

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

**COMPLAINT NO: CC006000000056916**

Shrikant V.Chinchmalatpure ... Complainant.

**COMPLAINT NO: CC006000000057358**

Shital Nilesh Deshmukh ... Complainants.

Madhavi Mangesh Jagtap

**Versus**

Sanvo Resorts Private Limited

Urvesh Virendra Mehta

Dwarakanath Krishnamurthy Rao

K S Raghavan

Samyag Mayur Shah.

(Marathon Nexzone Aura -1)

...Respondents.

MahaRERA Regn: P52000000665

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

**Appearance:**

Complainant: Mr. Amit Mohare, CA.

Respondents: Adv. Prasana Tare,

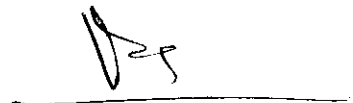
Adv. Sonam Mhatre i/b

Dhaval Vussonji & Associates.

**Final Order**

**27<sup>th</sup> June 2019.**

Whether prior notice of demand for interest or refund of the amount is condition precedent for filing of the complaint under Section 18 of RERA?, is the important legal issue involved in these complaints. The complainant of complaint no. CC006000000056916 Mr. Shrikant V.Chinchmalatpure has booked flat no. 2202 in C-wing, in sale building no. S2 of the respondents' registered project 'MARATHON NEXZONE AURA -1',



Village Kolkhe, Taluka Panvel, District Raigad. The complainants of complaint no. CC00600000057358, Shital Nilesh Deshmukh & Madhavi Mangesh Jagtap have booked flat no. 606 in C-wing of sale building no. 2, of the same project.


2. The complainants contend that the respondents agreed to hand over the possession of their respective flats in December 2017 'with reasonable extension of time of six months aggregating to 9 months'. However, the respondents have failed to hand over the possession of their flats on agreed date. Therefore, complainants claim the interest on their investments from the agreed date of possession till getting physical possession of the flats, under section 18 of RERA.

3. The respondents have pleaded not guilty. They have filed the reply to raise preliminary objection that complaints are not maintainable under Section 12 and therefore, the complainants amended their complaints but they have sought the interest from the date of actual possession till actual possession. Moreover, as per Section 18 of RERA they have not demanded the interest before filing of the complaints. Hence, the complaints are not maintainable. The respondents have further contended that the clauses of the agreement clearly indicate that the complainants were aware of the fact that the project is likely to be delayed by 10 to 15 years. Though the respondents have agreed to hand over the possession of the flats in December 2017, the parties have contemplated the extension of time aggregating 9 months. The respondents contend that the following reasons which were beyond their control delayed the project.

A) Collector Raigad granted commencement certificate up to the plinth level on 20<sup>th</sup> October 2012.

B) The project land come under Navi Mumbai Airport Influence Notified Area and CIDCO-NAINA was constituted as the Special Planning Authority by Notification dated 10<sup>th</sup> January 2013.

C) CIDCO-NAINA commenced their operation in January 2014.



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D) CIDCO-NAINA issued commencement certificate for construction of the building up to 3<sup>rd</sup> floor on 07.05.2014, though, the commencement certificate for constructing building up to 33 floor was applied.

E) The respondents applied for sanction of amended plans and buildings on 17.05.2014.

E) CIDCO-NAINA approved the amendment proposed by the respondents for constructing the building up to 29 habitable floors on 09.01.2018.

F) The project land is adjacent to National Highway and therefore, the respondents applied for no objection certificate for the access to the project from highway on 10.01.2008 but National Highway Authority issued it on 16.03.2016.


G) The respondents applied for permission to cross and lay water pipe line on 01.11.2008 but the Authority initially rejected it for widening of the highway and lastly granted it on 17.06.2016.

H). The Chief Engineer of Supply of 2MLD issued the water supply permission but it lapsed because the respondents did not have laying and crossing permission until June 2016. Therefore, they got the permission on 14.11.2016.

Therefore, the respondents request to dismiss the complaints.

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

<b>POINTS</b>	<b>FINDINGS</b>
1. Whether the respondents have failed to hand over the possession of the complainants' booked flats on agreed dates?	Affirmative.
2. Whether the respondents are entitled to get extension of time for the reasons beyond their control causing delay in completing the project?	Yes, 9 months.



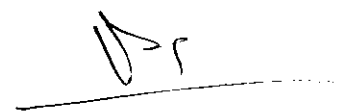
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3. Whether prior notice of demand for interest or refund of the amount is condition precedent for filing of the complaint under Section 18 of RERA? Negative.
4. Whether the complainants are entitled to get interest of their investment for delayed possession under Section 18 of RERA? Affirmative.

