

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.

COMPLAINT NO: CC0060000000001738.

Mrs. Bindhu Anantha Raj

... Complainant.

**Versus**

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

... Respondents.

**Appearance:**

Complainant: In person.

Respondents: Mr. Mahesh Deshpande

COMPLAINT NO: CC00600000000012525.

Prabir S. Lahiri

... Complainant.

**Versus**

N.K. Bhupeshbabu  
M/s. Enkay Castle,  
N.K. Bhupeshbabu  
(Enkay Garden - Lotus C)  
MahaRERA Regn: P52000009049.

... Respondents.

COMPLAINT NO: CC00600000000023336.

Mr. Shrikant Ashok Lakshatti

... Complainant.

**Versus**

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

... Respondents.



COMPLAINT NO: CC0060000000023359.

Mrs. Laxmi Tendulkar

... Complainant.

**Versus**

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

... Respondents.

COMPLAINT NO: CC0060000000023518.

Mr. Sunil Namdeo Bagade  
Mrs. Vaishali Sunil Bagade

... Complainants.

**Versus**

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

... Respondents.

COMPLAINT NO: CC0060000000023452.

Mr. Ramesh Bajirao Sable

... Complainant

**Versus**

N.K. Bhupeshbabu  
(Enkay Garden - Orchid)  
MahaRERA Regn: P52000012218.

... Respondents.

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

**Appearance:**

Complainants: S.N.M. Legal Associates

Respondents: Mr. Mahesh Deshpande



**FINAL ORDER**  
**22<sup>nd</sup> May 2018.**

The complainants of these six complaints have been seeking interest on their investment for every month of delay till they get possession of their flats under Section 18 of Real Estate (Regulation and Development) Act, 2016 because the respondents failed to hand over the possession of their booked flats of respondents' registered projects on agreed dates. The necessary information is as follows:

Sr.No.	Complaint No.	Flat No.	Date of agreement for sale	Agreed date of possession.
1.	CC0060000000012525	201&202 of Lotus	20.04.2013	21.04.2015
2.	CC006000000001738	104 of Bld. 5, Iris	10.01.2013	11.01.2015
3.	CC0060000000023336	104 of Bld. 1, Iris	09.05.2013	10.05.2015
4.	CC0060000000023359	202 Bld. 9 of Lotus	12.02.2013	13.03.2015
5.	CC0060000000023518	201 Bld.3, Lotus	15.03.2013	16.03.2015
6.	CC0060000000023452	204 Bld. 3, of Orchid	20.01.2014	21.01.2016

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 interest for every month of delay on their investment till they get the possession of their flats?	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, the complainants have proved this issue.

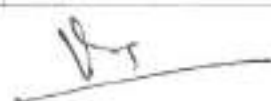
5. The respondents have referred to various authorities which did not give approvals, clearance and sanctions in time. According to the respondents, because of these reasons, which were beyond their control, they could not complete the project in time. However, in Nilkamal Realtors Suburban Pvt. Ltd.-v/s-Union 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 only when the question of compensation would arise in view of the provisions of Section 72 of RERA. 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 became 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, the allottee who does not intend to withdraw from the project, shall be paid by the promoter, interest for every month of delay 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 10.05%. Thus, the complainants are entitled to get interest at the rate of 10.05% from the date of default, if the payment is made before the said date and from the date of payment, if the same is made after the date of default. The respondents have not disputed the amount paid by the complainants shown in the payment formats. Therefore, the complainants are entitled to get the interest on the following amount from respective dates as under:

Sr. No.	Complaint No.	Amount in Rs.	Date of Interest.
1.	CC0060000000012525	(F201) 8,04,000/-	21.04.2015
		50,250/-	17.06.2015
		01,00,500/-	14.09.2015
		(F202) 8,04,000/-	21.04.2015
		50,250/-	17.06.2015
		01,00,500/-	14.09.2015



2.	CC006000000001738	19,10,287/- 01,04,760/- 01,04,760/- 01,04,760/-	11.01.2015 12.01.2015 16.03.2015 16.04.2015
3.	CC0060000000023336	22,39,255/-	10.05.2015
4.	CC0060000000023359	12,63,000/-	13.02.2015
5.	CC0060000000023518	13,25,000/- 82,813/-	16.03.2015 19.06.2015
6.	CC0060000000023452	14,60,938/- 1,71,875/-	21.01.2016 04.10.2016

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


#### ORDER

The respondents shall pay the respective complainants the interest on their investment as shown in Para 6 of this order, from the respective dates of their receipts for every month of delay till handing over the possession of their flats.

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

Mumbai.

Date: 22.05.2018.

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