

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

COMPLAINT NO: 0060000000044017

Nityanand S. Nair

... Complainant.

Versus

Mr. N.K. BhupeshBabu
(Enkay Garden - Iris)

... Respondents.

MahaRERA Regn: P52000005585.

COMPLAINT NO: CC0060000000044137

Jayant Satyawar Bhosale.

... Complainant.

Versus

Mr. N.K. BhupeshBabu
(Enkay Garden - Lotus D)

... Respondents.

MahaRERA Regn: P52000006667.

COMPLAINT NO: CC0060000000023735

Prabhakar Namdeo Bagade

... Complainant.

Versus

Mr. N.K. BhupeshBabu
(Enkay Garden - Lotus D)

... Respondents.

MahaRERA Regn: P52000006667.

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

Appearance:

Complainants: Adv. Sana Mujawar.

Respondents: Mr. Mahesh Deshpande.

FINAL ORDER

2nd August 2018.



Complainants have filed their complainants under Section 18 of Real Estate (Regulation and Development) Act, 2016.

2. The complainants have furnished the following information -

Complaint No.	Name of the complainant.	No. of the booked flat.	Agreed date of possession.
CC0060000000044017	Nityanand S. Nair	303, Iris-Building No.3.	02.01.2015
CC0060000000044137	Jayant Satyawar Bhosale.	203, Lotus D, Building No. 10	21.02.2015
CC0060000000023735	Prabhakar Namdeo Bagade	202, Lotus-D, Building No. 10	21.02.2015

Complainants contend that they booked flats in respondents' registered projects mentioned above situated at village Vavanje, Taluka Panvel, Dist. Raigad. The respondents have failed to deliver the possession of their flats on the agreed dates. They want to withdraw from the project and therefore they seek refund of their amount with interest and/or compensation under Sec. 18 of RERA.

3. Respondents have pleaded not guilty but they have not disputed the receipt of amount paid by the complainants except the amount of taxes and stamp duty. They have also not disputed the fact that they have failed to hand over the possession of the complainants' booked flats on the agreed dates. According to them, the project is delayed because earlier Collector, Alibaug was the planning authority and he sanctioned the plans. However, in the year 2013 the planning authority changed and NAINA was introduced as New Authority which brought with it the changed rules and law. When they purchased non-agricultural land in the year 2007, it carried one FSI but subsequently NAINA denied this entitlement of the promoters and they had to take the matter to the



Minister of State, Urban Department who decided it on 22.08.2017 and directed CIDCO to consider whether the area of the project comes within the periphery of 200 meters from Gaonthan (village limits). There was shortage of sand and some allottees did not pay the consideration as scheduled. Therefore, the respondents have contended that they were prevented by the causes which were beyond their control from completing the project in time. They have almost completed the flats of the complainants and only touch up work remained. It was not agreed between the parties that the possession would be handed over only on receiving completion certificate. They are ready to provide alternate accommodations in the same project to the complainants till their flats are completed. Hence, they submit that the complainants have filed the complaints with malafide intention and therefore, they be dismissed.

4. Following points arise for determination. I record my findings thereon as under-

POINTS	FINDINGS
1. Whether the respondents have failed to hand over the possession of the complainants' booked flats on the agreed dates?	Affirmative.
2. Whether the complainants are entitled to get refund of their amount with interest?	Affirmative.

REASONS

5. As I said, the respondents have not disputed the fact that they have not delivered the possession of the flat booked by the complainants on the agreed dates, so the complainants have proved this issue.

6. The respondents have contended that because of the change of the planning authority they have to face some difficulties particularly regarding their FSI. The matter has been decided by Hon'ble State Minister (UD) in 2017 and therefore, the project is delayed. It was expected of the respondents to carry the construction as per the rules and regulations which they were bound to



know. Only because new planning authority found that the project site does not come within the periphery of 200 meters from the village limits of Vavanje, they faced the difficulties. The complainants are not responsible for the same. Hence, I find that these grounds will not come to the help of the respondents. Moreover, even if it is taken for granted that the reasons which caused delay were beyond the control of the respondents, they cannot seek extension of time more than three + three months as has been laid down by section 8(b) of Maharashtra Ownership Flats Act. These grounds at the most can be considered as mitigating circumstances under Section 72 of RERA only when a question of adjudging quantum of compensation would arise.

