

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

**COMPLAINT NO: CC0060000000001525.**

Pradeep Agarwal

... Complainant.

**Versus**

Nirmal Lifestyle (Kalyan) Pvt. Ltd.  
(Advantage A)  
MahaRERA Regn: **P51700005436**

... Respondents.

**Appearance:**

Complainant: In person.

**COMPLAINT NO: CC00600000000023245.**

Mathan Prakash

... Complainant.

**Versus**

Nirmal Lifestyle (Kalyan) Pvt. Ltd.  
(Kalyan-Amazon A)  
MahaRERA Regn: **P51700003542**

... Respondents.

**Appearance:**

Complainant: Adv. Mr. Shiv Malhotra.

**COMPLAINT NO: CC00600000000079008.**

Swaminathan Iyer

... Complainant.

**Versus**

Nirmal Lifestyle (Kalyan) Pvt. Ltd.  
Chandrakant Hiralal Shah  
Dharmesh Sardarmal Jain  
Rajeev Ramesh Jain  
(Kalyan-Advantage A)  
MahaRERA Regn: **P51700005436**

... Respondents.

**Appearance:**

Complainant: Adv. Mr. S.R. Mamania.

**COMPLAINT NO: CC00600000000089829.**

Uday Wele

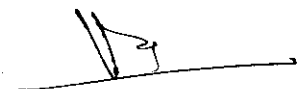
... Complainant.

**Versus**

Nirmal Lifestyle Kalyan Pvt. Ltd.  
(Kalyan- Applause A)

.... Respondents.

MahaRERA Regn: **P51700003274**



**Coram:** Shri B.D. Kapadnis,  
Hon'ble Member II.

**Appearance:**

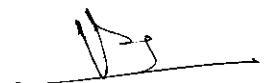
Complainants: In person.

Respondents: Adv. Mr. Tushar Kadam in all  
complaints.

**FINAL ORDER**  
**13<sup>th</sup> November 2019.**

The complainants have filed the complaints under Section 18 of Real Estate (Regulation and Development) Act, 2016 (RERA) for claiming interest on their investment on respondents' failure to hand over the possession of their booked flats on agreed dates in below mentioned registered projects of the respondents. The necessary information furnished by the complainants is as under:

Complainant	Flat No.	Project	Date of possession	Consideration paid before the agreed date. Rs.
Pradeep Agarwal	A-804	Advantage A	December 2016 + 6 months grace period	20,47,683/-
Mathan Prakash	A-303	Kalyan-Amazon A	December 2016 + 6 months grace period	35,75,910/-
Swaminathan Iyer	A-707	Kalyan-Advantage A	December 2015 + 6 months grace period	20,01,266/- & Rs. 4,56,086/- on 01.09.2017.
Uday Wele	A-903	Kalyan-Appause A	30.04.2014 + 6 months grace period.	19,22,859/-



2. The respondents have pleaded not guilty. They have admitted that the complainants have paid the above mentioned amount towards the consideration of their flats. They contend that the Hon'ble High Court restrained Kalyan-Dombivali Municipal Corporation from processing and deciding the applications/ the proposals for construction of buildings from 13.04.2015 to 25.04.2016 by passing order in PIL No. 182 of 2009. Therefore, the project is delayed because of the order of the Hon'ble High Court.

3. Following points arise for my determination and my findings thereof are as under:

**POINTS**

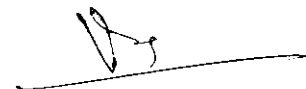
**FINDINGS**

- |  |              |
|--|--------------|
| 1. Whether the respondents have failed to hand over the possession of the flats on the agreed dates?           | Affirmative. |
| 2. Whether the respondents are liable to pay interest on the complainants' investments for delayed possession? | Affirmative. |

**REASONS**

4. The complainants have produced the agreements for sale executed by the respondents in their favour. They show that the respondents agreed to hand over the possession of the booked flats on the dates mentioned in the table with grace period of six months but they have failed to deliver it till the date of the complaints. Hence, I record my finding that the respondents have failed to hand over the possession of the booked flats on agreed dates.

5. The respondents have relied upon the orders passed by the Hon'ble High Court in PIL No. 182 of 2009. The Hon'ble High Court by its order dated 13<sup>th</sup> July 2015 directed the Kalyan-Dombivali Municipal Corporation not to sanction any proposal/project for construction of building until further orders. But this stay has been vacated by the Hon'ble High Court




on 25.04.2016. In fact, the complainants booked the flats much earlier. Section 8(b) of The Maharashtra Ownership of Flats Act contemplates the extension of only six months for possession if the grounds/reasons beyond the control of the promoter really prevent him from completing the project as agreed. Even after lapse of that period of six months the respondents have failed to hand over possession of the flats till the dates of the complaints. Considering these facts, I have included the grace period of six months in the agreed period of possession to mould the relief but it cannot further be moulded because Section 18(1)(a) of RERA provides that on failure of the promoter to complete the flat on the date specified in the agreement for sale he becomes liable to pay interest on the amount of the allottee at prescribed rate, if the allottee continues in the project. This is the absolute right conferred by the statute itself. In Neelkamal Realtors-v/s-Union of India Hon'ble Bombay High Court has held that the Court has no authority to re-write the judgement and in paragraph no. 100 of the Judgement it is observed that the period cannot be extended due to any injunction order from any Court or Tribunal. Though this observation is about Rule 6(a) of Maharashtra Rules 2017, the same logic needs to be applied while deciding the cases under Section 18 of RERA.

6. The complainants want to continue in the project and therefore, the respondents are liable to pay interest at prescribed rate on their investments as mentioned in above table of this order from the next day of the agreed date of possession. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.4%. The complainants are also entitled to get Rs. 20,000/- towards the cost of their complaints.

#### **ORDER**

A. The respondents shall pay simple interest at the rate of 10.4% on complainants' investments mentioned in the table from the date of expiry of the grace period till handing over the possession of the flats with OC.


  
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B. The respondents shall pay each complainant Rs. 20,000/- towards the cost of their complaints.

C. The parties are permitted to adjust their respective claims and pay the balance, if any.

Mumbai.

Date: 13.11.2019.

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

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

COMPLAINT NO.:CC006000000001525

Pradeep Agarwal

... Complainant.

COMPLAINT NO.:CC0060000000079008

Swaminathan Iyer

... Complainant.

**Versus**

M/s. Nirmal Life style Pvt.Ltd.(Kalyan)

... Respondents.

MahaRERA Regn: .P51700005436

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

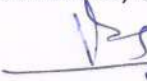
**ORDER ON THE RECOVERY APPLICATION**

**21<sup>st</sup> October, 2020**

The complainants report non-compliance of the orders passed in the complaints. Adv.Mr. Kadam submits that respondents would start making the payment very soon and shall furnish the schedule of payment to the complainants. Loan under WSAMI scheme is sanctioned and construction of the project would be started very soon. He expects co-operation from the complainants who want their flats at the earliest. Parties have agreed to adjust their claims and they are ready to clear the balance to whom it is due. Respondents are ready to give credit note of the adjusted amount.

2. Considering these aspects the complainants have shown their willingness to withdraw their applications for non-compliance. However, the respondents are directed to make the payment of their amount in instalments and to provide the schedule of repayment to the complainants. The complainants are at liberty to refile the applications for compliance of their orders if the respondents fail to comply with the orders as promised today. The non-compliance applications are therefore, disposed of.

Date: 21.10.2020.

  
21.10.2020  
(B. D. Kapadnis)  
Member-II,  
MahaRERA, Mumbai.