

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

COMPLAINT NO: CC006000000057061

Rama Kant Gupta

... Complainant.

Versus

M/s. Nirmal Lifestyle (Kalyan) Private Limited.

... Respondents.

MahaRERA Regn: P51700006766.

(Kalyan – Platino-C)

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

Appearance:

Complainant: In person.

Respondents: Adv. Mr. Tushar Kadam. a/w
Ms. Vaishali Mohite.

FINAL ORDER

09th September, 2020.

Whether the complaints filed under section 31 of RERA survive after the lapse of the registration of the project, is the important question of law involved in this complaint. The complainant contends that he booked flat No. A-1405 in the respondents' project. The respondents have failed to hand over the possession of the flats on an agreed date December 2014 with grace period of six months, therefore the complainant wants to come out of the project and claims refund of his amount with interest under section 18 of RERA.

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 209 restrained Kalyan-Dombivali Municipal Corporation on 13.04.2015 from approving any proposal of ^{the}



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 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 Bhosle V/s Shree Prakash Creative Buildcon JV wherein the Appellate Tribunal moulded the relief by extending period of possession. Hence, they request to dismiss the complaint.

3. Heard both the parties on a virtual platform.
4. Following points arise for determination and my findings recorded thereon are as under:

POINTS.

FINDINGS.

- | | |
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| 1. Whether the complaint survives after the lapse of the registration of the project? | Affirmative. |
| 2. Whether the respondents have failed to hand over the possession of the flat on an agreed date? | Affirmative. |
| 3. Whether the complainant is entitled to get refund of his amount with interest? | Affirmative. |

REASONS.

5. Mr. Kadam brings to my notice that the registration of the project has lapsed on 31.12 2019 and this Authority has taken the decision that when the registration of the project lapses, then the allottees should file the complaint under sections 7 and 8 of RERA. Therefore, the complaint filed under section 18 of RERA is not maintainable and it be disposed of. Since this issue assumes importance, it is being examined in detail.



6. The Preamble of RERA provides that this Act is to establish Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure the sale of plot/ apartment / building as the case may be or sale of real estate project in an efficient and transparent manner and to protect the interest of the consumer in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear the appeals from the decisions , directions and orders of Real Estate Regulatory Authority and the Adjudicating Officer and for the matters connected therewith.

7. The Preamble set out the objective of the enactment and therefore, in its light the scheme laid down by RERA will have to be understood. Instead of making this order lengthy, I would prefer to deduce the inferences from the provisions of the RERA.

A. Every real estate project defined under section 2 (zn) of RERA which does not fall under sub-clause 2 of section 3 requires registration. In other words, such a project becomes eligible for registration.

B. In Mohd. Zain Khan V/s. Maharashtra Real Estate Regulatory Authority, Hon'ble Bombay High Court has held that MahaRERA will have to entertain the complaints relating to the project whether it is registered or it is not registered under section 3 of RERA provided it is eligible for registration. The reason is obvious, if the complaint regarding non registration of the eligible project will not be entertained by the Authority, it will make the provision of section 59 read with section 3 redundant.

C. Project gets completed when either the occupancy certificate or the completion certificate is issued by the local authority or the planning authority, as the case may be, and in that event, the registration comes to an end.



- D. As per section 5 sub-clause (3), the registration granted remains valid for the period declared by the promoter for completion of the project. It means that, after the expiry of the timeline (the period estimated by the respondents for completion of the project), the registration lapses, if it is not extended by one year under section 6 of the RERA.
- E. When the Authority either revokes the registration or when the registration lapses, and the project is not complete, in that circumstance the Authority will have to proceed as per section 8 of RERA.
- F. Section 8 provides that upon the lapse of registration or revocation of the registration under the Act, the Authority may consult the appropriate government to take such action as it deems fit including carrying out the remaining development work by competent authority or by association of the allottee. The action to be taken under section 8 is obviously after the lapse or revocation of the registration.
- G. Section 14(3) imposes the liability on the promoter to rectify structural defects or any other defect in workmanship quality or provision of services or any other obligation of the promoter as per the agreement for sale relating to such development for next five years of handing over the possession.
- H. Possession can be handed over only when the project is completed i.e. on issuance of either occupancy certificate or completion certificate by the local authority or sanctioning authority, as the case may be.
- I. Therefore, provisions of section 8 and section 14(3) make it clear that Authority retains the jurisdiction even after the completion of the project or even after lapse or revocation of the registration certificate.
- J. The Act has been enacted by the Parliament to safeguard the interest of the allottees, the promoters and the real estate agents. It brings



transparency and discipline in the real estate sector. It is enacted to boost the housing industry.

