

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

**COMPLAINT NO: CC001000000000060.**

Jitendra Vaidya

... Complainant.

**Versus**

Sanklecha Contructions Pvt.Ltd.

\* Anwar Hussain Thim

... Respondents.

MahaRERA Regn: P51600005464.

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

**Appearance:**

Complainants: Adv. Mr. Avinash Pawar.

Respondents: Adv. Mr. Abhishek Pungliya

\*Corrected u/s 39 of RERA on 22.01.2019.

**FINAL ORDER**

**5<sup>th</sup> December 2018.**

The complainant contends that he booked flat no 301, A-2 of respondents registered project 'Athens' situated at Pathardi, District Nashik. The respondents agreed to deliver its possession tentatively by the end of mid 2014 with grace period of six months i.e. by 31<sup>st</sup> December 2014. The complainant wants to continue in the project but claims interest on his investment from the date of respondents' default in handing over the possession of the flat on agreed date till receiving the same for every month of delay under Section 18 of Real Estate (Regulation and Development) Act, 2016.

2. The respondents have filed their lengthy reply. The sum and substance thereof is, they applied for environmental clearance on

  
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09.02.2012 and the authority granted it on 06.02.2015. The agreement for sale is registered on 12.04.2013. At that time the complainant was informed about the 40 conditions imposed by the commencement certificate were to be complied with. They admit that the possession was to be delivered in mid of 2014 with grace period of six months. They contend that on 22.03.2013 MPCB issued show cause notice as to why the project should not be closed down. Thereafter it issued stop work notice on 11.07.2013 because environmental clearance was not obtained. The construction was stopped but respondents challenged the notice before the Hon'ble High Court. Thereafter matter was heard by the Principal Secretary who withdrew the proposed directions holding that respondents did not violate the Notification of 2006 (Order of 22.10.2013). The respondents therefore, contend that because of these legal issues the work was halted for the period of 17 to 18 months and it was recommenced from June 2015. However, because of the stoppage of the work the purchasers stopped making payments and bookings came to stand still. The construction activity in Nashik City was held up in the year 2016-17 because of the shortage of the water. The respondents cast 11<sup>th</sup> slab by August 2014 but thereafter suffered in November 2016 because of the Government's demonetization scheme and in April 2017 because of the implementation of GST. They completed 13<sup>th</sup> slab by August 2017 and thus main structure is completed. The common amenities are to be shared by the occupants of the 8 buildings and their construction to the extent of 70% is also made. They reimbursed interest under subvention scheme till April 2017. Despite these facts, the complainant chooses to withdraw from the project and seeks refund and compensation in April 2018. They were prevented from the sufficient causes for completing the project in time and they are entitled to reasonable extension of time. Hence, they request to dismiss the complaint.



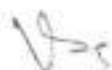
3. Following points arise for determination and my findings recorded thereon are as under:

POINTS	FINDINGS
1. Whether the respondents have failed to hand over the possession of the booked flat on agreed date?	Affirmative.
2. Whether the respondents are entitled to get extension of time because of the reasons causing delay which were beyond their control?	Negative.
3. Whether the complainant is entitled to get refund of his amount with interest and/or compensation?	Affirmative.

#### REASONS

**Failure to deliver the possession of the flat on agreed date.**

4. The respondents have admitted that the possession of the complainant's booked flat was to be delivered in mid of 2014 with grace period of six months. This clearly shows that in fact the respondents were to hand over the possession of the flat in June 2014 but by way of grace the complainant agreed to the grace period of further six months. It means that the respondents were bound to hand over the possession of the flat by 31<sup>st</sup> December 2014 in any circumstance. Admittedly the respondents have not handed over the possession of the flat even in December 2014. Hence, the complainant has proved that the respondents have failed to deliver the possession of the flat on agreed date.

  
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### **Reasons of Delay:**

5. The respondents have referred to causes of delay as specified in their reply and therefore, they contend that those reasons were beyond their control and hence, the period to hand over the possession of the flat should be extended. The reliance has been placed by their advocate on the orders passed by this Authority in Venkata Phanindra Kumar Valluri-v/s-M/s. Akshar Space Pvt. Ltd. and Jimmy & Rammy Peramjit Singh Rajput-v/s-Propel Developers Pvt. Ltd., for the purpose. I have gone through these orders. In this context it is necessary to look at Section 8(b) of Maharashtra Ownership Flats Act (MOFA). It provides that if the promoter for reasons beyond his control is unable to give possession of the date specified or the further agreed date and the period of three months thereafter or further period of three months if those reasons still exist, then in any such case the promoter shall be liable on demand to refund the amounts of the allottee with simple interest at the rate of 9% from the date the promoter received the sums till the amount and interest thereon is refunded. In Neelkamal Realtors Suburban Pvt. Ltd.-V/s-Union of India - 2017 SCC online Bombay 9302, the Division Bench of Hon'ble Bombay High Court has observed that the promoter having sufficient experience in the open market, is expected to have fair assessment of the time required for completing the project. The respondents were aware of the various conditions imposed by the municipal corporation mentioned in commencement certificate which were to be complied by them. Despite the knowledge of all the hurdles which they were likely to face, they agreed to deliver the possession of the flat by mid-2014. The agreement has been executed on 09.04.2013. It is unfair on the part of the respondents to make capital of the compliance of legal requirements for seeking the extension of time. In spite of having knowledge of all those things they promised to deliver early possession of the flat by end of mid 2014 just to lure the complainant for booking their flat. Such practice needs to be deprecated



with firm hand. In Neelkamal Realtors the Hon'ble Bombay High Court has held in the context of the date of possession that the courts/authority cannot rewrite the agreement. Even after taking into consideration the reasons assigned by the respondents causing delay in completion of the project and by holding them genuine, I find that as per Section 8 (b) of MOFA this period cannot be extended beyond six months. There is delay of more than six months in this case and hence the complainant is entitled to get interest on his investment from the date of default. Though, the agreed date of possession is mid of 2014, the parties themselves have contemplated the grace period of further six months which ends at the end of the December 2014. Thus, the liability of the respondents at the most starts from 1<sup>st</sup> January 2015 to pay interest on the complainant's investment for every month of delay till handing over the possession of the flat with O.C. as laid down by Section 18 of the Real Estate (Regulation and Development) Act, 2016.

**Complainant's entitlement:**

6. The respondents have not disputed the receipt of payment reflected in Exh. 'A'. It shows that the complainant paid respondents Rs. 36,70,342/- before 1<sup>st</sup> January 2015. He paid Rs. 17,774/- on 03.02.2015. The complainant is entitled to get the interest on Rs.36,70,342/- from 1<sup>st</sup> January 2015 and on Rs. 17,774/- from 03.02.2015 minus the reimbursed interest under subvention scheme, as respondents failed to deliver the possession of the flat on agreed date till they, hand over the possession of the flat to him with O.C. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.5%. The complainant is also entitled to get Rs. 25,000/- towards the cost of the complaint. Hence, the following order.




### ORDER

Respondents shall pay the complainant simple interest at the rate of 10.5% per annum for each month of default on Rs.36,70,342/- from 1<sup>st</sup> January 2015 and on Rs. 17,774/- from 03.02.2015 minus the reimbursed interest paid under subvention scheme, till they hand over the possession of the flat to complainant with O.C.

Respondents shall pay the complainant Rs. 25,000/- towards the cost of the complaint.

Mumbai.

Date: 05.12.2018.

  
5.12.18  
( B. D. Kapadnis )  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.