

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

COMPLAINT No: CC00600000044307

Mr. Denzil D'souza & Mrs. Anita D'souza Complainants

Versus

M/s. Nirmal Lifestyle (Kalyan) Private Limited Respondent

MahaRERA Registration No. P51700003537

Coram: Hon'ble Dr. Vijay Satbir Singh, Member-1

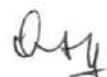
Adv. Lulla appeared for the complainants.

Mr. Rohit Chavan a/w Mrs Vaishali Mohite appeared for the respondent.

Order

(31st August, 2018)

1. The complainants have filed this complaint seeking directions from the MahaRERA to the respondent to pay interest @18% and compensation from the period commencing from 1st January, 2017 till the actual date of possession and execute the registered agreement for sale with them. Further, they have also demanded rent from the agreed date of possession i.e. Jan 2014 till the date of possession in respect of booking of a flat No.1301, on 13th floor in the building known as "Glory B" bearing MahaRERA registration No. P51700003537 at Kalyan, Dist. Thane.
2. The complainants have stated that initially they booked the flat in the year 2014 in Colossem Project for a total consideration amount of ₹ 46,35,630/-. Initially, the respondent had issued allotment letter dated 08/08/2015 against the said booking. Further, in the year 2016, the respondent orally informed that all the bookings of Colosseum project were cancelled and the complainants along with other allottees could book the flat in the neighbouring "Glory" project. Accordingly, the respondent issued another



allotment letter dated 09/07/2016 for booking of the said flat No. B-13-1301 admeasuring about 582 sq. feet carpet area at a total cost of ₹ 45,40,050/- to the complainants.

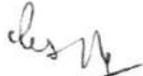
3. The complainants have paid an amount of ₹ 39,45,960/- to the respondent against the said flat. But, the respondent failed to handover possession of the said flat as agreed on or before July, 2017 and now the respondent has given revised date of possession as July, 2019. The complainants argued that the respondent has violated the provision of section 14 of the RERA Act, 2016 as he has changed plans and numbers of floors frequently without taking consent of the complainants. Even the respondent has failed to comply with the provision of section 16 of the RERA Act, 2016. The complainants are, therefore, seeking compensation under section 14 of the RERA Act, 2018 and also rent from 1st January 2017 till the actual date of possession.
4. The respondent disputed the claim of the complainants and argued that the respondent has not violated any provision of the RERA Act, 2016 and therefore, on the said ground itself the complaint is to be dismissed. The respondent further argued that the complainants are not the genuine allottees. However, they are investors who have invested their money but did not come forward to execute registered agreement for sale by paying statutory charges. Even there is no agreement entered into between them and there is no agreed date of possession. Hence, the complainants can not seek interest for the delayed possession and rent. With regard to the allegation made by the complainants regarding violation of section 14, the respondent argued that the plans have not been changed by him as alleged by the complainants and even as per para 9 of the allotment letter the respondent is entitled to change, alter and amend the layout plan etc. in the said building. With regard to violation of section 16(1) of the RERA

Act, 2016, the respondent has argued that he is awaiting the government notification for compliance. In addition to this, if necessary, the respondent is willing to execute the registered agreement for sale with the complainants. The respondent has requested for dismissal of this complaint.

5. Considering the rival submissions made by both the parties, this Authority feels that it is admitted fact that the complainants have booked a flat in the respondent's project and made substantial payment towards the cost of the flat. However, no registered agreement has been executed with the complainants. Further, the complainants are seeking reliefs under section 18 of the Real Estate (Regulation & Development) Act, 2016. After going through the provisions of section 18 of the said Act, it is clear that the allottees are entitled for interest and compensation if the promoter fails to discharge any other obligation imposed on him under this Act and Rules and Regulations made there under or in accordance with the terms and conditions of the agreement for sale or as the case may be. In the present case, in the absence of an agreement for sale, section 18 has no role to play.
6. In respect of payment of rent to the complainants, this Authority feels that there is no provision in Real Estate (Regulation & Development) Act, 2016, wherein such relief can be granted by this Authority. Hence same is rejected.
7. With regard to the violation of provision of section 14 of the RERA Act, 2016, the complainants have not submitted any cogent documentary proof to show that the respondent has changed the plans and violated the provision of section 14. Hence, the reliefs under section 14 of the RERA can not be granted to the complainants.

8. Regarding violation of section 16(1) of the RERA Act, 2016, it is a fact that the state government has not yet issued notification for insurance. Hence, the respondent at this stage could not comply with the said provision of the RERA Act, 2016.
9. Since the complainants have already paid more than 10% of the amount, the respondent is liable to execute an agreement for sale with the complainants towards the booking of the flat as per the provisions of section 13 of the RERA Act, 2016. Therefore, this Authority directs the respondent to execute the registered agreement for sale with the complainants within a period of 30 days from the date of payment of necessary stamp duty and registration charges by the complainants.

10. With these directions, the complaint stands disposed of.



(Dr. Vijay Saini Singh)
Member-1, MahaRERA