7. Section 18 of RERA confers an option on the allottee either to withdraw from the project and claim refund of his amount with interest or to continue it on promoter's failure to hand over the possession on agreed date. The complainants have exercised their right to withdraw from the project. Hence the complainants cannot be compelled to take possession of the flat without such certificate and they cannot be forced to reside in accommodation provided by promoter. In Nilkamal Realtors Suburban Pvt. Ltd.-v/s-Union of India in Writ Petition No. 2337 of 2017, Hon'ble Bombay High Court has held that the promoters must estimate the time likely to be taken by them for completion of the project. The Authority cannot re-write the agreements and therefore, the date of possession mentioned in the agreement for sale will have to be adhered to. In view of this ruling of the Hon'ble High Court, I find that it is not necessary to consider the grounds of delay assigned by the respondents.

8. The respondents have not disputed the amount paid by the complainants mentioned in their respective payment statements marked Exh.'A'. However, they contend that they are bound to pay the amount of stamp duty and taxes because the said amount went to the Government. The stamp duty is paid in the names of the complainants and on cancellation of the agreement for sale they would be entitled to seek its refund. Hence, the



respondents are not liable to pay them the amount of stamp duty. So far as the taxes are concerned, I am told that its refund cannot be claimed. The respondents have made default in handing over the possession of the flats on agreed dates. Therefore, the complainants cannot be made to suffer the financial loss by asking them to bear the amount of tax. In fact, it is the responsibility of the respondents to restore their position. Hence, I hold that the respondents are bound to refund the amount of taxes.

9. The complainants are entitled to get simple interest at prescribed rate on their amount from the respective dates of their payment till they are refunded. The Rules framed under the Act provide that the rate of interest would be 2% above the highest marginal cost of lending rate of interest of SBI which is currently 08.5%. Thus, the complainants are entitled to get interest at the rate of 10.5% from the date of the payment till they are refunded. The complainants are entitled to get Rs. 20,000/- towards the cost of their complaint. Hence, the following order.

ORDER

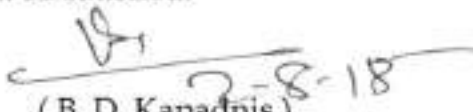
The respondents shall refund the complainants the amount mentioned in payment statements marked Exh. 'A' except the amount of stamp duty, with simple interest @ 10.5% p.a. from the date of payment till their refund. Payment statements shall form the part of this order.

The respondents shall pay complainant of each case Rs. 20,000/- towards the cost of their complaints.

The charge of the amount payable to the complainants shall be on their booked flats till their claims are satisfied.

The complainants shall execute the deeds of cancellation of the agreements for sale when their claims will be satisfied.

Date: 02.08.2018.


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

Complaint No - 006000000044137/2018

PAYMENT FORMAT

Sr. No	Date	Amount	Purpose	Receipt No./Cheque No. with Bank Name
1.	16/09/2011	Rs. 50,000/-	Booking Amount	Receipt No - 4961; Cheque No - 386162 - SBI Bank
2.	14/10/2011	Rs.2,28,300/-	Towards Purchase of flat	Receipt No - 5388; Cheque No - 386163 - SBI Bank
3.	11/06/2012	Rs. 1,50,000/-	Towards Purchase of flat	Receipt No - 6077; Cheque No - 142091 - SBI Bank
4.	12/02/2013	Rs.15,600 /-	Registration charges	Agreement for sale DD No. 140987
5.	12/02/2013	Rs.77,700 /-	Stamp Duty Charges	DD No. 140988
6.	06/05/2013	Rs. 3,47,950/-	Loan Disbursement	Receipt No - 8266; Transfer from SBI Bank to account no-0031755575356
7.	28/08/2013	Rs. 15,525/-	Vat Tax	Receipt No - 9150; Cheque No - 567898- SBI Bank
8.	28/08/2013	Rs. 22,553/-	Service Tax	Receipt No - 9149; Cheque No - 567897- SBI Bank
9.	19/09/2013	Rs.1,55,250	Loan Disbursement	Receipt No - 9371; Transfer from SBI Bank to account no-0031755575356
10.	08/11/2013	Rs.1,55,250/-	Loan Disbursement	Receipt No - 9674; Transfer from SBI Bank to account no-0031755575356
11.	30/12/2013	Rs.9,594/-	Service Tax	Receipt No - 9818; CASH

12.	18/03/2015	Rs.1,55,250/-	Loan Disbursement	Receipt No - 12436; Transfer from SBI Bank to account no- 0031755575356
13.	04/06/2015	Rs. 77,625/-	Loan Disbursement	Receipt No - 12741; Transfer from SBI Bank to account no- 0031755575356
	Total -	Rs.14,60,517/-		

J. Bhosale
Mr. Jayant Bhosale

(Complainant)

N.K. Bhupeshbabu
for Mr. N.K. Bhupeshbabu

(Respondent)

Stamp Duty & Seal Certificate
Payment are not admitted
N.K. Bhupeshbabu
21/8/18