

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.
COMPLAINT NO: CC0060000000023451.

Anil George Charles ... Complainants,
Mrs. Suma Anil George Charles

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

MahaRERA Regn: P52000010054.

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

Appearance:
Complainants: Adv. Sana Mujawar.
Respondents: Mr. Mahesh Deshpande.

FINAL ORDER
30th July 2018.

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

2. The complainants contend that they booked flat no. 102 in respondents' registered project Blue Bay Enkay Garden situated at village Vavanje, Taluka Panvel, Dist. Raigad. The complainants complain that the respondents have failed to deliver the possession of their flat on the agreed date 07.08.2015. 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. 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 accommodation in the same project to the complainants till their flat is completed. Hence, they submit that the complainants have filed the complaint with malafide intention and therefore, it 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 flat on the agreed date? | 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. The respondents have not disputed following amount paid by the complainants.

| Date | Amount paid | Purpose |
|------------|-------------|------------------|
| 05.01.2012 | 50,000/- | Consideration |
| 24.06.2012 | 5,00,000/- | Consideration |
| 22.07.2012 | 2,00,000/- | Consideration |
| 24.07.2012 | 3,00,000/- | Consideration |
| 09.12.2012 | 2,50,000/- | Consideration |
| 09.12.2012 | 2,50,000/- | Consideration |
| 14.02.2013 | 1,50,000/- | Consideration |
| 14.02.2013 | 1,50,000/- | Consideration |
| 29.05.2013 | 3,00,000/- | Consideration |
| 30.06.2013 | 2,00,000/- | Consideration |
| 30.07.2013 | 2,50,000/- | Consideration |
| 02.08.2013 | 1,50,000/- | |
| 07.08.2013 | 05,000/- | Agent charges: |
| 07.08.2013 | 30,000/- | Charges of flat: |
| 13.12.2013 | 1,00,162/- | Service Tax: |
| 13.12.2013 | 27,944/- | VAT |

Both the parties have filed the statement of payment marked Exh. 'A' under their signatures. Hence, the complainants are entitled to get back these amount.

They 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 paragraph 7 of this order with simple interest @ 10.5% p.a. from the date of payment till their refund.

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

The charge of the aforesaid amount shall be on the complainants' booked flat till their claim is satisfied.

The complainants shall execute the deed of cancellation of the agreement for sale when their claim will be satisfied.

Date: 30.07.2018.


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