

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

COMPLAINT NO: CC006000000001235

Amit Malik
Shankar Kerba Kamble
Nasir Musa Patel
Shakir Musa Patel
Jameruddin Ibrahim Shaikh

... Complainants.

Versus

Firoz Usman Tinwala
Mustafa Firoz Tinwala
(Ashrafi Towers)
MahaRERA Regn: -P51900010592.

... Respondents.

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

Appearance:

Complainants: In person.

Respondents: In person.

Final Order.

26th February 2018

Pleadings of parties.

Complainant Mr. Amit Malik booked a Flat No.B- 604, Mr. Shankar Kamble booked Flat NoB-403, Mr. Nasir Patel booked B-703, Mr. Shakir Patel booked flat no. B-408 ~~and 405~~, Mr. Jameruddin Shaikh booked flat no. B-406 of respondents' Ashrafi Towers situated at Rafi Ahmad Kidwai Marg, Wadala (W) Mumbai. The respondents agreed to hand over the possession of the complainant Nos. 1 & 2's flats on or before May 2013, of complainant nos. 3 & 4' booked flats on or before September 2014 and that of complainant no. 5 on or before April 2014. However, they have failed to deliver the possession of the flats on the agreed dates. The complainants want to continue in the project. They claim interest on their amount for every month of delay till the



possession of the flats is handed over, u/s. 18 of The Real Estate (Regulatory & Development) Act, 2016 (for short, RERA).

2. The respondents have pleaded not guilty but they have not filed any explanation, though they have sought time to file it.

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

Points.	Findings.
1. Whether the respondents have failed to : deliver the possession of the flats on the agreed dates?	Affirmative.
2. Whether the complainants are entitled to : get interest on their investment for every month of delay till they get the possession of their flat?	Affirmative.

REASONS.

Delayed Possession.

4. The complainants have produced their agreements for sale showing that the respondents agreed to deliver possession of the flats booked by them on the above mentioned agreed dates. However, the respondents have not delivered the possession of the flats till the date of complaint. Hence I hold that the complainants have proved that the respondents have failed to deliver the possession of the flats on agreed dates.

Relevant provision of Law.

5. Section 18 of RERA provides that if promoter fails to complete or is unable to give possession of an apartment on the date specified in the agreement and the allottee does not withdraw from the project, then he is entitled to get interest at prescribed rate for every month of delay on the amount paid by him. The complainants want to continue in the project.



Entitlement of the Complainants.

6. Mr. Amit Malik has produced the statement of account marked Exh. 1 showing that he paid Rs. 35,00,000/- towards the consideration of the flat.
7. Mr. Shankar Kamble has produced the statement of account marked Exh. 2 showing that he paid Rs. 18,00,000/- towards the consideration of the flat.
8. Mr. Nasir Musa Patel has produced the statement of account marked Exh. 3 showing that he paid Rs. ^{35,00,000/-} (15,72,486/-) towards the consideration of the flat.
9. Mr. Shakir Musa Patel has produced the statement of account marked Exh. 4 showing that he paid Rs. 35,23,500/- towards the consideration of the flat.
10. Mr. Jameruddin Shaikh has produced the statement of account marked Exh.5 showing that he paid Rs. 34,06,510/- towards the consideration of the flat.
11. Since the complainants want to continue in the project, they are not entitled to get interest on the amount paid by them towards other expenses incurred by them other than the amount of consideration. Hence I have taken into consideration the amount of consideration paid by the complainants to the respondents only.
12. Since the respondents have failed to deliver possession of the flats on the agreed dates, the complainants are entitled to get simple interest at the prescribed rate which is 2% above the State Bank of India's highest marginal cost of lending current rate 8.05%. This interest is compensatory in nature. Hence, to meet ends of justice, I do not find it necessary to award compensation separately. However, the complainants are entitled to get Rs. 20,000/- towards the cost of their complaint. Hence, following order.

ORDER.

1. Respondents shall pay -


- (a) Mr. Amit Malik interest at the rate of 10.05 % on Rs. 35,00,000/- from 1st June 2013 till the possession of his flat is delivered.
- (b) Mr. Shankar Kamble interest at the rate of 10.05 % on Rs. 18,00,000/- from 1st June 2013 till the possession of his flat is delivered.
- ©. Mr. Nasir Musa Patel interest at the rate of 10.05 % on Rs. ^{35,00,000/-} (15,72,486/-) from 1st October 2014 till the possession of his flat is delivered.



(d). Mr. Shakir Musa interest at the rate of 10.05 % on Rs. 35,23,500/- from 1st October 2014 till the possession of his flat is delivered.

(e). Mr. Jameruddin Shaikh interest at the rate of 10.05 % on Rs. 34,06,510/- from 1st May 2014 till the possession of his flat is delivered.

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


26.2.18


(B.D. KAPADNIS)

Member & Adjudicating Officer,
MahaRERA, Mumbai.

Mumbai

Date: 26.02.2018

It is brought to my notice that Mr. Nasir Patel booked flat No 408 only and he paid Rs. 35,00,000/- Hence the necessary corrections are made by exercising the powers conferred by S-39 of RERA.


26.3.18