

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

1. Complaint No. **CC006000000089761**

Mr. Deepesh S Singh

.... Complainant

Versus

M/s. Neelkanth Constructions

....

Respondent

Project Registration No. **P52000005312**

Along With

2. Complaint No. **CC006000000089864**

Mr. Sujay Joshi

.... Complainant

Versus

M/s. Neelkanth Constructions

....

Respondent

Project Registration No. **P52000005312**

Along With

3. Complaint No. **CC006000000120996**

Mr. Nikhil Narayan Bare

....

Complainant

Versus

M/s. Neelkanth Constructions

....

Respondent

Project Registration No. **P52000005312**

Along With

4. Complaint No. **CC006000000161317**

Mr. Vaibhav Prabhakar Ballal

.... Complainant

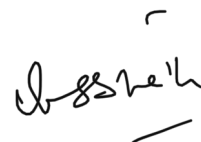
Versus

M/s. Neelkanth Constructions

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Respondent

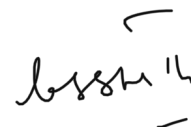
Project Registration No. **P52000005312**



Coram: Dr Vijay Satbir Singh, Hon'ble Member I, MahaRERA.
Adv. Nilesh Garde appeared for all the complainants.
Adv. Khushiram Jadhvani a/w. Adv. Manali Saraf appeared for the respondent.

ORDER
(30th July 2020)
(Hearing Through Video Conferencing)

1. The above named complainants have filed these four complaints seeking directions from the MahaRERA to the respondent to pay the interest for the delayed possession under section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA'), in respect of booking of their respective flats in the respondent's project known as "Neelkanth Vihar Phase I" bearing MahaRERA project registration no. P52000005312, situated at New Panvel, Dist. Raigarh. The complainants also prayed for directions to the respondent to obtain occupancy certificate, to handover the possession of the flats to the complainants, to form the society and to execute the deed of conveyance.
2. The complaints were heard on several occasions and the same were hearing finally today as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through video conferencing. All the parties were issued prior intimation for these hearings and they were also informed to submit their written submissions if any. Accordingly, the parties have uploaded their respective written submissions and notes of arguments on record of MahaRERA. During the hearing today, all the parties appeared through their respective advocates and filed their submissions.



3. It is the case of the complainants that they have purchased their respective flats in the respondent's project and have also executed registered agreements for sale with the respondent in the years 2017 & 2018. As per the provisions of the said agreements for sale, the respondent was liable to handover the possession of the said flats to the complainants on or before 31-03-2019. However, the respondent failed to hand over them the possession on time. Hence the complainants have sought the payment of interest for the delayed possession. The complainants further stated that even after the respondent sold more than 50% of the units, it failed to form the association of allottees/ society of allottees till date. The respondent has also failed to execute the deed of conveyance with the complainants along with the other allottees of the project. The complainants also alleged that the respondent is yet to handover and allot the parking spaces to respective allottees and is demanding permission from the allottees to utilize the additional FSI and construct the additional floors. Hence the complainants have filed the present complaints seeking the reliefs as sought therein.
4. The complainants further stated that as per the interim order of the MahaRERA, the respondent has sought extension of the project completion date and obtained the same till 30-11-2020. However, the respondent has received the full occupancy certificate in the month of November 2019 itself. The complainants further stated that they have signed the possession letter and have received the possession of their respective flats in the month of December 2019 by paying the balance amounts thus having paid the whole consideration to the respondent. However, the respondent is not

ready to allot the parking as well as to form the society of the allottees. The complainants therefore, have prayed for interest for the delayed possession and the directions to the respondent to form the society and execute the deed of conveyance. The complainants also prayed for the allotment of the parking spaces to the complainants at the earliest.

5. With regard to the reasons cited by the respondent for the delay, the same have been denied by the complainants on the ground that the CIDCO NAINA come into existence in the year 2013 itself. Further though the respondent applied for occupancy certificate in the month of September, 2018, the said application was rejected by the NAINA as there was deviations from the approved plans and hence the respondent modified the said application and then obtained the occupancy certificate. Hence there was no delay at the level of the competent authority as contended by the respondent. The complainants also relied upon various judgments of MahaRERA as well as the Maharashtra Real Estate Appellate Tribunal in this regard and same are perused.
6. The respondent disputed the claim of the complainants stating that it has completed all the obligations on its part and has handed over the flats to the complainants. After taking possession the complainants cannot stop it from consuming the FSI of the entire land. It had started the process of forming the society but the complainants were obstructing the respondents for their ulterior motive of extracting money from the builder. Hence it stopped the process of the formation of the society. Moreover, it was apprehending the construction of further construction of 4th floor.

If complainants do not obstruct it will go on with the formation of society. In fact, the building plans were sanctioned only upto three floors out of 8000 sq.mtrs. of FSI and it has already informed the complainants the procedure according to RERA laws and the plan of construction in multiple phases. It wants to use the unconsumed FSI of the land.

7. The respondent further stated that in clauses 24 and 25 of the agreement for sale it is clearly specified that it may construct additional floors for consuming the FSI of the entire land. The complainants are using the RERA forum for their ulterior motives and trying to obstruct the formation of society by the respondent. They have consented for minor deviations and therefore there is no delay on the part of the respondent. The delay is due to change in the Planning Authority which the complainants have accepted before purchasing the flats. Further there is no commercial arrangement for allotment of car parking space. This is not specified in the agreement and if the complainants need car parking space they need to pay for it. According to RERA, the builder is allowed to sell covered car parking space since it is the property of the builder. The respondent therefore prayed for dismissal of these complaints.

8. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, the complainants have raised various issues such as possession of their flats, interest for the delayed possession, car parking spaces, formation of society, execution of conveyance deed etc. Admittedly, the complainants are allottees in the respondent's project and

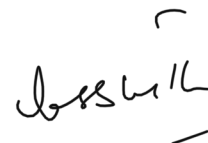
there are registered agreements for sale executed between the complainants / allottees on different dates between the years 2017 and 2018. According to the agreements for sale, the respondent was liable to give possession of the flats to the complainants on or before 31st March, 2019. The respondent could obtain the occupancy certificate for the said project on 27-11-2019 and handed over the possession of flats to all the complainants in the month of December, 2019. However, on the agreed date of possession stipulated in the agreements for sale, the respondent had failed to handover possession of the flats to the complainants. It shows that the respondent has violated the provisions of section 18 of the RERA and the Rules made there under.

9. To justify the case, the respondent has stated that the project got delayed mainly due to change in competent authority from Collector, Raigarh to CIDCO NAINA and the complainants were aware of the said fact at the time of execution of the agreements and same was incorporated in clause 9 of the said agreement. The said fact was examined by MahaRERA and it reveals that the CIDCO NAINA was established in the month of January, 2013 and the agreements were registered with the complainants in the year 2017 or 2018. Hence at the time of execution of the agreements for sale with the complainants, the respondent was well aware of all constraints in the project and therefore it fixed time for handing over possession to the complainants in the agreements for sale accordingly. Further although the respondent stated that it applied for occupancy certificate with NAINA in the month of September, 2018 and the flats were ready on that date, it could have obtained the occupancy certificate before the agreed date of possession and

should have handed over possession by the agreed date of possession as per the agreements. Hence the reasons cited by the respondent for delay are not acceptable. Apparently, the respondent promoter wants to apply convenient clauses in the agreement to take undue benefits after commencement of the RERA.

10. With regard to the issue raised by the complainants of selling of the car parking, the MahaRERA is of the view that there is explicit provision under RERA that the promoter can sell only covered car parking by charging certain amount. The open parking has to be handed over to the society, it cannot be sold in the open market. Hence the complainants allottees and the respondent promoter are bound by this provision. Moreover, no cash payment can be accepted.

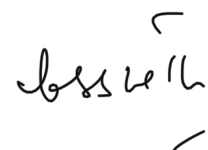
11. With regard to the issue raised by the complainants for formation of society and execution of conveyance deed, the MahaRERA is of the view that the provision of section 11(4) (e) of the RERA provides that the promoter is liable to enable the formation of society within a period of three months of the majority of allottees having booked their flats. In the present case, since more than 51% of the allottees have booked their flats and the full occupancy certificate has been obtained for the said project, it is the statutory duty of the respondent promoter to form a society of the allottees and the respondent promoter has no authority to lay down any condition for the same as the same is not permissible under RERA.

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12. On the issue raised by the complainants for construction of additional 4th floor, in the building, the MahaRERA feels that the project is registered with MahaRERA after commencement of the RERA and hence provisions of RERA would apply for this project. Accordingly, as per section 14 of the RERA for any change / modification in the sanctioned plan the mandatory consent of the allottees is are required to be obtained. Likewise, if the respondent wants to modify any plans including the construction of 4th floor, then it has to obtain the requisite consent of allottees as prescribed under section 14 of the RERA and the Rules and Regulations made thereunder. The provisions of RERA shall apply for the future construction.

13. In view of the aforesaid facts and circumstances of this case, the MahaRERA feels that there is no fault on the part of the complainants who have put their hard earned money for booking of their flats in the respondent's project. The respondent has not given any plausible reasons for the alleged delay.

14. It is clear from the above discussion that the reasons cited by the respondent for the delay in completion of the project do not give any satisfactory explanation. Moreover, the payment of interest on the money invested by the home buyers is not the penalty, but a type of compensation for delay as has been clarified by the Hon'ble High Court of Judicature at Bombay in the judgment dated 6th December, 2017 passed in W.P. No. 2737 of 2017. The respondent is liable to pay interest for the period of delay in accordance with the terms and conditions of agreement.



15. In view of aforesaid facts and discussion the following order is passed :

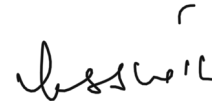
- a) The respondent is directed to pay interest to the complainants from 1st April, 2019 for every month till the date of occupancy certificate is obtained for the project i.e. 27th November, 2019 on the actual amount paid by the complainants at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2 % as prescribed under the provisions of Section-18 of RERA and the Rules made there under.
- b) With regard to the payment of interest to the complainants, the MahaRERA further directs that the respondent promoter is entitled to claim the benefit of “moratorium period” as per the Notifications / Orders Nos. 13 and 14 dated 2nd April, 2020 and 18th May, 2020 issued by the MahaRERA and the Notification/ Order which may be issued in this regard from time to time.
- c) On the claim of the complainants for compensation towards mental agony, the MahaRERA is of the view that since the complainants want to continue in the project, they are entitled to seek interest for the delayed possession under section 18 of the RERA.
- d) The respondent/promoter is directed to form a society as contemplated under the provision of section 11(4)(e) of the RERA within a period of 3 months from the date of this order and also to execute the conveyance deed in favour of the said society

thereafter as per the provisions of the RERA.

e) With regard to the construction of additional floor to be constructed in the building, the MahaRERA directs that without the consent of the 2/3rd of the allottees as prescribed under section 14 of the RERA, respondent would not carry out any construction on site.

f) With regard to the car parking, the MahaRERA directs that the respondent is entitled to sell only covered car parking and no cash money be demanded from the allottees.

11. With the above directions, all the four complaints stand disposed of.



Dr. Vijay Satbir Singh
(Member I/MahaRERA)