

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

COMPLAINT NO. CC00600000044532

Mr. Hussain K. Zaveri & Ms Khozaima Zaveri Complainants

Versus

M/s. Nirmal Lifestyles (Kalyan) Pvt.Ltd., Respondent

MahaRERA Registration No. P51700003616

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

Adv. Priyanka Pandya i/b Rustomji & Ginwala for the complainant.

Adv. Rohit Chavan a/w Rahul Ektare for the respondent.

Order

(11th July, 2018)

1. The above named complainants have filed this aforesaid complaint seeking directions of this Authority to the respondent for refund of the booking amount paid by him to the respondent with interest and compensation in respect of booking of a Flat No. 1604 adm. 313 sq.ft. carpet area on 16th floor in Wing 'A' of the Building known as 'Thames' bearing MahaRERA Registration No. P51700003616 at Kalyan, Dist. Thane.
2. The complainants have stated that he had booked the said flat in the respondent's project on 19th October, 2013 for a total consideration of Rs.25,55,280/- out of which he has paid an amount of Rs.12,84,189/-. At the time of booking, the respondent has agreed to hand over possession of the said flat with O.C. within a period of three years from the date of booking. On failure of the respondent to hand over the possession of the said flat to the complainants, the present complaint has been filed

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by them claiming interest and compensation u/s. 18 of the Real Estate and Development Act, 2016.

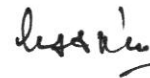
3. However, the respondent has disputed the claim of the complainants. He stated that the present complaint is not maintainable u/s. 18 of the RERA Act since there is no registered Agreement for Sale executed between them and there is no agreed date of possession. He further stated that even in Allotment Letter, the date of possession is not mentioned and therefore, he has not violated or contravened any provisions of the RERA Act. As of now, there is no cause of action for the complainant to file the present complaint. However, without prejudice to his rights and contentions, he submitted written undertaking on record of this Authority stating that he will refund the principal amount paid by the complainants towards the cost of the flat subject to the complainants returning the original Allotment Letter and Payment receipt in respect of the said flat.
4. This Authority has examined the submissions made by both the parties. It is an admitted fact that in the present case, there is no registered Agreement for Sale executed by and between both the parties and even in the Allotment Letter, the date of possession is not mentioned. The complainants contended that the respondent orally agreed to hand over possession of the said flat within a period of three years from the date of booking. However, the complainants have not produced any cogent documentary evidence to show that the agreed date of possession for handing over of the flat has been lapsed.
5. Provision of Sec. 18 (1) of the RERA Act indicates that the allottee is entitled to seek refund of the amount if the Promoter fails to hand over possession of the flat to the allottees as per the agreed date of possession mentioned in the Agreement for Sale or as the case may be. In the present case, admittedly, there is no Agreement for Sale executed

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between the complainants and the respondent and therefore, there is no agreed date of possession. Moreover, in the Allotment Letter also, no date of possession is mentioned and this Authority feels that Section -18 of the RERA Act is not applicable to the present case. The complainants are not entitled to seek any relief under Sec. 18 (1) of the RERA Act. However, since the respondent has shown his willingness to refund the principal amount paid by the complainants, nothing survives in this complaint.

6. In the light of these facts, this complaint stands disposed off.



(Dr. Vijay Satbir Singh)
Member-I/MahaRERA