

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.

COMPLAINT NO: CC006000000056757

Mittal Padia ... Complainant.

**Versus**

Larsen and turbo ... Respondents.  
(Emerald Isle - T8)

MahaRERA Regn: P51800002230.

COMPLAINT NO: CC006000000056800

Mayank Agrawal ... Complainant.  
Aanchal Agrawal  
Renu Agrawal

**Versus**

Larsen and turbo ... Respondents.  
(Emerald Isle - T8)

MahaRERA Regn: P51800002230.

COMPLAINT NO: CC006000000056809

Ankesh Agrawal ... Complainant.  
Shamata Agrawal  
Renu Agrawal

**Versus**

Larsen and turbo ... Respondents.  
(Emerald Isle - T8)

MahaRERA Regn: P51800002230.

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

**Appearance:**

Complainants: Adv. Amar Khanna.

Respondents: Adv. Nilesh Gala.



**FINAL ORDER**  
**31<sup>st</sup> January 2019.**

The complainants have filed these cases for getting refund of their amount with interest and/or compensation on respondents' failure to hand over the possession of their booked flats on agreed date. The booked flats are in the respondents registered project Tower T8 of Emerald Isle project situated at village Tungwa, Taluka Kurla. The necessary facts are as under :

Name of the complainant/s	Booked apartment /s	Date of possession	Amount claimed. (Rs.)	Amount to be paid.
Mittal Padia	T8 - 601	March 2017 + Grace period of six months	5,04,66,193/-	4,75,92,093/-
Mayank Agrawal Aanchal Agrawal Renu Agrawal	T8 - 403	March 2017 + Grace period of six months	4,04,45,066/-	3,84,90,066/-
Ankesh Agrawal Shamata Agrawal Renu Agrawal	T8 - 503	March 2017 + Grace period of six months	4,06,69,281/-	3,87,03,581/-

2. The respondents have filed their reply to contend that this Authority has no jurisdiction to entertain and adjudicate upon this complaint because:

- a. The O.C. for Tower T8 is received on 21.12.2018 and project is completed. On completion of the project the jurisdiction of the Authority comes to an end.
- b. The agreement for sale has been executed on 12<sup>th</sup> January 2016 as per the provisions of Maharashtra Ownership of Flats Act and therefore,



the provisions of RERA are not applicable to it as the Act has come into force from 01.05.2017.

- c. The complainants are the investors; their investment is for better returns on their investments. Hence, this Authority has no jurisdiction to adjudicate upon their disputes.
- d. Section 18 of RERA is prospective in nature and it is not mandatory in nature.

3. The respondents further contend that while registering the project, they have declared the date of completion of Tower-T8 of the project as 31<sup>st</sup> December 2018, in accordance with the provisions of Section 4 of RERA. They contend that the occupancy certificate has been received on 21<sup>st</sup> December 2018 i.e. before the declared date of completion 31<sup>st</sup> December 2018. There is no delay in completing the project and hence, the complaint is not maintainable. They further contend that they have been prevented by sufficient causes which were beyond their control from completing the project in time. Environmental clearance for construction of the building upto 18 floor was granted by the order dated 04.02.2013. The respondents sought further expansion of the project and applied for environmental clearance up to 25 floor on 15.02.2016. They received it on 25.08.2017. They also received stop work notice dated 21<sup>st</sup> June 2017 from the Municipal Corporation which was challenged in Writ Petition No. 1783 of 2017 and the Hon'ble High Court directed the Corporation not to take any action in furtherance of notice on 29.06.2017. The Corporation withdrew the notice on 29.07.2017 but because of the notice, the respondents were required to demobilize the site and it took time to mobilize it which resulted in the cumulative delay of twelve months and twenty-three days. They contend that the complainants failed to make payment of pre-possession instalments as per the demand letter dated 28.06.2017. They terminated the agreement when 95% work was already completed. According to them, if at this stage the complainant is allowed to withdraw from the project, it



would affect the viability of the project and the other purchasers of the project will suffer. Therefore, they request to dismiss the complaint.

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

POINTS	FINDINGS
1. Whether the jurisdiction of the Real Estate Regulatory Authority is co-extensive with the registration of the Project?	Negative.
2. Whether Section 18 of RERA is retroactive in operation?	Affirmative.
3. Whether RERA applies to the agreement for sale executed under Maharashtra Ownership flats Act?	Affirmative.
4. Whether the complainants are investors?	Negative.
5. Whether the respondents have failed to hand over the possession of the flats on agreed date?	Affirmative.
6. Whether the complainants are entitled to get refund of their amount with interest and/or compensation u/s 18 of RERA?	Affirmative.

