

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

COMPLAINT NO: CC006000000023913.

Pankaj Mankame
Trupti Pankaj Mankame

... Complainants.

Versus

Nirmal Lifestyle Kalyan.
Rajeev Jain.
Dharmesh Jain.
Chandrakant Shah

... Respondents.

MahaRERA Regn: P51700005583

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

Appearance:

Complainants: Adv. Mr. Anil D'Souza.

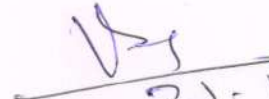
Respondent: Adv. Mr. Tushar Kadam.

ORDER ON THE RECOVERY APPLICATION

21st December, 2020

The complainants report satisfaction of the order. Hence, the application stands disposed of as fully satisfied.

Date: 21.12.2020.


21.12.2020.
(B. D. Kapadnis)
Member-II,
MahaRERA, Mumbai.

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(Lifestyle City Kalyan-Platano A)

... Respondents.

MahaRERA Regn: P51700005583

Coram: Shri B.D. Kapadnis,
Hon'ble Member & Adjudicating Officer.

Appearance:

Complainant: M/s. Solicis Lex.

Respondents: Rohit A. Chavan, GM Legal
a/w Adv. Ms Atiya Shaikh
& Adv. Vaishali Motute.

FINAL ORDER

12TH JULY 2018.

The complainants have filed this complaint under Section 18 of Real Estate (Regulation and Development) Act, 2016 (RERA) for claiming refund of their amount with interest and compensation on respondents' failure to hand over the possession of their booked flat no.1044, A-Wing of their registered project Platano A Nirmal Lifestyle City, Kalyan situated at Vadavali, Shahad on the agreed date 31st June 2015.

2. The respondents have pleaded not guilty. They have filed the reply to contend that the complainants have paid them Rs. 18,01,271/- towards



the consideration of the flat and they are ready to repay it with interest at 9% till 30th April 2017 and at the rate of 10% after 01.05.2017. They deny their liability to pay the complainants' amount of service taxes, VAT, registration charges and other Misc. charges claimed by the complainants. They have filed the order passed by the Hon'ble High Court in PIL No. 182 of 2009 showing 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. Thereby, the respondents want to contend that 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 as under :

POINTS	FINDINGS
1. Whether the respondents have failed to hand over the possession of the booked flat on the agreed date?	Affirmative.
2. Whether the respondents are liable to refund the amount of the complainants including the the taxes, registration charges etc.?	Affirmative.

REASONS

4. The complainants have produced the agreement for sale executed by the respondents in their favour. It shows that the respondents agreed to hand over the possession of the booked flat on or before December 2014 with grace period of next six months. Therefore, even if the period of six months is taken for granted, they were bound to deliver the possession of the flat on or before 31st June 2015 but they have failed to deliver it till the date of the complaint. Hence, I record my finding that the respondents have failed to hand over the possession of the booked flat on agreed date.



5. The respondents have relied upon the orders passed by the Hon'ble High Court in PIL No. 182 of 2009. On their perusal, I find that the Hon'ble High Court by its order dated 13th 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 flat in the year 2010 itself and the possession was to be delivered in December 2014. It means that the entire project was to be completed before the Hon'ble High Court passed the stay order. Therefore, these orders will not come to the help of the respondents to establish that they were prevented by the cause which were beyond their control, from completing the project in time.

6. 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 refund the amount of the allottee with interest at prescribed rate if the allottee withdraws from the project. The complainants want to withdraw from the project and therefore, the respondents are liable to refund their amount with interest at prescribed rate from the date of payment of the amount. The prescribed rate of interest is 2% above the SBI's MCLR which is currently 8.5%. The respondents have taken the plea that RERA came into force from 01.05.2017 and therefore, they are liable to pay interest at 9% as per section 8 of the Maharashtra Ownership Flats Act, 1963. In Neelkamal Realtors Suburban Pvt. Ltd.-v/s- Union of India, Writ Petition No. 2737 of 2017, the Hon'ble High Court has held that Section 18 is retroactive and therefore, I find that the respondents are liable to pay the prescribed interest under RERA from the date of the receipt of the amount paid to them or paid by the complainants to the Government Authorities.



7. The complainants have filed the statement of payment marked Exh.'A' along with their complaint. It shows that they paid Rs. 18,01,271/- towards the consideration and this amount is admitted by the respondents.

8. The complainants have mentioned that they have paid Rs. 52,737/- towards the service tax and Rs. 18,961/- towards VAT. They spend Rs. 19,000/- towards the registration charges of the agreement for sale and Rs. 9,911/- towards miscellaneous expenses. I find that the complainants paid these amount only because they wanted to purchase the booked flat. The respondents have made default in handing over the possession of the flat on the agreed date. Therefore, the complainants cannot be made to suffer this monetary lose. The respondents have incurred the liability to reimburse these amount because of their default.

9. So far as the stamp duty is concerned, it appears to have been paid by the complainants in their name. They can apply to seek its refund from the Sub-Registrar's office on cancellation of agreement for sale. Hence the complainants are not entitled to get reimbursement of the stamp duty amounting to Rs. 1,14,000/-. So barring this amount, the complainants are entitled to get the amount paid by them towards the consideration, taxes, registration charges and miscellaneous expenses mentioned in Exh. 'A'. The complainants are also entitled to get Rs. 20,000/- towards the cost of the complaint.

ORDER

A. The respondents shall refund the amount of consideration, taxes, registration fees and miscellaneous expenses (except the amount of stamp duty) mentioned in statement marked Exh."A" with simple interest at the rate of 10.05% from the dates of payment mentioned in Exh.'A' till their refund.



- B. The Exh.'A' shall form the part of the order.
- C. The respondents shall pay the complainants Rs. 20,000/- towards the cost of the complaint.
- D. The charge of the ordered amount shall be on the booked flat of the complainants till the satisfaction of their claim.
- E. The respondents shall execute the Deed of Cancellation of agreement for sale on satisfaction of their claim and the respondents shall bear its cost.

Mumbai.

Date: 12.07.2018.



(B. D. Kapadnis)
Member & Adjudicating Officer,
MahaRERA, Mumbai.

Draft 13th March 2018
Pankaj Mankame
Trupti Mankame

E-1.D

Upto 30th April 2017

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Date	Principal Amt	Days	Interest Amount @3%
24th Oct 2010	45000	2380	25403
17th Nov 2010	239411	2356	139001
15th Feb 2011	94533	2266	52819
30th nov 2011	39879	1978	19450
30th nov 2011	150000	1978	73159
08th feb 2013	379215	1542	144105
09th mar 2013	227529	1513	81884
27th Apr 2013	151686	1464	54757
25th may 2013	227529	1436	80564
03rd August 2013	151686	1366	51091
28th sep 2013	94503	1310	30623
PRINCIPAL	1801271	INTEREST	757021

Upto 31st March 2018

Date	Principal Amt	Days	Interest Amount @10%
01st May 2017	1801271	334	164829
PRINCIPAL	1801271	INTEREST	164829

Service Tax	
30th nov 2011	4899
09th Mar 2013	9000
25th may 2013	11720
03rd Aug 2013	4583
31st July 2014	22430
TOTAL C	52737

VAT	
16th Aug 2012	18961
TOTAL D	18961

Stamp Duty	114000
Regn Fees	19000
Misc	9911
TOTAL E	142911

SUM TOTAL	
Principal	1801271
Interest	921850
Less TDS @10%	92185
	829665
Service Tax	52737
VAT	18961
Stamp Duty, Regn, Misc	142911
GROSS TOTAL	2845545

[Signature]