

THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.

COMPLAINT NO: CC0060000000012717.

Rajan P.V.

... Complainant.

**Versus**

N.K. Bhupeshbabu  
(Enkay Garden - Iris)  
MahaRERA Regn: P52000005585.

... Respondents.

COMPLAINT NO: CC0060000000012668.

Unnikrishnan Narayanan Azhuthachan

... Complainant.

**Versus**

M/s. N.K. Bhupeshbabu  
(Enkay Garden - Lotus D)  
MahaRERA Regn: P52000006667.

... Respondents.

COMPLAINT NO: CC0060000000001933.

Pushparajan S. Nair

... Complainant.

**Versus**

N.K. Bhupeshbabu  
(Enkay Garden - Lotus D)  
MahaRERA Regn: P52000009049.

... Respondents.

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

**Appearance:**

Complainants: Sasikumar T.C,

Respondents: Mr. Mahesh Deshpande.

**FINAL ORDER**

30<sup>th</sup> May 2018.



Complainants have filed their complainants under Section 18 of Real Estate (Regulation and Development) Act, 2016. The necessary facts are as follows:

Sr.No.	Name of the Complainant/s	Flat No.	Date of agreement for sale	Agreed date of possession.
1.	Rajan P.V.	104 of Iris	09.01.2013	08.01.2015
2.	Unnikrishnan Narayanan Azhuthachan	001 of Bld.3 , Lotus D	19.06.2013	18.06.2015
3.	Pushparajan S. Nair	001 of Bld.8 Lotus D	04.07.2013	05.07.2015

The projects of the respondents referred to above are situated at village Wavanje, Taluka Panvel, Dist. Raigad. The complainants complain that the respondents have failed to deliver the possession of their flats on the agreed dates. They want to withdraw from the project and therefore they seek refund of their amount with interest and/ or compensation under Sec. 18 of RERA

2. Respondents have pleaded not guilty and they have filed their replies wherein they have not disputed the receipt of amount paid by the complainants. They have also not disputed the fact that they have failed to hand over the possession of the complainants' booked flats on the agreed dates. According to them, they have received commencement certificate on 19.12.2012 from Town Planning Authority, Alibaug and thereafter the Town Planning Authority delayed the necessary approvals for further construction. On 28.03.2014, the Village Panchayat and on 05.12.2014 MPCB issued stop-work notices. The Environmental Clearance application was submitted on 20.11.2011 but because of the dissolution of the Board the environmental clearance has not been issued. Therefore, the respondents have contended that they were



prevented by the causes which were beyond their control from completing the project in time.

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

**POINTS**

**FINDINGS**

- |  |              |
|--|--------------|
| 1. Whether the respondents have failed to hand over the possession of the complainants' booked flats on the agreed dates?      | Affirmative. |
| 2. Whether the complainants are entitled to get refund of their amount with interest from the date of receipt till its refund? | Affirmative. |

**REASONS**

4. As I said, the respondents have not disputed the fact that they have not delivered the possession of the flats booked by the complainants on the agreed dates, so the complainants have proved this issue.
5. The respondents have referred to various authorities which did not give approvals, clearance and sanctions in time. According to the respondents, because of these reasons, which were beyond their control, they could not complete the project in time. However, in Nilkamal Realtors Suburban Pvt. Ltd.-v/s-Union of India in Writ Petition No. 2337 of 2017, Hon'ble Bombay High Court has held that the promoters must estimate the time likely to be taken by them for completion of the project. The Authority cannot re-write the agreements and therefore, the date of possession mentioned in the agreement for sale will have to be adhered to. In view of this ruling of the Hon'ble High Court, I find that it is not necessary to consider the grounds of delay assigned by the respondents. Moreover, they can be considered in view of the provisions of Section 72 of RERA only when the question of compensation would arise. In the facts and circumstances of the cases, I find that the complainants are not



entitled to get compensation and therefore, all the grounds of delay mentioned by the respondents become irrelevant.

