

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Virtual Hearing held through video conference as per MahaRERA Circular No.: 27/2020

Coram: Ravindra Deshpande, MEMBER II, MahaRERA

COMPLAINT NO.: CC001000000010153

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|-------------------------|-----------------|
| 1. HIMANGI VIKAS BHATIA | ...COMPLAINANTS |
| 2. MONICA DILIP DARYANI | |

Vs

SANKLECHA CONSTRUCTIONS PVT LTD	...RESPONDENT
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MahaRERA Project registration No. P51600009518

FINAL ORDER

06/08/2025

(Date of hearing – 22/10/2024)

Coram: Shri. Ravindra Deshpande, Member 2 MahaRERA

Adv. Jayshree Gupta the Complainants

Adv. Abhishek Pungliya for the Respondent

1. The Complainants have filed the present complaint requesting to direct the Respondent to refund the amount paid by the Complainants including Service Tax, VAT, Stamp duty and Registration Charges along with interest and cost of complaint.
2. In short, the facts of the complaint can be narrated as under:

It is the case of Complainants that The Complainants has purchased an apartment being flat number 901, 9th floor, Athens A3, 943 sq ft (87.63 sq mtrs) plus terrace 114 sq ft (10.59 sq mtrs,) total 1057 sq ft, in the Metrozone Athens A3, Plot Bearing/ CTS/ Survey/ Final Plot No Survey No 7/1 to 5 and 8/1 to 5 at Nashik 422009 with a registered Agreement for sale dated 2nd March 2013. The said is agreed for a total purchase consideration of Rs37,28,871/- plus Taxes and Stamp Duty (Rs1,86,450/-) and Registration charges31,300/- plus Service Tax and other charges. The complainant has already paid the Respondent Rs. 14,01,026/- Plus Service Tax and VAT Rs 57,301/-, Stamp duty Reg Rs2,17,800/-, Total = 16,76,127/- (Rupees Sixteen lakhs seventy-Six

thousand and one hundred twenty-seven only). The complainants state that in point 17 of the said registered Agreement for Sale, the date of possession is December 2014 plus 6 months grace period. The possession date is already gone by and there is no possession or force majeure declared by the Respondent and informed to complainants. The Complainants have paid about 50% of the purchase consideration and there is no sight of project being completed. In the MAHA RERA's record, the project is not completed and many task is not even stated by the Respondent. The Project Original registration was done with Form B as an affidavit in MAHA RERA with a completion date of 30th September 2018. The original MAHA RERA project registration certificate is also giving completion date as 30th September 2018. Despite many reminders and personal calls, Respondent is ignoring the complainants and have not communicating as to when the project will be completed. There was no injunction or stop work notice by any authority whatsoever, neither it is reported under section 11 on MAHA RERA's website. The Respondent also have not informed any cause for delay in the project to the complainants.

3. According to the Complainants, The Possession date in the registered Agreement for Sale is December 2014 and there was no Force Majeure informed by the Respondent. The Project completion date of 30th September 2018 as mentioned on Project Registration certificate issued by MAHA RERA is also gone long by. There is no new plan, CC or any other activity shown by the Respondent on the project. The Project is a gated community and complex of multiple towers. The complainants have booked looking at the community living in complex along with the amenities. The complainants do not want to have any part OC or limited amenities, but amenities as promised in Agreement for Sale and full OC. Hon'ble Bombay High Court in the Writ 2737 in the matter of Neelkamal Realtors have observed in para 256 that "Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale." Hence an extension certificate given by MAHA RERA do not impose any contractual obligation between the parties. Hon'ble Bombay High Court in the said writ in para 255 have observed: "The purpose of Section 18(1)(a) is to ameliorate the buyers in real estate sector and balance the rights of all the stake holders. The provisions of RERA seek to

protect the allottees and simplify the remedying of wrongs committed by a promoter. The intention of RERA is to bring the complaints of allottees before one Authority and simplify the process.” Section 88 of RERA Act 2016 also have recognized other Acts in offing. Hence the Agreement for Sale executed in MOFA do have jurisdiction of RERA Act 2016. The Lockdown where the projects getting completed after 25th March 2020 got extended for completion date by MAHA RERA as per the advisory by Central Council, New Delhi. Such date is also meaningless because of date of possession being December 2014 and cause for concern for this complaint occurred from December 2014 itself which was original date of possession. Hence there is no Force Majure for COVID -19 in the current matter be applied. There was no communication from Respondent for any reason of delay, Force majeure or any permissions delay in the project.

