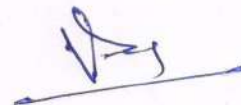
2. The respondent has pleaded not guilty and filed replies in the complaints. The respondent denies its liability to reimburse the amount of tax, brokerage and statutory charges paid by the complainants to the government. It contends that, it would hand over the possession of the flats on the date mentioned by it on its webpage for completion of the project subject to the current Covid-19 pandemic situation. The respondent contends that the various authorities delayed the statutory permissions. The Government of Maharashtra particularly its Urban Department issued the notification on 06.01.2012 and thereby modified various provisions of DCR. The respondent had to re-apply for the approval of the entire project as per the new guidelines and revise the plans. As per the clause 18 of the agreement, the promoter is permitted for reasonable extension of period for completion of the project and for handing over the possession of the flats. The allottees of the project have formed their association and therefore, the respondent contends that it is not proper to deal with individual cases. The allottees have to approach to the association of the allottees. The current market has tremendously collapsed and market has been hit with lockdown because of Covid-19 pandemic. Hence, it requests to dismiss the complaints.



3. Heard the learned advocates of the parties on virtual platform.

**Material date for possession.**

4. Adv. Mr. Kadam submits that RERA is prospective in nature it does not permit the reliefs claimed by the complainants. The respondent has 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 flats. The respondent would be liable if the flats are not constructed on or before the revised date. He has also brought to my notice Neel Kamal 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. Kadam 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 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 registration of the project.



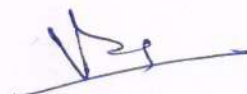


**Extension of agreed period for possession.**

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. In view of this factual and legal aspects of the matters, I do not follow the view canvassed by the respondent. Parties have agreed upon the extension of six months from the agreed dates of possession. Respondent was liable to hand over the possession of the flats on or before 31<sup>st</sup> December, 2016 but it has failed to do so.

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

6. 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 withdraw from the project and they have exercised their legal right to claim refund of their amount with interest. Respondent is liable to refund of their amount and reimburse the amount of stamp duty, registration charges and taxes with simple interest at prescribed rate because the complainants will have to be restored to the position which they occupied before booking of the flats. 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. Complainants are vindicating their individual rights and therefore, their complaints are maintainable u/s 31 of RERA. In result, the order-

**ORDER**

- A. The respondent shall refund the complainants' amount and reimburse the amount of stamp duty, registration and taxes with simple interest at the rate of 9% p.a.
- B. The respondent shall also pay complainants of Rs. 20,000/- towards the cost of their complaint.
- C. The charge of the aforesaid amount shall be on the booked flats till satisfaction of the complainants' claims.
- D. The complainants shall execute the deed of cancellation of agreements of sale on satisfaction of their claims and respondent shall bear its cost.

Date: 09.12.2020.

  
9.12.2020.  
(B. D. Kapadnis)  
Member-II, MahaRERA, Mumbai.