## REASONS

### Jurisdiction

5. The learned advocate of the respondents submits that occupancy certificate for Tower T8 has been received on 21 December 2018 and hence, this Authority loses its jurisdiction over the matter. It appears that the learned advocate is labouring under the impression that the Authority holds the jurisdiction till the registration of the project exists. For this purpose it is necessary to look at section 5 (3) of RERA which provides that the registration granted under the section shall be valid for



a period declared by the promoter under sub-clause ( C ) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be. This provision therefore does not show that on the receipt of the occupancy certificate the registration of the project shall lapse. Even if it is taken for granted that it lapses on the completion of the project, the issue involved is; whether the Authority shall loose its jurisdiction on completion of the project or not. I answer the question in negative for following reasons:

- a) Section 7 of RERA provides for cancellation/ revocation of the registration of the project. However, section 8 thereof casts obligation on the Authority to carry out remaining development work on lapse or revocation of registration.
- b) Section 14 (3) of RERA provides that in case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within five years from the date of handing over the possession, the promoter is duty bound to rectify such defects without further charge within 30 days. In the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act.
- c) Section 17 of RERA requires the promoter to execute a registered conveyance deed in favour of the allottee of the apartment and register the conveyance deed in favour of the society regarding undivided proportionate title in the common areas within three months from the issuance of the occupancy certificate. The promoter is duty bound to hand over documents, plans to society of the allottees within 30 days from obtaining the occupancy certificate.



These express provisions of RERA indicate that these obligations are to be discharged after receipt of the occupancy certificate or completion of the project by the promoter. Section 33 of the Act provides that it is the function of the Authority to ensure the compliance cast upon the promoter, allottee or real estate agent under the Acts, Rules and Regulations made thereunder. The Real Estate Regulatory Authority while performing its role as regulator has the duty to see that the promoter discharges the duties imposed by the Act and if he fails then, the Authority has the jurisdiction to rectify the errant promoter.

6. Now, this discussion takes me to section 31 of the Act which provides that any aggrieved person can file a complaint with the Authority or the Adjudicating Officer against any promoter, allottee or real estate agent if they violate or contravene any provision of RERA or Rules or Regulations framed thereunder. Therefore, if the cause of action arises which gives right in favour of the aggrieved person and creates obligation or liability on promoter, allottee or real estate agent as per the provisions of the Act, the Authority retains its jurisdiction because section 79 of the Act bars the jurisdiction of Civil Court from entertaining any suit or proceedings in respect of any matter which the Authority or the Adjudicating Officer or the Appellate Tribunal is empowered by or under the Act to determine. Therefore, I hold that the jurisdiction of the Authority is not lost only because of the receipt of the occupancy certificate or the completion of the project.

**RERA applies to MOFA agreement.**

7. The learned advocate of the respondents submits that the agreements have been executed during MOFA regime and therefore, they cannot be governed by RERA. For this purpose, it is necessary to look at Para - 119 of Neelkamal Realtors Suburban Pvt. Ltd. & Anr.- v/s-Union of India's judgement 2017 SCC online Bom. 9302. In the





context of the agreed date of possession the Hon'ble Division Bench of the High Court observes-

"Under provisions of section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA---- the RERA does not contemplate the re-writing of the contract."

These observations are sufficient to hold that the provisions of RERA are applicable to the agreements for sale though they have been entered into prior to the registration of project under RERA. In other words, the prior stage to registration comes before RERA came into force. Therefore, the Act applies to the agreements which have been executed even before it came into operation i.e. executed during MOFA regime, hence, there is no force in this submission.

**Section 18 of RERA is retroactive and mandatory.**

8. The learned advocate of the respondents submits that the provisions of RERA are prospective as held by the Hon'ble High Court in Neelkamal Realtors' Case. Therefore, he submits that section 18 is prospective and it cannot operate against the respondents for the commissions or omissions occurred prior to RERA coming into force. In this regard, paragraph 121 and 122 of the judgement of Neelkamal Realtors attract my attention. In these paragraphs the Hon'ble High Court has dealt with section 3, 6, 8 & 18 of RERA and they have recorded that these provisions are to some extent retroactive or quasi retroactive and the parliament has power to legislate even such provisions. Therefore, I hold that section 18 is retroactive in nature.

9. The learned advocate of the respondents submits that section 18 is not mandatory and the Authority can prevent the allottee from withdrawing from the project even on the promoter's failure to complete or to give possession of an apartment in accordance with the



terms of the agreements for sale or, as the case may be, duly completed by the date specified therein. I have gone through the provisions of section 18, the relevant portion thereof reads as under:

**"18. Return of amount and compensation-**

- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building -
- a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
  - b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any reason.