- K. Real Estate Regulatory Authority has been established under section 20 to adjudicate the disputes coming in the form of complaints under section 31 against the promoter, allottee, real estate agents for contravention or violation of the provisions of RERA or the rules and regulations made thereunder.
- L. Section 34 (f) provides that it is the function of the Authority to ensure the compliances of the obligation cast upon the promoter, allottees and real estate agents under this Act and the rules and regulations made thereunder.
- M. Section 34 (g) provides that it is the function of the Authority to ensure the compliances of the regulations or orders or directions made in exercise of its power under the Act.
- N. Section 38 confers on Authority the powers to impose the penalty or interest in regard to any contravention of the obligation cast upon the promoter allottee, real estate agents under the Act or the rules and regulations made thereunder.
- O. Section 40 of the Act empowers the Authority to execute its orders.

8. After noting all these provisions, it becomes clear that the Real Estate Regulatory Authority has control and jurisdiction over all the real estate projects situated within its territorial jurisdiction which are eligible for registration u/s. 3, irrespective of the fact as to whether they are registered or not. Mere lapse, revocation of registration certificate does not bring the control of the Authority or its jurisdiction to an end. The project remains under the control of the Real Estate Regulatory Authority till it is completed.



9. Hon'ble Bombay High Court has held in M/s. Neelkamal Realtors V/s. Union of India that it is the duty of the Authority to see the project is completed and it is the unique feature of this enactment. The Authority while acting as a regulator has to exercise its administrative powers to find out innovative methods and device practical solutions for solving the problems in practical manner within four corners of law. The law is static and the circumstances are changing. The Authority has to find out workable solutions to the problems in the changed circumstances as a regulator. Therefore, the Authority has taken the view in past that when the registration lapses only course open is to proceed under section 7 and 8, so that the project would be taken to the completion and the rights and liabilities of the allottees can be adjudicated upon thereafter. The amount deposited in the separate account is to be used mainly for the purpose of completing/ constructing the project. Large number of allottees are interested in getting their houses and therefore it is in the larger interest of the allottees to see that the project is completed. However, the Authority cannot be oblivious of the fact that the provisions of section 34 (f) and (g) provide that it is the function of the Authority to ensure the compliance of the obligations cast upon the promoter, allottee and the real estate agents and to see that the compliance of the regulation and the orders. Hence, I find that only because the registration lapses that itself is not sufficient to close the proceedings of the complaints filed by the complainants seeking refund or interest on their investment for delayed possession. On lapse or revocation of registration it is for the Real Estate Regulatory Authority to plunge into action as required by section 8 and it cannot be left to the allottees only as it would keep the project in lurch.

10. Now I will look at this fact from different angle, suppose even after expiry of the period specified by the promoter for completion of the project,



it is not completed, section 18 empowers the allottee to withdraw from the project. Once he takes the decision of withdrawal and he seeks refund, then he is not interested in completion of the project. Therefore, such allottee cannot be compelled to wait till the project is completed. It will be against the express provisions of section 18. In Mr. Anil Kumar Jain V/s. M/s. Nexgen Infracon Pvt. Ltd., National Dispute Redressal Commission has held that the allottee cannot be made to wait indefinitely and it is well within his right to withdraw from the project and claim refund. Recently, in Kolkata West International City Pvt. Ltd. V/s. Devasis Rudra (Civil Appeal No. 3182 of 2019), Hon'ble Supreme Court found that the allottee was waiting for possession for 7 years and when the project was not completed, The Supreme Court held that the refund was justified. Hence, I come to the conclusion that even after lapse or revocation of the registration, the complaint filed under section 18 for refund of the amount cannot be disposed of and such allottees cannot be made to wait till completion of the project. His complaint will have to be decided.

