

THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY
MUMBAI.

COMPLAINT NO: CC0060000000023009

Benny Elizabeth Titus ... Complainant.

COMPLAINT NO: CC0060000000023012

Selva Ganapath Selvaraj ... Complainant.

COMPLAINT NO: CC0060000000023058

Lutfuddin Shaikh ... Complainant.

COMPLAINT NO: CC0060000000023590

Nuruddin Mohd.Hussain Shaikh ... Complainant.

COMPLAINT NO: CC0060000000023663

Ajita Oswald Rodrigues ... Complainant.

COMPLAINT NO: CC0060000000023666

Bharat Bhupendra Parmar ... Complainant.

COMPLAINT NO: CC0060000000044192

Mahesh K. Pol ... Complainant.

COMPLAINT NO: CC0060000000044348

Leena Vilas Kulkarni ... Complainant.

COMPLAINT NO: CC0060000000044351

Mahe Alam Intiyaz Ahmed ... Complainant.



COMPLAINT NO: CC0060000000054583

Parveen Aminullah Shah Syed

... Complainant.

Versus

Pramod Pandurang Pisal,
(M/s. Unity Land Consultancy)
Mohammad Masroor Shaikh
(M/s. M.M. Developers)
M/s. Spenta Infrastructure and
Development Pvt. Ltd.

.....Respondents.

MahaRERA Regn: P51800006382

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

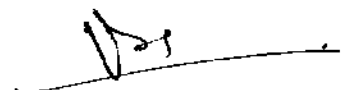
Appearance:
Complainant: Adv.Nirav Joshi.
Respondent No.1 : In person.
Respondent No.2 : Exparte.
Respondent No. 3 : Exparte.

Common Final Order.

24th July 2018.

Complainants are the allottees of respondents' M.M. Residency project situated at Kurla, Mumbai. Their necessary information is as follows.

Name	Complaint Number	Flat No.	Date of Possession
Benny Elizabeth Titus	CC006000000023009	B-1103	31.12.2011
Selva Ganapath Selvaraj	CC006000000023012	A-1205	31.12.2011
Lutfuddin Shaikh	CC006000000023058	B-404	31.12.2012
Nuruddin Mohd. Hussain Shaikh	CC006000000023590	B-703	31.12.2012



Ajita Oswald Rodrigues	CC006000000023663	A- 1303	31.12.2012
Bharat Bhupendra Parmar	CC006000000023666	B- 1301	30.04.2017.
Mahesh K. Pol	CC006000000044192	A-304	31.12.2012.
Leena Vilas Kulkarni	CC006000000044348	B- 1005	31.12.2012
Mahe Alam Imtiyaz Ahmed	CC006000000044351	A- 1105	31.12.2012
Parveen Aminullah Shah Syed	CC006000000054583	A-201 & A- 202	31.12.2011

Respondents have failed to deliver possession of the flats till the date of complaints. Complainants want the possession of their flats. They request to award interest on their investments till they get the actual possession of their flats and compensation also u/s. 18 of the Real Estate (Regulation and Development) Act, 2016 (for short, RERA).

2. Plea of respondent no.1 has been recorded in these cases. they have pleaded not guilty but they have not filed their replies. However, respondent nos.2&3 have failed to remain present and contest the complaints.

3. Following points arose for determination. I record my findings therein as under:-

POINTS.	FINDINGS.
1. Whether promoters delayed the possession of the flats booked by the complainants?	Affirmative.
2. Whether the complainants are entitled to get Interest and/or compensation under Section 18 of RERA?	Affirmative.
3. Who is liable to pay interest/compensation to complainants?	All the respondents.

REASONS.

Delayed possession:

4. There is no dispute between the parties that M/s. M.M. Developers & M/s. Unity Land Consultancy entered into agreements for sale with the



complainants. The respondents do not dispute the fact that when they entered into agreements for sale with complainants, they agreed to deliver the possession of their flats on or before December, 2012 and to Mr. Parmar on 30.04 2017. It is also not in dispute that the building is incomplete and the possession of the flats has not been given to the complainants till the date of complaints. Section 18 of RERA clearly provides that if promoter fails to complete or he is unable to give possession of apartment, plot or building – (a) in accordance with the terms of the agreement for sale or, (b) as the case may be, duly completed by the date specified therein, where the allottee does not intend to withdraw from the project, allottee shall be paid by the promoter, interest of every month of delay till handing over of the possession at such rate as may be prescribed. On plain reading of this provision the relevant date of possession would be the agreed date for delivery of possession mentioned in the agreement for sale. Therefore, I record my finding that the respondents have failed to deliver the possession of the complainants' booked flats on the agreed date of possession.

Reason of delay:

5. Though respondent no. 1 has not filed any reply/explanation in these complaints, the respondents have brought to my notice that the complaint in respect of their project was referred for its enquiry to High Power Committee by Anti-Corruption Bureau, as per the order of the Hon'ble High Court. Order of High Power Committee has been placed on record, it shows that the stay order was passed on 19.05.2010 and it remained in force till 31.12.2014. According to the respondents, it was communicated to them on 25.03.2015 but I do not find any proof showing that the stay order was communicated to them on 25.03.2015. Therefore, for all practical purposes, I hold that the order was in force from 19.05.2010 to 31.12.2014. I find that it was in force for four years and seven months and it caused the delay.

