

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

1. COMPLAINT NO: CC006000000078747.

1. Vishal Dattatray Nerpagar
2. Dattatray Baburao Nerpagar
3. Priti Dattatray Nerpagar ... Complainants.

Versus

Nirmal Lifestyle Kalyan Pvt Ltd ... Respondent.

MahaRERA Regn: P51700003543.

2. COMPLAINT NO: CC006000000058080.

Madhavan Pe ... Complainant.

3. COMPLAINT NO: CC006000000161387.

Vishakha Nitin Kokane ... Complainant.

Versus

Nirmal Lifestyle Kalyan Private Limited ... Respondent.

MahaRERA Regn: P51700003542.

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

Appearance:

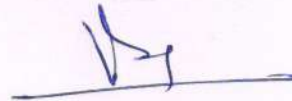
Complainants: Adv. Mr. Jain at Sr. No. 1.
Present in person at Sr. No. 2 & 3.

Respondent: Adv. Mr. Tushar Kadam.

FINAL ORDER

23rd December, 2020

The complainants have booked their flats in the respondent's registered project 'Amazon'. The respondent has failed to handover the possession of the flats on the agreed dates. Therefore, the complainants have been claiming their possession and interest on their investment for the delayed possession under section 18 of RERA. They have pleaded following facts.



Name of the complainant	Flat no.	Agreed date of possession	Consideration Paid
Vishal Dattatray Nerpagar	B/503	June 2016 + Grace Period of 6 months	Rs. 14,77,080/-
Madhavan Pe	A/603	December 2016 + Grace Period of 6 months	Rs. 35,49,672/-
Vishakha Nitin Kokane	A/905	December 2016 + Grace Period of 6 months	Rs. 56,97,678/-

2. The respondent has pleaded not guilty and filed its replies to contend that the project is delayed because 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 respondent. It contends that the agreements specify that the agreed date of possession can be extended due to force majeure and shortage of building materials. It contends 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. Hence, it requests to dismiss the complaints.

3. Heard both the parties on virtual platform.



4. Following points arise for determination and my findings recorded thereon are as under:

POINTS

FINDINGS

- | | |
|---|--------------|
| 1. Whether the respondent failed to hand over the possession of the flats on agreed dates? | Affirmative. |
| 2. Whether the complainants are entitled to get interest on their amounts for delayed possession? | Affirmative. |

REASONS

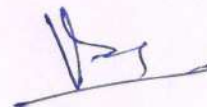
5. In the agreements executed under Maharashtra Ownership Flats Act, the respondent has specifically agreed to hand over the possession of the booked flats on or before the agreed dates mentioned by the complainants, with grace period of six months. The parties themselves have computed the period of grace period of six months due to unforeseen circumstances and uncertainty which may obstruct the construction of the project in time. Section 8(b) of Maharashtra Ownership Flats Act 1963 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 respondent was liable to hand over the possession of the flats before the expiry of grace period in any circumstance. Admittedly, the respondent has failed to hand over the possession of the flats on agreed dates.

6. Feeble attempt has been made by the respondent to submit that at the time of registration of project, the respondent mentioned that the



revised date of completion, however, the respondent admits that the OC is not yet received. Mr' kadam relies on case of Minal Bhosale. I find myself unable to agree with views canvassed by the respondent 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. I find that 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 respondent has 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 view canvassed by respondent.



8. Since the respondent has failed to handover the possession of the booked flats on the dates specified in the agreements for sale, the right to claim interest is accrued to the complainants u/s.18 of RERA. Therefore, respondent has incurred liability to pay the simple interest at prescribed rate on the consideration amount paid before the date of expiry of grace period from that date, and on the part of consideration subsequently paid from the dates of those payment till the possession of the flats is handed over with agreed amenities and completion/occupation certificate. 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 their complaints. Hence, the order.

ORDER

A. The respondent shall pay the simple interest at the rate of 9 percent per annum on the consideration amount paid before the expiry of grace period from that date and on the part of consideration subsequently paid from the dates of those payment till the possession of the flats is handed over with agreed amenities and completion/occupation certificate.

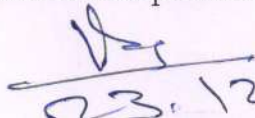
B. The respondent shall pay complainant/s of each case Rs. 20,000/- towards the cost of their respective complaint.

C. The parties are permitted to give set off of their respective current claims and shall pay the balance to whom it is due.

D. Respondent shall hand over the possession of flats to the complainants immediately on receiving completion/occupation certificate on getting the agreed payment.

E. Original order is kept in CC006000000078747 filed by Vishal Dattatray Nerpagar and copies are kept in other complaints.

Date: 23.12.2020.


23.12.2020
(B. D. Kapadnis)
Member-II, MahaRERA
Mumbai.