

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.  
COMPLAINT NO: CC006000000044134**

Vishal Metrani

... Complainant.

**Versus**

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

... Respondents.

MahaRERA Regn: P52000005585.

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

**Appearance:**

Complainants: S.Bhimani.

Respondents: Adv.Mr. Mayur Shikhare.

**FINAL ORDER  
13<sup>th</sup> August 2018.**

Complainant has filed this complaint under Section 18 of Real Estate (Regulation and Development) Act, 2016. Complainant contends that he booked flat no. 204 in respondents' registered project Enkay Garden-Iris situated at village Wavanje, Taluka Panvel, Dist. Raigad. The respondents have failed to deliver the possession of his flat on the agreed date 06.02.2015. He wants to withdraw from the project and therefore he seeks refund of his amount with interest and/or compensation under Sec. 18 of RERA.

2. Respondents have pleaded not guilty but they have not disputed the receipt of amount paid by the complainant 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 complainant's booked flat on the agreed date. 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 handover possession of the complainant's flat but its O.C. is awaited. Hence, they submit that the complainant has filed the complaint with malafide intention and therefore, it be dismissed.

3. 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 complainant's booked flat on the agreed date? | Affirmative. |
| 2. Whether the complainant is entitled to get refund of his amount with interest?                                       | Affirmative. |

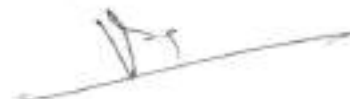


## REASONS

4. As I said, the respondents have not disputed the fact that they have not delivered the possession of the flat booked by the complainant on the agreed date, so the complainant has proved this issue.

5. 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 Wavanje, they faced the difficulties. The complainant is 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.

6. 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 complainant has exercised his right to withdraw from the project. Hence the complainant cannot be compelled to take possession of the flat without occupancy certificate. 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.

7. The respondents have not disputed the amount paid by the complainant mentioned in his payment statement marked Exh.'A' except the amount of stamp duty tax on registration fee. In fact, this amount is included in the registration charges claimed by the complainant. The stamp duty is paid in the name of the complainant and on cancellation of the agreement for sale he would be entitled to seek its refund. Hence, the respondents are not liable to pay him the amount of stamp duty. So far as the service tax and VAT are concerned, I am told that their refund cannot be claimed. The respondents have made default in handing over the possession of the flat on agreed date. Therefore, the complainant cannot be made to suffer the financial loss by asking him to bear the amount of taxes. It is the responsibility of the respondents to restore his position. Hence, I hold that the respondents are bound to refund the amount of taxes.

8. The complainant is entitled to get simple interest at prescribed rate on his amount from the 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 complainant is entitled to get interest at the rate of 10.5% from the date of the payment till they are refunded. The complainant is entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the following order.



## ORDER

The respondents shall refund the complainant the amount mentioned in payment statement marked Exh. 'A' except the amount of stamp duty and tax on registration fee, with simple interest @ 10.5% p.a. from the date of payment till their refund.

Payment statement Exh. 'A' shall form the part of this order.

The respondents shall pay complainant Rs. 20,000/- towards the cost of the complaint.

The charge of the amount payable to the complainant shall be on his booked flat till his claim is satisfied.

The complainant shall execute the deed of cancellation of the agreement for sale when his claims will be satisfied.

Mumbai.

Date: 13.08.2018.



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

VISHAL METRANI

Complaint No - CC006000000044134

Payment Details to Enkay

| SR. No. | Date         | Amount              | Purpose                 | Receipt No./Cheque No. | Bank Name                   |
|---------|--------------|---------------------|-------------------------|------------------------|-----------------------------|
| 1       | 18/12/2010   | 51,000.00           | Booking amount          | 301599                 | Bassein Catholic Co-op bank |
| 2       | 15/01/2011   | 145,488.00          | Initial Payment         | 348005                 | Bassein Catholic Co-op bank |
| 3       | 30/01/2013   | 20,100.00           | Towards Registration    | 250461                 | Bank of Baroda              |
| 4       | 30/01/2013   | 1,920.00            | Tax on registration fee | Cash                   | NA                          |
| 5       | 30/01/2013   | 100,400.00          | Stamp Duty              | 250460                 | Bank of Baroda              |
| 6       | 05/02/2013   | 11,000.00           | NA                      | Cash                   | NA                          |
| 7       | 18/03/2013   | 630,144.00          | 1st installment         | 430315                 | Axis Bank                   |
| 8       | 29/04/2013   | 317,108.00          | 2nd installment         | 433776                 | Axis Bank                   |
| 9       | 01/10/2013   | 12,215.00           | Service tax             | 000002                 | Standard chartered bank     |
| 10      | 01/11/2013   | 12,000.00           | Service tax             | 000012                 | Standard chartered bank     |
| 11      | 23/11/2013   | 50,000.00           | 3rd installment         | 785931                 | Axis Bank                   |
| 12      | 01/12/2013   | 12,000.00           | Service tax             | 000013                 | Standard chartered bank     |
| 13      | 16/12/2013   | 200,790.00          | 4th installment         | 787790                 | Axis Bank                   |
| 14      | 17/01/2014   | 200,790.00          | 5th installment         | 790333                 | Axis Bank                   |
| 15      | 31/01/2014   | 6,204.00            | Service tax             | 000012                 | HDFC bank                   |
| 16      | 22/01/2015   | 100,395.00          | 6th installment         | 528542                 | Axis Bank                   |
| 17      | 27/03/2015   | 100,395.00          | 7th installment         | 564992                 | Axis Bank                   |
| 18      | 01/05/2015   | 7,000.00            | VAT                     | 000026                 | HDFC bank                   |
| 19      | 01/06/2015   | 7,000.00            | VAT                     | 000027                 | HDFC bank                   |
| 20      | 30/06/2015   | 100,395.00          | 8th installment         | 366634                 | Axis Bank                   |
| 21      | 01/07/2015   | 6,029.00            | VAT                     | 000028                 | HDFC bank                   |
| 22      | 01/10/2015   | 8,000.00            | Service tax             | 000029                 | HDFC bank                   |
| 23      | 30/10/2015   | 7,923.00            | Service tax             | 000030                 | HDFC bank                   |
|         | <b>Total</b> | <b>2,108,296.00</b> |                         |                        |                             |

*M Vishal*

9-08-2018