

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

**COMPLAINT NO: CC005000000023414.**

1. Mr. Murtuza Rahim
2. Insiyah Rahim
3. Insiyyah A.Rahim

... Complainants.

**Versus**

1. Marvel Landmarks Private Limited,  
Through its Director- Vishwajeet Subhash Jhavar
2. Shri. Subhash Sitaram Goel
3. Shri. Rajendra Sitaram Goel
4. Anuj Umesh Goel
5. Ankit Umesh Goel

...Respondents.

MahaRERA Regn: P52100002514.

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

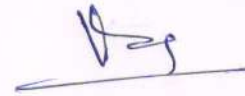
Complainants: Adv Mr Prasad Temrar.

Respondents: Adv. Rushikesh Indis for  
Respondent no1,  
CA Mr. Nicky Milani for  
respondent Nos. 2 to 5.

**FINAL ORDER**

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

The complainants have booked flat no. 203 in 'M' building of Marvel Ganga Sangria. The respondents failed to handover the possession of the flat on or before 31.12.2013 as agreed, though the complainants paid Rs. 1,63,89,563/- before the said date. Therefore, the complainants claim interest on their investment for the delayed possession under section 18 of



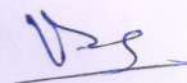
RERA and also claim possession of the said flat along with cost of the complaint.

2. The respondents have pleaded not guilty. The respondent no. 1 has filed the reply to contend that the occupancy certificate of Building M has been received on 21.05.2019 and the respondents are ready to handover the possession of the flat to the complainants. The respondent no. 1 further contends that even after crossing agreed date of possession, the complainants did not take any action against the respondents and hence their claim is barred by limitation. The respondent no. 1 further contends that, the respondent no. 2 to 5 are the land owners and they are also the promoters. All the respondents have executed the agreement in favour of the complainants and hence all the respondents are liable to pay the interest to complainants.

3. Mr. Milani for the respondent no. 2 to 5, submits that, they are land owners and it is the sole responsibility of the respondent no. 1 to pay the interest for delayed possession.

4. I have heard the advocates/representatives of the parties on virtual platform.

5. There is no dispute between the parties that the possession was to be handed over on or before 31.12.2013 and the respondents have failed to hand it over. Therefore, as per the provisions of section 18 of RERA, the complainants are entitled to claim interest on their investment for the delayed possession. Only because after 31.12.2013 till filing of the





complaint, the complainants have not taken any steps against the respondents for recovering the interest on their investment and therefore their claim is barred by limitation, is not the valid submission because there is no provision in MOFA to claim interest on account of delayed possession. This right has accrued only when RERA came into force. In the case of Neelkamal Realtors Suburban Pvt. Ltd. V/s. Union of India, Hon'ble Bombay High Court has clarified that the section 18 of RERA is retroactive and it can be made applicable to the agreements executed under MOFA. Hence, I find that the complainants' claim is maintainable under law and it is not barred by limitation.

6. Though the respondents contend that, they received occupation certificate of Building-M on 21.05.2019, the possession of the flat has not been given till that date therefore, as per the mandate of section 18 of RERA, the complaints are entitled to get the interest till they receive the possession of the flat with agreed amenities. So far as the liability of the respondents is concerned, they are the promoters and therefore they are jointly liable to pay interest on account of delayed possession. For this purpose, I rely upon the definition of the promoter defined by section 2(z)(k), the explanation thereto provides that, "—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sell apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder". The complainants are entitled to get interest at prescribed rate on the consideration amount paid on or before 31.12.2013, from 01.01.2014 and on part of the consideration

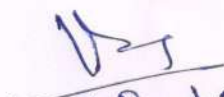


paid subsequently from the dates of their payment till getting the possession of the flat with agreed amenities. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 7% p.a. The complainants are also entitled to get Rs. 20,000/- towards the cost of the complaint. Therefore, the following are the order-

#### ORDER

- A. The respondent shall jointly pay simple interest at the rate of 9% p.a. on the amount of consideration paid on or before 31.12.2013, from 01.01.2014 and on part of the consideration paid subsequently from the dates of their payment till handing over the possession of the flat with agreed amenities.
- B. The respondents shall also pay Rs. 20,000/- to the complainants towards the cost of the complaint.
- C. The parties are at liberty to adjust their respective claims and pay the balance to whom it is due, if any.
- D. The respondents on getting the full payment of the agreed consideration and charges shall handover the possession of the flat with all the amenities mentioned in the agreement for sale within one month from this order.

Date: 18.12.2020.

  
18.12.2020  
(B. D. Kapadnis)  
Member-II,  
MahaRERA, Mumbai.