

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

COMPLAINT NO: CC006000000078869

K.V. KRISHANAN

... Complainant.

Versus

M/s. Nirmal Lifestyle (Kalyan) Private Limited.

...Respondents.

MahaRERA Regn: P51700003554.

(Kalyan – Rivera)

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

Appearance:

Complainant: Adv. Mr. Sanjay Rege.

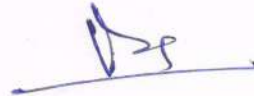
Respondents: Adv. Mr. Tushar Kadam.
a/w Ms. Vaishali Mohite .

FINAL ORDER

09th September, 2020.

The complainant contends that he booked flat No. A-1-105 in the respondents' project. The respondents have failed to handover the possession of the flats on agreed date September 2015 therefore the complainant wants to come out of project and claims refund of his amount with interest under section 18 of RERA.

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 209 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 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 Bhosle V/s Shree Prakash Creative Buildcon JV wherein the Appellate Tribunal moulded the relief by extending period of possession. Hence, they request to dismiss the complaint.

3. Heard both the parties on virtual platform.

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

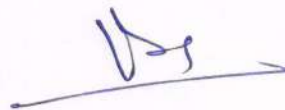
POINTS.

FINDINGS.

- | | |
|--|--------------|
| 1. Whether the respondents have failed to hand over the possession of the flat on agreed date? | Affirmative. |
| 2. Whether the complainant is entitled to get Refund of his amount with interest? | Affirmative. |

REASONS.

5. Allotment letter produced by the complainant shows that the respondents have allotted flat and it contains almost all the terms and conditions which generally appear in the agreement for sale except the date of possession. The total cost of the flat is Rs. 30,82,800/-. The complainant has paid the respondents Rs. 16,36,731/- so far. This amount is more than 20% of the total consideration. When the flat was booked, in those days Maharashtra Ownership of Flats Act was in force and as per its section 4 (1), the respondents were liable to execute the agreement for sale and register it before accepting more than 20% of the consideration. Section 13 (1) of the RERA has come in force with effect from 01/05/2017, it provides

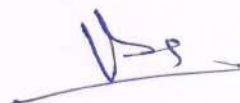


that the promoter shall not accept more than 10% of the total consideration without first executing the agreement for sale and registering it. It appears that the respondents have failed to execute and register the agreement for sale even after accepting more than 20% or 10% of the total consideration. So, this is nothing but a clear violation of Section 13 (1) of the RERA.

6. The complainant contends that at the time of booking he was promised that the possession of the flat would be given by September 2015. The respondents cannot rebut this contention because they are estopped from doing so as they have failed to execute the agreement for sale in spite of the legal obligation imposed by section 4 (1) of the MOFA and thereafter section 13 (1) of the RERA. Hence, I believe the complainant to hold that the promised date for giving the possession was September 2015.

7. The flat has been booked under Maharashtra Ownership Flats Act 1963. Section 8(b) thereof specifically provides that if the promoter is prevented by the 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 handover the possession of the flat on or before February 2016 at the most. Admittedly, the respondents have failed to handover the possession of the flat on this date also.

8. Feeble attempt has been made by Mr. Kadam for the respondents to submit that at the time of registration of the project, the respondents have mentioned the proposed date of completion which has not been crossed and therefore, he submits that the respondents would not be liable to



refund the complainant's amount. He has also brought to my notice the case of Minal Bhosale. I find myself unable to agree with the views canvassed by Mr. Kadam because Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. V/s. Union of India have clarified the fact in Para-119 that under the provisions 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 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.

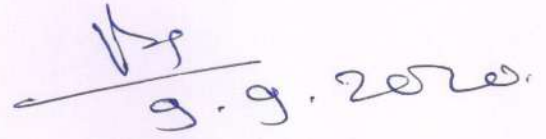
9. The respondents have failed to handover the possession of the flat even after passing this date, hence the complainant is entitled to claim refund of amount with interest at prescribed rate under section 18 of the RERA. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 7% p.a. The complainant is also entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the following order.



ORDER

- A. The respondents shall refund Rs. 16,36,731/- to the complainant with interest at the rate of 9% p.a. from the dates of the receipts of the amount till their refund.
- B. The respondents shall also pay the complainant Rs. 20,000/-towards the cost of the complaint.
- C. The charge of the aforesaid amount shall be on the booked flat.
- D. The payment is subject to the moratorium period specified by this Authority from time to time.

Date: 09.09.2020.



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