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under the Act:

Provided, that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

In Neelkamal Realtors, the Hon'ble High Court has observed that the purpose of section 18(1)(a) is to ameliorate the buyers in real estate sector and balance the rights of all the stake holders. The promoter is supposed to be conscious of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. If the promoter defaults to hand over the possession to the





allottee in the agreed time limit or extended one, then the allottee shall reasonably expect some compensation.

10. After reading the provisions of section 18 and the observation of the High Court it becomes clear that when the promoter fails to hand over the possession of the apartment on the date agreed by him for doing so, the allottee gets option either to continue in the project and claim interest on his investment till getting the possession or withdraw from it. Section 18 provides that when the allottees demand their amount by opting to withdraw from the project, he shall be liable to refund the amount with interest and or compensation. The word 'shall' indicates that this provision is mandatory and it is the absolute right of the allottee which accrues on account of promoter's failure either to complete the apartment or to give its possession in accordance with the terms of the agreement for sale or on the date specified therein for completion of it. This right cannot be denied to the allottee by contending that his withdrawal from the project would affect the viability of the project and the interest of the other allottees continuing in it would be prejudiced. On the contrary, the allottee who withdraws from the project made his funds available to the promoter for completing the project, the money is used by the promoter and even thereafter when promoter makes default, if the allottee is expected to sacrifice the legal right accrued to him for protecting the interest of the promoter under pretention that the interest of the continuing allottees will be prejudiced by such withdrawal, will amount to mockery of justice and is not permissible in law. If the interest of the continuing allottees is prejudiced, the promoter is responsible for it and the innocent allottee cannot be made a scape goat for him. Respondents have submitted that they have received occupation certificate of tower -8 and therefore there is no question of causing prejudice to the viability of the project or causing prejudice to the interests of other allottees. Therefore, I disagree with the learned advocate

of the respondents when he submits that section 18 is not mandatory particularly, the allottees right to withdraw from the project.

**Complainants are allottees & scope of section 31 of RERA.**

11. The respondents have taken a stand that the complainants are the investors, therefore, they are not entitled to file the complaints under Section 31 of RERA. It is pertinent to note that any aggrieved person can file a complaint against the promoter of the registered project, if the promoter contravenes or violates any provisions of RERA or Rules or Regulations made thereunder. This section empowers the real estate regulatory authority to entertain the complaint of any aggrieved person. Aggrieved person need not be allottee, promoter or real estate agent. However, the complaint can be filed against only these three persons provided they have violated or contravened the provisions of RERA or rules or regulations made thereunder. Therefore, the learned advocate appears to be under wrong impression that only the allottee can file a complaint against the promoter u/s 31 of RERA. This is one aspect of the matter.

12. The other aspect of this issue is, the respondents have entered into agreements for sale of the flats with the complainants. The agreements are registered. The respondents themselves have projected in the agreements that they agreed to sell and the complainants agreed to purchase the flats. Hence, the respondents are estopped from denying their status as the flat purchasers i.e. the allottees. Moreover, the respondents have not mentioned while uploading the information of their project on the official website of MahaRERA that the complainants are the investors or they have financed them. Section 4(2)(k) of RERA provides that the names and addresses of the contractors, architect, structural engineer, if any and any other person concerned with the development of the proposed project must be put on the website. Therefore, they are estopped from denying the complainants' status as home buyers. There remains no doubt in my



mind that the complainants come under the purview of 'allottee' defined by Section 2 (d) of RERA. Their complaints are maintainable in law.

**Delayed possession.:**

13. The learned advocate of the respondents submits that while registering the project with MahaRERA the respondents have declared that 31<sup>st</sup> December 2018 is the completion date of tower T-8 of the project and occupancy certificate of the tower is received on 21.12.2018 i.e. before crossing the declared date of completion and hence, section 18 is not attracted. For this purpose, also one has to look at the judgement of the Hon'ble High Court passed in Neelkamal Realtors' case. In Para-119 of the judgement the Division Bench has clarified that under provisions of section 18, that the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under section 4. The RERA does not contemplate re-writing of contract between the flat purchaser and promoter. In view of these observations, I find that the promoter has revised the date of completion of the project while registering the project unilaterally without the consent of the allottees. The respondents are therefore, bound by the contractual obligation to hand over the possession of the flats on agreed date and not by the declared date.

14. The complainants have brought to my notice the copies of the agreement for sale executed by the respondents in their favour. They show that the respondents agreed to deliver possession of the flats on or before 31<sup>st</sup> March 2017 with grace period of six months. It means that they agreed to deliver the possession on or before 30<sup>th</sup> September 2017. Admittedly, the respondents have failed to hand over the possession of the flats on the agreed date, hence I record my finding to this effect.



