

**THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI.
COMPLAINT NO: CC006000000057515**

Sajid Ahmed Sheikh

... Complainant.

Appearance:

Complainant: Absent.(Adv. Mr. Godfrey
Pimenta)

Respondents: Adv. Mr. Tushar Kadam.

COMPLAINT NO:CC006000000110859

Vivek Raut

... Complainant.

Versus

M/S Lifestyle City Kalyan Pvt Ltd.
(Lifestyle City Kalyan-Platano D)

...Respondents.

MahaRERA Regn: P51700005451

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

Appearance:

Complainant: In person.

Respondents: Adv. Mr. Tushar Kadam.

Final Order

05th March 2020.

The complainants have booked flats in respondents' registered project 'Lifestyle City Kalyan-Platano D' situated at Kalyan. They agreed to hand over the possession of the flat on or before December 2016 with grace period of six months. The respondents failed to hand over the possession of the flats on the agreed date. Therefore, the complainants



seek the interest on their investments till getting the possession of the flats as they want to continue in the project. The details of their booked flat are -

Complainant Name	Flat Number	Possession Date	Amount Paid
Sajid Ahmed Sheikh	302, Platono D Wing	December 2016 with grace period of six months	Rs. 19,98,111/-
Vivek Raut	105, Platono D Wing	December 2016 with grace period of six months	Rs.17,14,146/-

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.

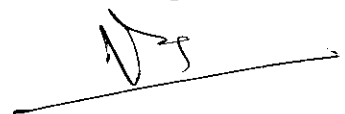
3. Heard the parties.

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 flats on agreed date?	Affirmative.
2. Whether the complainants are entitled to get interest on their investments for delayed possession?	Affirmative.

REASONS

5. In the agreement, the respondents have specifically agreed to hand over the possession of the booked flats on or before December 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 flats on or before 30.06.2017 in any circumstances. Admittedly, the respondents have failed to hand over the possession of the flats on the agreed date.

6. Feeble attempt has been made by the learned advocate of the respondents to submit that at the time of registration of project, the respondents have mentioned that the proposed date of completion would be 31.12.2020 and therefore, he submits that the respondents would be liable to pay the interest to the complainants, if the flat is not constructed on or before this revised date. He has also brought to my notice the case of Minal Bhosale. I find myself unable to agree with views canvassed by Mr. Kadam because 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 provision 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. 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 but this discretion cannot be used against the provisions of law. RERA permits the application of MOFA by virtue of its Section 88 and hence, I find that even if it is taken for granted that the project was delayed because of reasons beyond the control of the promoter, the agreed period cannot be extended beyond the period of six months.



7. Here in this case, I find that the agreements have been executed in the year 2013. The injunction has been granted by the Hon'ble High Court in the year 2015 and it is vacated in the year 2016. Even thereafter the respondents have not completed the project. The Hon'ble Supreme Court has held in Fortune Infrastructure-V/s-Trivor D'lima (2018) 5 SCS 442 that the reasonable period of possession is only three years. In view of this factual and legal aspects of the matter, I do not follow the views canvassed by Mr. Kadam.

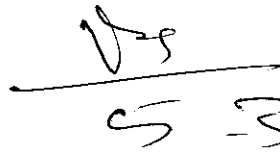
8. There is no dispute between the parties that Mr. Sajid Ahmed Sheikh has paid Rs.19,98,111/- and Mr. Vivek Raut has paid Rs.17,14,146/- towards the consideration of the flats. The respondents are liable to pay the interest at prescribed rate on these amounts from 1st July 2017 till handing over the possession of their respective flats. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.15%. The complainants are also entitled to get Rs. 20,000/- towards the cost of the complaints. Hence, the order.

ORDER

The respondents shall pay simple interest at the rate of 10.15% per annum on the amounts mentioned in para 8 to the complainants from 01.07.2017 till handing over the possession of the booked flat.

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

Mumbai.
Date: 05.03.2020.


53 2020.
(B. D. Kapadnis)
Member II, MahaRERA,
Mumbai.