6. Section 18(1)(a) of RERA provides that if the promoter fails to give possession of an apartment on the date specified in the agreement for sale, and the allottee wants to withdraw from the project, he shall be paid by the promoter his amount with interest as may be prescribed. The Rules framed under the Act provide that the rate of interest would be 2% above the marginal cost of lending rate of interest of SBI which is currently 08.05%. Thus, the complainants are entitled to get interest at the rate of 10.05% from the date of the payment of amount till its refund. The respondents have not disputed the amount paid by the complainants shown in the following table. Therefore, the complainants are entitled to get refund of their amount mentioned below with interest.

Sr. No.	Name of the Complainant/ s	Amount in Rs.	Date of Payment	Purpose
1	Rajan P V	50,000	28.08.2011	Consideration
		4,19,040	18.10.2011	Consideration
		1,59,520	13.03.2012	Consideration
		2,09,520	06.06.2012	Consideration
		1,05,360	03.01.2013	Consideration
		23,650	24.01.2013	Consideration
		23,000	24.01.2013	Consideration
		5,00,000	25.01.2013	Consideration
		81,910	19.04.2013	Consideration
		1,04,760	08.03.2014	Consideration
		1,04,760	09.03.2015	Consideration
		1,04,760	14.04.2015	Consideration
		34,547	21.08.2013	Service Tax
		14,666	31.08.2013	VAT



		1054	08.03.2014	VAT
		3237	08.03.2014	Service Tax
		3237	09.03.2015	Service Tax
		3237	14.04.2015	Service Tax
		17,680	09.01.2013	Reg. Charges
		4000	09.01.2013	Legal Expenses
2.	Unnikrishnan Narayanan Azhuthachan	2,00,000	05.02.2012	Consideration
		1,26,700	28.02.2012	Consideration
		60,800	18.06.2013	Consideration
		4,56,250	16.09.2013	Consideration
		1,68,750	19.11.2013	Consideration
		1,68,750	19.01.2014	Consideration
		1,68,750	23.01.2015	Consideration
		84,375	15.06.2015	Consideration
		1,68,750	17.09.2016	Consideration
		16,900	21.06.2013	Reg. Charges
		4,000	21.06.2013	Legal Charges
		10,291	27.08.2013	Service Tax
		16,875	27.08.2013	VAT
		19,313	28.11.2013	Service Tax
		5,214	22.02.2014	Service Tax
		8,168	28.01.2015	Service Tax
		6,328	30.08.2015	Service Tax
3	Pushpārajan S. Nair	2,00,000	05.02.2012	Consideration
		1,26,700	25.02.2012	Consideration
		10,800	03.07.2013	Consideration
		5,06,250	21.09.2013	Consideration
		1,68,750	27.05.2014	Consideration
		1,68,750	24.11.2013	Consideration



		1,68,750	12.01.2015	Consideration
		84,375	07.08.2015	Consideration
		18,740	05.07.2013	Reg. charges
		4,000	05.07.2013	Legal charges
		8,746	27.08.2013	Service Tax
		15,643	29.11.2013	Service Tax
		16,875	13.04.2015	VAT
		10,858	28.07.2015	Service Tax
		12,953	16.09.2015	Service Tax

The complainants are not entitled to get the reimbursement of stamp duty amount because it is paid in their names. They can claim its refund on cancellation of the agreements for sale.

7. The complainants are entitled to get Rs. 20,000/- towards the cost of their complaint. Hence, the following order,

#### ORDER

The respondents shall refund the respective complainants the amount mentioned in paragraph 6 of this order with interest @ 10.05% from the date of their payment to the respondents or the Govt. as the case may be till the same be refunded.

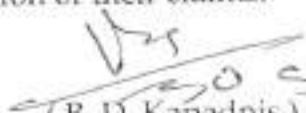
The respondents shall pay the complainants of each case Rs. 20,000/- towards the cost of their complaint.

The charge of the above mentioned amount shall be on the booked flats of the complainants till satisfaction of their claims.

The complainants shall execute the Deeds of cancellation of agreement for sale on respondents' cost, on satisfaction of their claims.

Mumbai.

Date: 30.05.2018.

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