4. The Respondent uploaded a reply and contested the present complaint. The defence case of the Respondent is as under:

According to the Respondent, the Commencement Certificate for the Metrozone was granted by the Nasik Municipal Corporation on 29.08.2011 with conditions. There was no condition requiring Environmental Clearance prior to commencing construction. As per condition no. 34, Environmental Clearance was to be obtained and submitted prior to obtaining Occupancy Certificate. After the said Commencement Certificate was issued, construction work was commenced for the said project, i.e., The Metrozone Athens A3 as well as for the other RERA registered projects forming part of the said larger scheme of The Metrozone. For the said project, the Respondents applied to the Environment Department for Environmental Clearance on 9.2.2012. As per the EIA Notification 2006, a decision on an application for Environmental Clearance is required to be conveyed to an applicant such as the Respondents within 60 days after receipt of such an application if it is rejected at the Scoping stage or within 105 days after receipt of the final Environment Impact Assessment Report. However, the said Environment Clearance for the said project was granted on 06.02.2015, i.e., after almost 3 years. In

respect of the said flat of 1371 sq. ft built up., a registered Agreement of Sale was executed by the Respondents in favour of the Complainant on 29.12.2012 and registered on 02.03.2013. As per the said Agreement, the total consideration for the said flat is Rs. 37,128,871/- @ Rs. 2450/- per sq. ft. built up. Recital No. 21 of the said Agreement of Sale, at page 6 of the Agreement, stated that the Purchaser/ Complainant had received the Commencement Certificate which was also annexed to the said Agreement as Annexure E to the said Agreement. The Commencement Certificate containing 40 conditions was annexed to the said Agreement of Sale dated 29.12.2012 at pages 51-53 of the said registered Agreement. Hence, the Purchaser/ Complainant was aware of the conditions imposed by the Nasik Municipal Corporation including condition 34 of the Commencement Certificate in respect of submitting Environmental Clearance prior to applying for an Occupancy Certificate. Although clause 17 of the Agreement stated that possession of the said flat was expected to be delivered by end of 2014 including a grace period of 6 months after obtaining Completion/ Occupancy Certificate, in clause 18, it also provided for a reasonable extension of time for the said completion/ delivery on account of delay caused by, inter alia, any notice/ order issued by a government or a public/ competent authority or any act beyond the control of the Respondents. On 12.6.2012, the Respondents obtained Consent to Establish under section 25 of the Water (Prevention and Control of Pollution) Act 1974 for Total Construction BUA 1,75,212.05 sq. mts. On 22.3.2013, the MPCB issued Proposed Directions/ Show Cause Notice seeking a reply from the Respondents as to why directions should not be issued to close down the Respondents' activity and to disconnect water as well as electricity supply to the Respondents. On 9.4.2013, the Respondents replied to the said letter from MPCB and pointed out several relevant facts such as the fact that under condition 34 of the Commencement Certificate, Environmental Clearance was to be obtained before applying for an Occupancy Certificate. In the said reply dated 9.4.2013, it was also pointed out that the Environment Department had failed to adhere to the 105 day limit

for deciding on an application for Environmental Clearance. The Respondents also pointed out that flat purchasers expected delivery on the dates of possession promised to them and; hence, construction could not be halted. The Respondents also pointed out that they had already installed a septic tank to treat the non-hazardous waste emanating from labourers' activities such as toilets, etc. It was specifically pointed out that there was no hazardous waste generation on the construction site. Although the Respondents had applied for Environmental Clearance on 9.2.2012 itself and despite the Respondents' reply to the Show Cause Notice dated 22.3.2013, the Maharashtra Pollution Control Board ("MPCB") issued a Stop Work Notice on 11.7.2013 on the ground that the said Environmental Clearance had not been obtained. Construction was stopped and the fact of the said stoppage was conveyed to the MPCB on 16.7.2013. As on 11.7.2013, when the said Stop Work Notice had been issued, the Respondents had completed the 1st slab which had been completed in October 2012 itself. On the same day, i.e., on 16.7.2013, the Respondents filed a Writ Petition in the Bombay High Court to set aside the said Stop Work Notice. Despite the Government Direction dated 29.6.2013 which clearly states that Stop Work Notices should not be issued for projects in which construction carried out is less than 20,000 sq. mts., the Stop Work Notice was issued on 11.7.2013 when only 15,529.84 sq. mts. had been constructed by the Respondents. On 3.9.2013, the Respondents put all the relevant facts on record in a letter addressed to the Environment Department and requested them to instruct the MPCB to withdraw their stop work notice. They also requested the Environment Department to expedite processing of the Respondents' application for EC. On 4.9.2013, the Principal Secretary of the Environment Department issued Proposed Directions/ Show Cause Notice seeking a reply from the Respondents as to why directions should not be issued to stop the Respondents' construction activity for violation of the EIA Notification 2006 and to take further legal action under the Environment Protection Act 1986. On 23.9.2013, the Respondents requested the Principal Secretary of the Environment Department to grant a hearing to

