

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

COMPLAINT NO: CC006000000001813

1.Nayab Riyaz Faukat  
2.Shadab Riyaz Faukat

...

Complainants.

**Versus**

1.Firoz Usman Tinwala  
2.Mustafa Firoz Tinwala  
MahaRERA Regn: -P51900010592.

...

Respondents.

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

**Appearance:**

Complainants: In person.

Respondents: In person.

**Final Order.**

14<sup>th</sup> February 2018

**Pleadings of parties.**

The complainant Mr. Nayab Riyaz Faukat booked a Flat No. 303 & complainant Mr. Shadab Riyaz Faukat registered Flat No. 302, of C-wing in respondents Ashrafi Towers situated at Rafi Ahmad Kidwai Marg, Wadala (W) Mumbai. The parties have executed agreements for sale on 31.12.2015. The respondents agreed to hand over the possession of those flats within 6 months from the date of agreements. It means that they agreed to deliver the possession of the flats by 30<sup>th</sup> June 2016. However, they have failed to deliver the possession of the flats on the agreed date. The complainants want to continue in the project. They claim interest on their amount for every month of delay till the possession of the flats is handed over u/s. 18 of The Real Estate (Regulatory & Development) Act, 2016 (for short, RERA).

2. The respondents have pleaded not guilty but they have not filed any explanation, though they have sought time to file it.



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

- | <b>Points.</b>   | <b>Findings.</b> |
|--|------------------|
| 1. Whether the respondents have failed to :<br>deliver the possession of the flats on the<br>agreed date?  | Affirmative.     |
| 2. Whether the complainants are entitled to :<br>get interest on their investment for every<br>month of delay till they get the possession<br>of their flat? | Affirmative.     |

#### **REASONS.**

##### **Delayed Possession.**

4. The complainants have produced agreements for sale dated 31.12.2015 showing that the respondents agreed to deliver possession of the flats booked by them within 6 months from the date of agreements. However, the respondents have not delivered the possession of the flats till the date of complaint. Hence I hold that the complainants have proved that the respondents have failed to deliver the possession of the flats on agreed date.

5. Section 18 of RERA provides that if promoter fails to complete or is unable to give possession of an apartment on the date specified in the agreement and the allottee does not withdraw from the project, then he is entitled to get interest for every month of delay on the amount paid by him. The complainants want to continue in the project.

##### **Entitlement of the Complainants.**

6. Mr. Nayab Riyaz Faukat has produced respondents' letter dated 19.07.2011 which shows that they have received Rs. 8 lacs from Mr. Nayab Riyaz Faukat on 18.07.2011. Hence Mr. Nayab Riyaz Faukat has proved that he paid the respondents Rs. 8 lacs.

7. Mr. Shadab Riyaz Faukat has produced respondents' letter dated 12.07.2011 to show that he paid them Rs. 4,25,000/- & Rs. 4,25,000/- on 11.07.2011 towards the consideration of flat no. 302. Thus, Mr. Shadab Faukat has proved that he paid respondents Rs. 8,50,000/-.

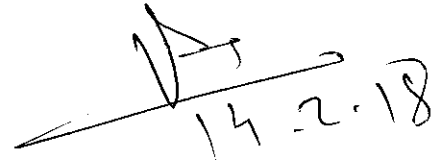
8. Since the respondents have failed to deliver possession of the flats on the agreed date, the complainants, therefore, are entitled to get the interest at the prescribed rate which is of State Bank of India's highest marginal cost of lending rate, it is currently 8.05% + 2%. This interest is compensatory in nature. Hence, I do not find it necessary



to award compensation separately because the ends of justice will be served if the interest at the prescribed rate is awarded from the date of default i.e. 01.07.2016. However, the complainants are entitled to get Rs. 20,000/- towards the cost of their complaint. Hence, following order.

**ORDER.**

1. Respondents shall pay Mr. Nayab Faukat monthly interest @ 10.05% on Rs. 8 lacs & to Mr. Shadab Faukat on Rs. 8,50,000/- from 01.07.2016 till handing over the possession of their flats.
2. The respondents shall pay complainants Rs. 20,000/- towards the cost of their complaint.



(B.D. KAPADNIS)

Member & Adjudicating Officer,  
MahaRERA, Mumbai.

Mumbai

Date: 14.02.2018