11. The second category of the cases is of the complaints filed under section 18 claiming interest on the investment of the allottee for delayed possession within the period of registration but registration lapses or is revoked when they come for hearing and decision. This happens on account of the failure of the system to adjudicate his claim during the registration period. Though such allottees can be termed as 'Equity Holders', I find that they cannot be punished and made to suffer for failure of the system. In such cases, I find that the complaints will have to be entertained and decided to quantify the promoter's liability which he has to shoulder even after such lapse or revocation of the registration of the project as held by The Hon'ble High court in Neelkamal Relators case.



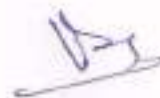
12. The third category is complaints filed by the allottees who want to continue in the project and want interest on their investment for delayed possession, after lapse or revocation of the registration of the project. In such circumstances, I find that the Authority has to decide their complaints also. In case of the allottees who want to continue in the project, the Authority can permit the parties to adjust/give set off, their current dues and the balance is to be paid to whom the amount is due. This is the most practical solution to solve the problem of liquidity and it can be done without diverting the accumulated funds from construction activities. It is necessary to bear in mind that monthly payment of interest by the promoter cannot be termed as a regular source of the allottees like an investor who invest their money in banks or it is not a lottery/bonanza for them. Normally the allottees happen to be buyers of the first home who have to pay rent of the rented premises where they live and they have to pay interest on loan amount also, if loan is taken. For old persons it is the investment of their life time saving of their hard-earned money for fulfilling their basic need and great dream of owning a house of their own. If the promoter defaults in completing the project as per timeline specified by he himself, the allottees cannot be made to suffer and get exploited at his hands by asking him to sacrifice his legal right by asking him to wait till the project is completed or to pay first for construction and recover interest after completion of the project. Money has time value and therefore the need is to be struck by doing justice in the matter. Appropriate decision can be taken by the Authority at the time of execution of the order passed in such complaints to ensure that the funds meant for construction are not drained out so that the very purpose of constructing and completing project would be defeated thereby in exceptional circumstances where the project is near to completion or almost completed and can be completed by utilising the entire accumulated funds. Priority will have to be considered at that time by



considering the facts and circumstances of each case and no straight jacket formula can be devised as a thumb rule.

13. Now I shall turn to the case on hand. In this case, though the completion or the occupancy certificate has not been issued by the competent authority, the respondents have contended that the project has been completed and their architect has issued the certificate to that effect. In this circumstance, I find that when the entire project is completed no adverse effect would be caused on the project by passing the order in this complaint. The construction work or completion work would not hamper by passing such order. Therefore, I find no substance in the submissions of Mr. Kadam that the complaint is not maintainable because the registration of the project is lapsed.

14. An agreement for sale produced by the complainant shows that the respondents agreed to hand over the allotted flat on or before December, 2014 with a grace period of six months. The flat has been booked under Maharashtra Ownership Flats Act 1963. Section 8(b) thereof specifically provides that if the promoter is prevented by the causes beyond his control from completing the project on an 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 a project in time. After taking into consideration these facts, I am convinced that the respondents were liable to handover the possession of the flat on or before June 2015 at the most. Admittedly, the respondents have failed to handover the possession of the flat on this date also.




15. The respondents have failed to hand over the possession of the flat even after crossing the agreed date of possession, hence the complainant is entitled to claim refund of the amount with interest at prescribed rate under section 18 of the RERA. The complainant claims refund of Rs. 18,10,080/. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 7% p.a. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the following order.

ORDER

- A. The respondents shall refund Rs. 18,10,080 /-to the complainant with interest at the rate of 9% p.a. from the dates of the receipts of the amount till their refund.
- B. The respondents shall pay the complainant Rs. 20,000/-towards the cost of the complaint.
- C. The charge of the aforesaid amount shall be on the booked flat till satisfaction of the complainant's claim.
- D. The payment is subject to the moratorium period specified by this Authority from time to time.
- E. Complainant shall execute the deed of cancellation of agreement of sale on satisfaction of his claim and respondents shall bear the cost thereof.

Date: 09.09.2020.


9.9.2020
(B. D. Kapadnis)
Member-II,
MahaRERA, Mumbai.