

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

COMPLAINT NO: CC0060000000022917.

Santosh Kumar Kedia

... Complainant.

Versus

BhupeshBabu Nilliparambil
(Enkay Garden - Iris)

... Respondents.

COMPLAINT NO: CC0060000000023571.

Shashikant Shivaji Kalel

... Complainant.

Versus

M/s. N.K. Bhupeshbabu
(Enkay Garden - Lotus D)
MahaRERA Regn: P52000005585.

... Respondents.

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

Appearance:

Complainants: Adv. Sana Mujawar.

Respondents: Mr. Mahesh Deshpande.

FINAL ORDER

30th July 2018.

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

Sr.No.	Name of the Complainant/s	Booked Flat No.	Agreed date of possession.
1.	Santosh Kumar Kedia	301 Iris	28.02.2015
2.	Shashikant Shivaji Kalel	201 Iris	14.01.2015



The project of the respondents referred to above is situated at village Vavanje, 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 continue in the project and therefore they seek interest on their amount under Sec. 18 of RERA.

2. Respondents have pleaded not guilty but 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, the project is delayed because earlier Collector, Alibaug was the planning authority and he sanctioned the plans. However, in the year 2013 the planning authority changed and NAINA was introduced as New Authority which brought with it the changed rules and law. When they purchased non-agricultural land in the year 2007, it carried one FSI but subsequently NAINA denied this entitlement of the promoters and they had to take the matter to the Minister of State, Urban Department who decided it on 22.08.2017 and directed CIDCO to consider whether the area of the project comes within the periphery of 200 meters from Gaonthan (village limits). There was shortage of sand and some allottees did not pay the consideration as scheduled. Therefore, the respondents have contended that they were prevented by the causes which were beyond their control from completing the project in time. They have almost completed the flats of the complainants and only touch up work remained. It was not agreed between the parties that the possession would be handed over only on receiving completion certificate. They are ready to provide alternate accommodation in the same project to the complainants till their flats are completed. Hence, they submit that the complainants have filed the complaints with malafide intention and therefore, they be dismissed.



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 on their amount for every month of delay from the date of default till handing over 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, so the complainants have proved this issue.

5. The respondents have contended that because of the change of the planning authority they have to face some difficulties particularly regarding their FSI. The matter has been decided by Hon'ble State Minister (UD) in 2017 and therefore, the project is delayed. It was expected of the respondents to carry the construction as per the rules and regulations which they were bound to know. Only because new planning authority found that the project site does not come within the periphery of 200 meters from the village limits of Vavanje, they faced the difficulties. The complainants are not responsible for the same. Hence, I find that these grounds will not come to the help of the respondents. Moreover, even if it is taken for granted that the reasons which caused delay were beyond the control of the respondents, they cannot seek extension of time more than three + three months as has been laid down by section 8(b) of Maharashtra Ownership Flats Act. These grounds at the most can be considered



as mitigating circumstances under Section 72 of RERA only when a question of adjudging quantum of compensation would arise.

6. Section 3 of MOFA prohibits the promoter from inducting a person and prohibits a person from entering into a possession of a flat unless completion certificate from the local authority is received. Hence the complainants cannot be compelled to take possession of a flats without such certificate and they cannot be forced to reside in accommodation provided by promoter. 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. 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 continue in the project, he shall be paid by the promoter interest as may be prescribed on his amount for every month of delay. The Rules framed under the Act provide that the rate of interest would be 2% above the highest marginal cost of lending rate of interest of SBI which is currently 08.5%. Thus, the complainants are entitled to get interest at the rate of 10.5% from the date of the default till the possession of their flats are handed over. The respondents have not disputed the amount of Rs. 20,12,003/-paid by Mr. Santosh Kedia and Rs. 19,90,440/- paid by Mr. Shashikant Kalel. Therefore, the complainants are entitled to get interest on these amount.

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



ORDER

The respondents shall pay the respective complainants the interest on their amount mentioned in paragraph 6 of this order @ 10.5% from the date of default till handing over the possession of the complainants' flats.

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

Date: 30.07.2018.


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