

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

COMPLAINT NO: CC006000000057729

Vinod Bokare

... Complainant.

Versus

Om Sai Infra/Mahesh Patel
(Sai Kanishk Phase II)

... Respondents.

COMPLAINT NO: CC006000000057774

Damodar Patle

... Complainant.

Versus

Om Sai Infra/Mahesh Patel
(Sai Kanishk Phase II)

... Respondents.

MahaRERA Regn: P51700012436.

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

Appearance:

Complainants: In person.

Respondents: Adv. Rohan Mane.

FINAL ORDER

14th March 2019.

The complainants have filed these complaints under Section 18 of RERA claiming interest on their investment for every month of delay because the respondents delayed the possession of their booked flats.

2. Mr. Vinod Bokare booked flat no. 604, and Mr. Damodar Patle booked flat no.1101 in the same building No. B-5 of the respondent's

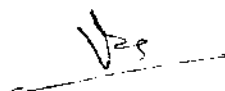


registered project 'Sai Kanishk Phase II'. The respondents have failed to hand over the possession of the flats on agreed date i.e. on or before 31st December 2018. The complainants want to continue in the project and therefore, they claim interest on their investment.

3. The respondents have pleaded not guilty. They have filed the reply wherein they admit that complainants have booked the above numbered flats and they have failed to hand over the possession of the flats on agreed date. According to them, 11th floor of building no. B-5 has been constructed. The project could not be completed within time though the Commencement Certificate was issued on 11th January 2013 because there was hard basalt rock and they required permission to blast it, which delayed the project. The respondents have obtained revised C.C. on 13.08.2014 for constructing stilt (part) + ground (part) to 7th floor. However, due to the change in FSI policy, they got additional FSI and got further revised C.C. on 31.05.2016 for constructing 11th floor. They had to change the Contractor because the earlier Contractor was not working to their satisfaction. Therefore, they contend that these causes were beyond their control and they delayed the project.

4. Following points arise for determination and my findings recorded thereon are as under:

POINTS	FINDINGS
1. Whether the respondents have failed to hand over the possession of flats on the agreed dates?	Affirmative.
2. Whether the complainants are entitled to get interest on their investments for every month of delay?	Affirmative.

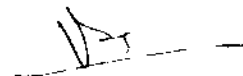


REASONS.

5. There is no dispute between the parties that the respondents have failed to hand over the possession of the complainants' booked flats on agreed date 31.12.2018. Therefore, the complainants have exercised their right conferred on them by section 18 of RERA to claim interest on their investment for every month of delay by continuing in the project. In these circumstances, they are entitled to get interest at prescribed rate on their investments from the date of default i.e. from 01.12.2019 till getting the possession of their flats. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 8.55%.

6. So far as the reasons of delay assigned by the respondents are concerned, I find that they were not beyond their control. It appears that they revised their plan because they wanted to use the maximum FSI which was made permissible pending completion of the project. The complainants are not responsible for the delay caused. It is for the promoter to estimate the time which is likely to be taken for completion of the project and then to agree upon the date of possession as held in Neel Kamal Relators' case by the Hon'ble Bombay High Court. To conclude, I hold that the grounds assigned by the respondents do not permit me to extend the agreed time of possession.

7. The payments made by the complainants reflected in the payment formats submitted by them have not been disputed by the respondents. Mr. Vinod Bokare has paid Rs. 32,95,078/- and Mr. Damodar Patle has paid Rs. 28,49,221/- towards consideration before the agreed date of possession. Therefore, both the complainants are entitled to get interest at prescribed rate on their investment from 01.01.2019 till getting the possession of their



respective flats. Each complainant is also entitled to get Rs. 20,000/- towards the cost of his complaint. Hence, the order.

ORDER

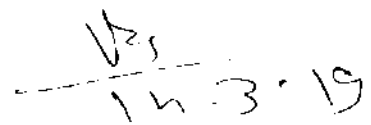
The respondents shall pay simple interest at the rate of Rs. 10.55% to Mr. Vinod Bokare on his investment of Rs. 32,95,078/- and to Mr. Damodar Patle on his investment of Rs. 28,49,221/- from 01.01.2019 till handing over the possession of their respective flats.

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

Respondents are permitted to adjust the interest amount against the amount due from the complainants, if any, but they shall issue separate credit notes thereof.

Mumbai.

Date: 14.03.2019.


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