

**MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC0060000000012337

Mr. Prateek Kumar ... Complainant.

Versus

Neelkamal Realtors Tower Pvt. Ltd. ... Respondents.
(One Mahalaxmi Phase 2)

COMPLAINT NO: CC0060000000012348

NSB Infrastrure & Projects Pvt. Ltd. ... Complainant.

Versus

Neelkamal Realtors Tower Pvt. Ltd. ... Respondents.
(One Mahalaxmi Phase 1)

MahaRERA Regn: **P51900006299.**

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

Appearance:

Complainant: Adv. Saijo Mathew

Respondents: Ms. Vidya S.

FINAL ORDER

13th June 2018.

Mr. Prateek Kumar agreed to purchase the flat nos. B-5303 & 5304 and NSB Infrastructure Pvt. Ltd. booked flat nos. B-5301 & 5302 in respondents registered project one Mahalaxmi Phase 2 & 1



situated at Byculla Division, Jacob Circle, Byculla and the respondents failed to execute their agreements for sale even after receiving more than 10% of the total value of the said flats. Therefore, the complainants seek directions against the respondents for execution and registration of the agreements for sale of those flats in their favour under Section 13 of Real Estate (Regulation and Development) Act, 2016 (RERA).

2. Though the respondents have pleaded not guilty on 04.05.2018 and, filed their reply to contend that they are ready to execute the agreements for sale on receiving IOI / Commencement Certificate. The learned Advocate of the complainants and the representative of the respondents have been heard.

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

POINT	FINDING
1. Whether the respondents failed to execute and register agreements for sale of the complainants booked flats even after receiving more than 10% of their total consideration?	Affirmative.

REASONS

4. Mr. Prateek Kumar has placed the allotment letters of flat nos. B- 5303 & 5304 on record. The total value of flat nos. B- 5303 is Rs. 8,42,25,000/- and that of 5304 is 7,58,10,000/-. He has produced payment schedule on record to show but he paid Rs. 2,45,00,000/- against each flat which is more than 10% of the total consideration.


5. NSB Infrastructure Pvt. Ltd. have also produced the allotment letters of flat nos. 5301 & 5302. The total value of flat no. 5301 is Rs.



8,42,25,000/-and that of flat no. 5302 is Rs. 8,20,87,500/-. The statement of payment produced by NSB Infrastructure Pvt. Ltd. show that Rs. 2,45,00,000/- have been paid in respect of each flat. These payments are more than 10% of the total value of the flats. Therefore, under Section 13 of RERA the respondents are bound to execute and register the agreements for sale of the booked flats.

6. The representative of the respondents tried to submit that the allotment letters have been issued in the year 2011 when Maharashtra Ownership Flat Act was in force and section 13 of RERA is not retroactive and retrospective. The complainants have paid the respondents money more than 20% and therefore, as per Section 4 of the said Act, they were bound to execute the agreements for sale on acceptance of consideration more than 20%. The project is ongoing project. It has brought legacy of legal rights and liabilities of the parties relating to it at the time of its registration with RERA. The liability of the respondent to execute the agreements for sale continued even after coming into operation of RERA it being recurring right till continuation of the transaction entered into by the parties. Despite that the respondents have not executed the agreements for sale in complainants' favour.

7. The representative of respondents Ms. Vidya tried to bring to my notice some orders passed by Mr. R.S. Virk appointed to hear objections/public representations in the matter of PACI Ltd. in File No. 146/2, 332 and 450. Similarly, the copies of the orders passed by Hon'ble High Court in Arbitration Petition No.363 of 2015 and Arbitration(I.) No. 1937 of 2014 have been brought to my notice. These orders do not relate to registered project. They are not relevant.




8. After taking into consideration the facts and circumstances of the case and the provisions of Section 13, I find that the respondents are bound to execute and register the agreements of the booked flats in complainants favour on receiving IOD or Commencement Certificate, as the case may be. Hence, I proceed to pass following order.

ORDER

- A. The respondents shall execute the agreements for sale of flats No. B-5303 & 5304 of their project in Mr. Prateek Kumar and register them.
- B. The respondents shall execute and register the agreements for sale of flat nos. B-5301 & 5302 of their project in favour of NSB Infrastructure Pvt. Ltd.
- C. The respondents shall execute the agreements for sale within 15 days from the receipt of IOD or Commencement Certificate of the project, as the case may be and shall register them within next 15 days.
- D. The complainants shall bear the cost of execution and registration of the agreements for sale.
- E. The respondents shall pay each complainant Rs. 20,000/- towards the cost of their complaint.

Mumbai.

Date: 13.06.2018.


13.6.18

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