### **Reason of delay:**

15. Mr. Gala draws my attention to the reasons of the delay. He submits Environmental clearance for construction of the building up to 18 floor was granted by the order dated 04.02.2013. The respondents sought further explanation of the project and applied for environmental clearance up to 25 floor on 15.02.2016. They received it on 25.08.2017. They also received stop work notice dated 21<sup>st</sup> June 2017 from the Municipal Corporation which was challenged in Writ Petition No. 1783 of 2017 and the Hon'ble High Court directed the Corporation not to take any action in furtherance of notice on 29.06.2017. The Corporation withdrew the notice on 29.07.2017 but because of the notice, the respondents were required to demobilize the site and it took time to mobilize it which resulted in the cumulative delay of twelve months and twenty-three days. Therefore, he requests to hold that the project is not delayed by excluding the time spent in the litigation and obtaining environmental clearance. I do not agree with him because the respondents had the environmental clearance for making the construction upto 18<sup>th</sup> floor in the year 2013 only. However, they have expanded the project up to 25<sup>th</sup> floor and applied for their environmental clearance in the year 2016. This fact was within the knowledge of the respondents while specifying the date of possession in the agreement. They cannot blame the authority because they applied late for further clearance. On the point of litigation, it is necessary to look at para-100 of Neelkamal Realtors' judgement which deals with Rule 6(a) of Maharashtra Rules 2017 pertaining to the registration. Mr. Gala has referred to this Rule which permits exclusion of time consumed due to stay or injunction orders from any court of law or tribunal or competent authority or statutory authority in deciding the timeline for construction of the project. On these lines Mr. Gala requests to exclude the period taken by the litigation referred to above. However, the Hon'ble High Court has discussed the issue in the judgement and refused to exclude such time consumed from consideration



and went to the extent of directing the State Government to undertake a fresh survey of Rules. Moreover, the delay is caused because of the commission or omission of the respondents and the complainants are not responsible for the same. Hence, I hold that the respondents have failed to prove that they were prevented by sufficient cause from completing the project in time.

**Entitlement of the complainants:**

16. Under section 18 of RERA the complainants entitled to get refund of their amount with interest at prescribed rate on respondents' failure to hand over the possession of the flats on the agreed date. The rules framed under the Act have prescribed the rate of interest. It is 2% above State Bank of India's highest marginal cost of lending rate. The said rate is currently 8.55%. Hence, the allottees are entitled to get simple interest @ 10.55% per annum from the date of the payment till the refund thereof.

17. Complainant Mr. Padia has filed the statement of payment marked Exh.F which shows that the amount of Rs. 28,64,100/- have been claimed on account of stamp duty and Rs. 10,000/- towards the out of pocket expenses.

Complainant Mayank, Aanchan, and Renu have filed Exh.F which shows that the amount of Rs. 19,49,000/- have been claimed on account of stamp duty and Rs. 6,000/- towards the out of pocket expenses.

Complainant Ankesh and Ors. have filed Exh-D which shows that the amount of Rs. 19,59,700/- have been claimed on account of stamp duty and Rs. 6,000/- towards the out of pocket expenses.

18. I find that the complainants can claim refund of the stamp duty from the Sub Registrar's office on cancellation of the agreements under section 48 of Maharashtra Stamp Act within five years of the execution of it. There is no proof that they spent out of pocket expenses claimed by the complainants. The rest of the payments in these statements of payment



have not been disputed by the respondents. Hence, the complainants are entitled to get those amount.

19. Considering the facts and circumstances of the cases and the pleas taken by the respondents to oppose the complainants claim, they are entitled to get at least Rs. 3,00,000/- towards compensation in each case. The respondents have raised the legal issues which have already been settled by the Hon'ble High Court and tried to avoid their responsibility and tried to make this case complicated unnecessarily. Hence, they are liable to pay Rs. 35,000/- towards the cost of the complaint of each case. Hence, the order.

#### ORDER

The respondents shall pay the complainants of respective cases amount mentioned in the column 5 of the table appearing in para - 1 of the order with simple interest @ 10.55% per annum from the date of the payment mentioned in the above referred exhibits till the refund thereof.


It is hereby clarified that in the event of non-compliance of the order within five years of the agreements for sale, the respondents shall pay the complainants the amount of stamp duty also.

The respondent shall pay Rs. 3,00,000/- towards compensation and Rs. 35,000/- towards the cost of the complaint to the complainants of each case.

On satisfaction of the claims, the complainant shall execute the deed of cancellation of agreement for sale at respondents' cost, till then the charge of the claim amount shall be on the complainants' booked flats.

Mumbai.

Date: 31.01.2019.

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