**REASONS.**

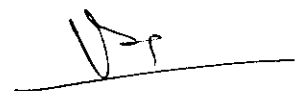
5. There is no dispute between the parties that the respondents agreed to hand over the possession of the complainants' booked flats on or before 31<sup>st</sup> December 2017. The respondents have failed to hand over the possession of the flats on agreed dates.

6. The respondents have contended that they were prevented by causes which were beyond their control from completing the project in time. They have produced the documents in support of their contention. It is pertinent to note that Section 8(b) of MOFA which still holds the field, permits the extension of only six months, if the causes are beyond the control of the promoter. In the agreements the parties have mentioned that the respondents would be entitled to get grace period of six months but they have used the words aggregating 9 months. How three months are added to the grace period of six months is not explained by the respondents. The respondents have brought to my notice that the contents of the agreements for sale indicate that the complainants were given to understand that the project was likely to be delayed and therefore, I find that the parties thought of reasonable period of extension and hence the 'aggregating period of 9 months' as the period of extension has been contemplated by the parties. To conclude, I hold that even after assuming the reasons assigned by the respondents are genuine and they were really beyond their control and delayed the project, the period of extension could not be more than 9 months from the agreed date of possession. Therefore,



I find that the respondents were liable to hand over the possession of the flats by September 2018. They have failed to hand over the possession even after extended period. Hence, I record my finding to this effect. Before parting with this issue I feel it necessary to put on record that the Hon'ble Supreme Court has held in Fortune Infrastructure -v/s-Trivor D'lima (2018)5SCC442 that the reasonable time for possession would be three years and in Central In Land Water Transport Corporation Ltd.-v/s-Brojo Nath Ganguli (1986)3 SCC 156, Supreme Court has observed that one sided agreements executed in favour of the promoters can be ignored. So I have taken these rulings in consideration while coming to aforesaid conclusions.

7. Section 18 of RERA provides that if the promoter fails to complete or he is unable to give possession of an apartment in accordance with the terms of the agreements for sale or as the case may be, duly completed by the dates specified, he shall be liable for payment to the allottees, in case they wish to withdraw from the project, to return the amount received by him with interest at such rate as may be prescribed or with compensation. The provision provides that where allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till handing over the possession at such rate as may be prescribed. The learned advocates of the respondents therefore, submit that before filing the complaint under Section 18, it was necessary for the complainants to demand their amount if they want to withdraw and demand interest on their investment, if they want to continue. In these complaints the complainants have not issued any notice of demand before filing of complaints and hence, these complaints cannot be entertained. I do not agree with the learned advocates of the respondents for the simple reason that the Act does not make provision for issuance of demand notice. When the complainant files the complaint u/s 18(1) of RERA it is as good as a notice to the respondents about the demand of interest or demand for refunding the money. On same day of filing of complaints, they are

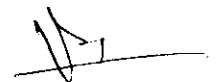


generated on the webpage of the promoters. Promoter gets notice/intimation/information of the allottee's claim immediately on filing of complaint. It itself can be treated as prior notice, though in fact it is not the mandate of law to issue such prior notice. Therefore, if they have the intention of satisfying the claim of the allottees, they are at liberty to do so. After some weeks' complaints come before the Authority and then they are adjudicated upon. Therefore, the act of filing the complaint can be said to be a demand contemplated by Section 18. In other words, I hold that there is no necessity of issuing separate demand notice before filing of the complaint u/s 18 of RERA demanding interest or refund of the amount as the case may be. Such notice is not condition precedent for filing the complaint under Section 18 of RERA. Mere prayer in complaint demanding interest or refund of amount is sufficient.

8. The pleas of the respondents have been recorded under Section 18 of RERA and the complaints have proceeded against them under Section 18 of RERA. Hence, it is not necessary to comment upon the applicability of section 12 of RERA in these complaints.

9. It is fact that because of typographical mistake that the complainants have claimed the interest 'from the date of actual possession till actual possession.' Mr. Mehare for the complainants undertakes the responsibility of correcting it. I do not want to give much importance to this issue. The law clearly provides that the interest starts to run from the date of default in handing over the possession on agreed date, till handing over the physical possession of the flats. Hence, I find no force in this submission of the learned advocates. It leads me to hold that the complaints are maintainable.