Whether complaints are premature?

6. The respondents contend that if this period of stay is excluded from computation, then the complaints are pre-mature. I do not accept this submission because I have mentioned that, in the proceedings filed under Section 18 of RERA the date mentioned in the agreement for sale will have to be taken into consideration for the purpose of deciding the starting point of the promoters default in handing over the possession. So far as



the stay order is concerned, this can be considered as mitigating circumstance under Section-72 of the Act but it cannot be considered for the purpose of postponing the date of delivery of possession.

Entitlement of the complainants:

7. I have already referred to Section 18 of the Act. The complainants want the possession of booked flats, therefore, they are entitled to get the interest at prescribed rate on their investments for every month of delay till they get possession of their flats. This is their statutory right and they cannot be deprived of it. Stay granted by High Power Committee was in force till 31.12.2014. I consider it as the mitigating circumstance. Unity Land Consultancy undertook to complete the project within 18 months as has been referred to above. Hence I hold that complainants' entitlement starts after 18 months from 01.01.2015. This date comes to June 2016. Liability of respondents to pay interest starts from this date.

8. The respondents have not disputed the receipt of monies paid by complainants. Complainants are entitled to get interest on their amounts as per the provision of Section 18 of RERA and rules framed thereunder. The prescribed rate of simple interest is marginal cost of lending rate of interest of SBI which is now 8.5 - 2 % p.a. Complainants are entitled to get the interest on their amounts mentioned below from 01.07.2017 and the interest shall be payable on each month of default.

Name	Complaint Number	Interest on amount payable from 01-07-2017 till possession
Benny Elizabeth Titus	CC006000000023009	16,18,205/-
Selva Ganapath Selvaraj	CC006000000023012	21,65,100/-
Lutfuddin Shaikh	CC006000000023058	21,73,991/-
Nuruddin Mohd. Hussain Shaikh	CC006000000023590	17,58,900/-
Ajita Oswald Rodrigues	CC006000000023663	23,33,734/-

Bharat Bhupendra Parmar	CC006000000023666	23,00,000/-
Mahesh K. Pol	CC006000000044192	21,00,000/-
Leena Vilas Kulkarni	CC006000000044348	22,74,300/-
Mahe Alam Imtiyaz Ahmed	CC006000000044351	26,97,600/-
Parveen Aminullah Shah Syed	CC006000000054583	19,04,017/- 28,59,075/-

Compensation:

9. Compensation depends upon the facts of each case. It appears in these cases that since beginning the respondents have been playing mischief. They have not made it clear to the complainants while entering into the agreements for sale that the project was stayed by the High Power Committee. They have not completed the rehab component. They are taking undue advantage of their own wrong by contending that since rehab component has not been completed they are not getting additional FSI and TDR also. They have also failed to keep their promise given to SRA while taking the project. They have been avoiding responsibility of completing the project in time. Therefore, in view of the peculiar circumstances of these cases, the allottees have been undergoing mental stress because of all the uncertainties. They have paid their money to respondents long back and now they cannot book other flats also. They have suffered from loss of opportunity. Hence I find that the respondents must pay Rs.1,00,000/- to each complainant on account of aforesaid grounds, except Mr. Parmar as he booked the flat in 2016. They shall pay Rs. 20,000/- towards the cost of the complaints to each complainant.

Liability of respondents.

10. M/s. Unity Land Consultancy have taken the responsibility of making construction. M/s. Unity Land Consultancy accepts its liability to complete the building and their right to receive the further payment from the complainants. This is the internal arrangement made by the respondents. All the three respondents are the promoters defined by section 2(zk) of RERA. The explanation provides that all the promoters shall be jointly liable as such for functions and responsibilities specified under RERA or the Rules and Regulations made thereunder. Therefore, I



find that all the three respondents are jointly or severally liable to satisfy the award passed against them.

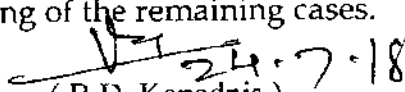
Hence, following order.

ORDER

1. The respondents shall pay the complainants simple interest at the rate of 10.5 percent per annum on the complainants' investments mentioned in para 8 of this order from 1st July 2016 for every month of delay till they get possession of their flats.
2. The respondents shall pay complainants Rs.1,00,000/- towards compensation except Mr.Bharat Parmar and Rs. 20,000/- towards the cost of complainant to each complainant.
3. The respondent nos.1 and 2 shall complete the project within the period of one year from 19.12.2017 as ordered in CC006000000000300.
4. The original order be kept in the record and proceedings of CC0060000000023009 and its Photostat copies be kept in the record and proceeding of the remaining cases.

Mumbai.

Date: 24 .07.2018.


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