

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

COMPLAINT NO: CC006000000012712.

George Monson

... Complainant.

**Versus**

N.K. Bhupeshbabu

(Enkay Garden - Iris )

... Respondents.

MahaRERA Regn: P52000005585

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

**Appearance:**

Complainants: Adv.Mr. Sasi Kumar T.C.

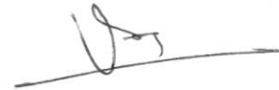
Respondents: AR Mr. Mahesh Pande.

**Final Order.**

26<sup>th</sup> April 2018.

The complainant seeks the refund of his amount with interest under Section 18 of Real Estate (Regulation and Development) Act, 2016 from the respondents on account of their failure to deliver the possession of flat no. 303, building no. 6 of respondents' project Iris situated in MIDC, Taloja, Village Wavanje Taluka Panvel, District Raigad on agreed date.

2. The respondents have pleaded not guilty. The respondents have filed an 'undertaking' (reply) to contend that the work got stalled for Environmental Clearances for near about 48 months. CIDCO, a new Special Planning Authority took four years to start giving the necessary permission and CIDCO has yet to undertake the work of infrastructure such as drainage line, street light and repairing roads etc. The respondents received only Rs. 16,03,125 towards the cost of the flat and they shall give the possession of the flat within six months from signing the undertaking. However, the complainant desires to withdraw from the project.



3. Following points arise for determination and findings thereof are as under:

Points.	Findings.
1. Whether the respondents have failed to deliver the possession of flat to the complainant on agreed date i.e. within two years from the Agreement for sale dated 07.03.2014?	Affirmative.
2. Whether the complainant is entitled to get refund of his amount with interest?	Affirmative.

### REASONS

4. The complainant has produced the agreement for sale dated 07.03.2014 showing that the respondents agreed to deliver the possession of the booked flat no. 303 of respondents' Iris project within two years from the date of agreement dated 07.03.2014. However, the respondents have not handed over the possession of the flat on the agreed date.

5. Maharashtra Ownership Flats Act, 1963 is in force in Maharashtra and its applicability is permitted by Section 88 of RERA. Section 8(b) of the said Act provides that if the promoter for reasons beyond his control is unable to give possession of the flat by the date specified/ agreed and a period of three months thereafter or further period of three months if those reasons still exist. Therefore, this provision shows that even if the reasons causing the delay are beyond the control of the promoter he cannot seek extension of time for more than six months. After six months the allottee is entitled to get refund of his amount with interest from the date of payment. Even if it is taken for granted that the reasons for delay assigned by the respondents were beyond their control, they cannot get extension of more than six months. In this situation I hold that the complainant is entitled to get his amount with interest. I have taken liberal view to hold that the



interest permissible under RERA is compensatory in nature and therefore, I have restrained myself from awarding compensation.

6. The Section 18(1)(a) of the Real Estate (Regulation and Development) (RERA) provides that if the promoter fails to give possession on the date specified in the agreement for sale, he is liable to return the amount of the allottee with interest, if the allottee withdraws from the project. In this case the complainant withdraws from the project and therefore, he is entitled to get back his amount with interest at the prescribed rate from the date of the payment of amount till it is refunded. The prescribed rate of the interest is 2% above the SBI's highest MCLR which is currently 8.05%.

7. The complainant has mentioned in his complaint that he paid the respondents 50,000/- on 01.07.2012, Rs. 8,50,000/- on 01.08.2012 and Rs. 9,85,680/- on 28.08.2014. The respondents have issued the receipts thereof. Therefore, I hold that the complainant has paid these amount. Respondents have failed to prove that they received only Rs. 16,03,125/-.

8. The complainant claims Rs. 25,500/- paid towards the registration charges which he is entitled to get by way of reimbursement. He claims Rs. 1,41,500/- towards the stamp duty. On cancellation of the agreement for sale, he is entitled to get the refund of it from the concerned authority. Hence, the complainant cannot claim it from the respondents. The complainant claims Rs. 4000/- towards legal charges. In fact, considering the fees paid by the complainant on his complaint, the ancillary expenses he is entitled to get Rs. 20,000/- in lump sum towards the cost of the complaint. Since the interest is compensatory in nature no compensation is being awarded separately. Hence, the following order.

#### **ORDER**


1. The respondents shall refund the amount mentioned in Para 6 & 7 of the order together with interest, from the date of the receipt of those amount at the rate of 10.05% till they are refunded.



2. The respondents shall pay to the complainant Rs. 20,000/- towards the cost of the complaint.
3. The charge of the aforesaid amount shall be on the booked flat of the complainant till the satisfaction of his claim.
4. The complainant shall execute deed of cancellation of agreement for sale on satisfaction of his claim at the cost of the Respondents.

Mumbai.

Date: 26.04.2018.

  
26.4.18

( B.D. KAPADNIS)

Member & Adjudicating Officer,  
MahaRERA, Mumbai.