10. I have already come to the conclusion that the respondents were liable to hand over the possession by end of December 2017 + extended period of nine months i.e. by 30<sup>th</sup> September 2018. Therefore, the liability of the respondents to pay interest at prescribed rate on the complainants'



investment starts from 1<sup>st</sup> October 2018 till handing over the possession of the flats to the complainants. The prescribed rate of interest is 2% above the SBI's highest MCLR which is currently 8.5% per annum. The respondents have not disputed the payments recorded in the payment forms marked Exh.'A' of the respective cases and therefore, the respondents shall pay from 1<sup>st</sup> October 2018, on the amount paid before it, till handing over the possession of the flats to the complainants. The interest shall start to run on the subsequent payments from the dates of their payment. The respondents are liable to pay Rs. 20,000/- towards the cost of each complaint. Hence, the order.

### ORDER

The respondent shall pay the complainants simple interest at the rate of 10.5% per annum on the amount paid before 01.10.2018 from 01.10.2018 and on the amount paid subsequently from their dates of payment till handing over the possession of the flats.

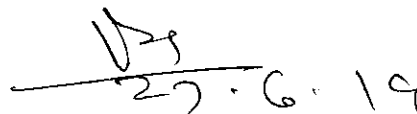
The respondents shall pay Rs. 20,000/- towards the cost of each complaint.

The payment forms marked Exh.'A' of the respective cases shall form part of the order.

The respondents are permitted to issue credit notes of the accrued amount of interest against any amount if due, from the complainants.

This order shall not operate as precedent.

Mumbai ✓  
Date: 27.06.2019.

  
27.06.19  
(B. D. Kapadnis)  
Member & Adjudicating Officer,  
MahaRERA, Mumbai.

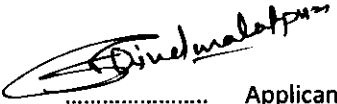
**LIST OF PAYMENTS MADE AGAINST CONSIDERATION**

Complaint No. : CC00600000056916

BEFORE : Hon'ble Member, MahaRERA


Between

Mr. Shrikant V. Chinchmalatpure

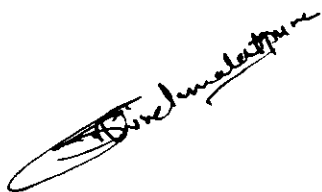
  
 ..... Applicant(s)

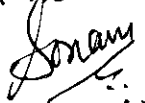
And

- 1) M/s. Sanvo Resorts Private Limited
- 2) Mr. Urvesh Virendra Mehta
- 3) Mr. Dwarkanath Krishnamurthy Rao
- 4) Mr. K S Raghavan
- 5) Mr. Samyag Mayur Shah

  
 ..... Member - II  
 ..... Respondent(s)

Sr No.	Date	Basic	Particulars	Rec. No.
1	31/08/2014	2,42,275	Booking	14613
2	30/09/2014	8,47,982	Installment	32013
3	07/10/2014	10,566	Installment - TDS	32204
4	07/01/2015	1,00,108	Installment	17063
5	08/02/2015	26,992	Installment	18441
6	08/02/2015	6,29,915	Installment	18441
7	15/02/2015	2,43,632	Installment	18836
8	26/02/2015	10,014	Installment - TDS	37991
9	16/04/2015	1,92,781	Installment	40773
10	16/04/2015	96,500	Installment	40774
11	04/07/2015	2,998	Installment - TDS	43390
12	09/09/2015	1,04,235	Installment	25594
13	09/09/2015	1,93,000	Installment	25268
14	07/10/2015	3,00,129	Installment	26413
15	17/11/2015	3,005	Installment - TDS	49026
16	17/11/2015	3,005	Installment - TDS	49205
17	01/12/2015	2,99,740	Installment	49716
18	05/01/2016	2,99,740	Installment	29927
19	08/02/2016	2,94,673	Installment	31014
20	26/02/2016	3,00,102	Installment	31695
21	12/03/2016	3,005	Installment - TDS	53472
22	12/03/2016	3,005	Installment - TDS	53474
23	12/03/2016	3,005	Installment - TDS	53475
24	12/03/2016	3,005	Installment - TDS	53952
25	21/04/2016	2,90,088	Installment	33405
26	16/06/2016	2,97,018	Installment	57245
27	30/06/2016	3,005	Installment - TDS	58792
28	10/06/2019	5,80,725	Installment	59947
29	10/06/2019	5,808	Installment - TDS	
		53,90,056	Total	



Payment not disputed.  
  
 Dhawal Vissarji & Associates  
 Advocate for Respondent