

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

COMPLAINT NO: CC006000000057566

Nagesh Nadkarni
Sayali Nadkarni

... Complainants.

Versus

Vinay Agrawal
(Balaji Symphony)

...Respondent.

MahaRERA Regn: P52000001043.

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

Appearance:

Complainants: Adv. Mr. A.T.Bhautik.

Respondent: Adv. Sanjuna Sudhakaran.

FINAL ORDER

12th March 2019.

The Complainants contend that they booked flat no. J-606 in respondent's registered project "Balaji Symphony" I-Wing situated at New Panvel. They allege that respondent failed to hand over the possession of the flat on the agreed date i.e. on or before 31st March 2017 with grace period of six months. The Complainants want to continue in the project and claim interest on their investment for every month of delay under Section 18 of RERA from the date of default till they took the possession of the flat on 25.12.2018.

2. The respondent has pleaded not guilty and he has filed the reply to contend that he has received the occupation certificate of Phase-1 where the booked flat of the Complainants is situated, on 21.08.2018. The Complainants were informed to take the possession of the flat by email



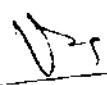
dated 24th August 2018 and complainants took the possession of the flat on 26.12.2018 without making any grievance of delayed possession. The respondent contends that the possession was delayed because the planning authority changed and NAINA became the Planning Authority. Under the policy of the new planning authority, podium plan was altered and the fire department added new obligation to provide fire sprinklers in all the flats. The Complainants have not averred that because of the delayed possession they have suffered. The respondent relies upon Para-125 to 127 of the Neelkamal Realtors judgement to contend that he should not be punished because he is a performing builder. Respondent contends that the complaint under section 18 of RERA is not maintainable. Hence, the respondent requests to dismiss the complaint.

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

POINTS	FINDINGS
1. Whether the respondent failed to hand over the possession of the flat on agreed date?	Affirmative.
2. Whether the Complainants are entitled to get interest on their investment from 01.09. 2017 to 25.12.2018 on account of delayed possession u/s 18 of RERA?	Affirmative.

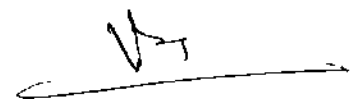
REASONS

4. The respondent has contended that he has specified in the agreement that he shall hand over the possession of the flat by March 2017 with grace period of six months, it means that he agreed to hand over the possession by September 2017. The six months' grace period is very often contemplated in the agreement, if for some genuine reason the project is delayed, the allottee shows the grace to extend the period by next six



months. In this context, section 8(b) of Maharashtra Ownership Flats Act can be looked into. It provides that if the promoter fails to give possession in accordance with the terms of the agreement on the date specified in it for the reasons beyond his control, then the period can be extended for three months and if those reasons still exist, then the period can be extended by next three months. If the project is delayed beyond the period of six months, then the allottee gets right to claim interest from the date of default. The respondent has contended that the delay is caused because the planning authority changed to NAINA and therefore, plans were changed. Even if it is taken for granted, that this was sufficient cause for extending the date, it cannot be extended beyond six months. Hence I find that the respondent was under the contractual obligation to hand over the possession by September 2017. Admittedly, the respondent has failed to hand over the possession on the agreed date, hence I record my finding to this effect.

5. Section 18 of RERA provides that the allottee can get interest on his investment on the promoter's failure to hand over the possession of an apartment on the dates specified in the agreement. Sub-clause (1) of section 18 is drafted in simple present tense, I hold that the material date is the agreed date of possession and not the date of the complaint. Hence, even after receiving the possession, the Complainants are entitled to get the interest on their investment for the delayed period because the right to get it is accrued to them on the promoter's default to hand over the possession on agreed date. Once there is right, there must be remedy to enforce it and without it the right has no meaning. In view of the matter, I find that though the Complainants have taken the possession of the flat, they are entitled to recover the interest on their investment from 01.10.2017 to 25.12.2018.



6. Respondent contends that the O.C. of the project is received on 21.08.2018 and the complainants have taken the possession of the flat hence, the complaint under section 18 of RERA is not maintainable. In my view even on the receipt of the O.C., the right and liability arising out of RERA subsist till they are addressed. Hence, I hold that the Complainants are entitled to get interest on account of delayed possession from the date of respondent's default till they received the possession. Though the respondent makes reference to para 125 to 127 of the judgement of the Hon'ble High Court passed in Neelkamal Realtors Suburban Pvt. Ltd. v/s Union of India (WP 2737/2017), I do not find that they help the respondent to absolve him from the liability arising out of section 18 of RERA.

7. The Complainants have filed the payment statement marked Exh.'A' which shows that till 03.12.2015, they paid Rs. 24,93,680/- to the respondent towards consideration and the receipt of this amount is not in dispute. I find that the Complainants are entitled to get simple interest on their amount at prescribed rate. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.55%. Complainants are entitled to get Rs. 20,000/- towards the cost of the complaint. Hence, the order.

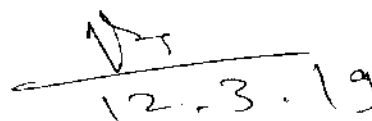
ORDER

The respondent shall pay the Complainants simple interest at the rate of 10.55% p.a. from 1st October 2017 to 25.12. 2018 on their investment of Rs. 24,93,680/- on account of delayed possession u/s 18 of RERA.

The respondent shall pay the Complainants Rs.20,000/- towards the cost of the complaint.

Mumbai.

Date: 12.03.2019.



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