the Respondents in respect of the Stop Work Notice dated 11.7.2013 issued by the MPCB and in respect of the Show Cause Notice issued by the Environment Department. Under their covering letter dated 11.9.2013, the Respondents also submitted all the relevant documents to the Environment Department.

5. According to the Respondent, after hearing the Respondents on 27.9.2013 and after considering the documents submitted by the Respondents on 11.9.2013, on 22.10.2013, the Principal Secretary withdrew the Proposed Directions with the observation that the Respondents had not violated the EIA Notification 2006 as they had not started construction with any malafide intention. He also observed that as per the conditions of the Commencement Certificate, the Environmental Clearance was to be obtained before applying for Occupancy Certificate. On the basis of the Environment Department's withdrawal of their Proposed Directions, the Respondents themselves had written a letter dated 11.11.2013 to the MPCB requesting them to withdraw their Stop Work Notice. Environmental Clearance was finally granted on 6.2.2015. However, at the time it was granted, due to the Stop Work Notice issued on 11.7.2013, the work had been halted for period of 17-18 months. Hence, it took 3 - 4 months to re-organize and re-source the labourers required to recommence construction which recommenced from May-June 2015. The delay of 17-18 months, when construction work had been stopped due to the said Stop Work Notice, also put tremendous financial strain on the Respondents who had borrowed money from banks and financial institutions for completing the said project. Hence, the Stop Work Notice, which was an order of a public authority (MPCB) and was a factor beyond the control of the Respondents. Hence, under Clause 18 (iii) and 18 (viii) of the Agreement, due to the 18 months delay caused by the Stop Work Notice and the 4 months delay due to the time spent in re-sourcing and re-organizing labourers after grant of EC, the Respondents are entitled to a reasonable twenty-two month extension of the date of delivery of possession of the said flat. Even though EC was granted on 6.2.2015, the effects of the stoppage of work for 18 months

had an adverse impact on the Respondents' financial planning and consumer confidence. Due to the stoppage of work, some of the existing purchasers stopped making timely payments. The stoppage of work also created an incorrect impression in the public at large that the project lacked the necessary sanctions. Hence, flat bookings came to a complete standstill. This persisted for several months even after construction resumed. It took several months for the Respondents to win back the confidence of the public at large and of potential flat purchasers. In the years 2016-2017, the Respondents' construction activity also slowed down due to shortage of water in the Nasik area. Water is required in all concrete and cement related processes at the time of utilizing cement and concrete for construction. Hence, even though cement and concrete were available, their utilization was less than at the normal rate due to the shortage of water. Under Clause 18 of the Agreement, non-availability of water is a ground for seeking an extension in the date of possession. Further, due to the stoppage of work for 18 months, a significant portion of the on-site material was damaged and several months were lost in ordering replacements for the same. After the EC was granted on 6.2.2015, the Respondents immediately set about organizing the labour and material to recommence construction which recommenced in May-June 2015. However, in November 2016, the government demonetised large denomination currency notes which had a disastrous impact on the Respondents. Several existing purchasers stopped making payments in response to demand notices raised by the Respondents which in turn affected the Respondents' finances adversely. Since the bank staff was overwhelmed by their additional duties caused by demonetisation, banks took longer than usual to process payments to the Respondents' suppliers of material which in turn slowed down the supply of material which caused a slowdown in the speed of construction. The Respondents' bank took, on average, 20 days to process payments in the months post-demonetisation. Since most labourers did not have an Aadhaar card, bank accounts could not be opened and such labourers stopped working for the Respondents. As a

result, approximately 400 labourers refused to work for the Respondents and left the construction site of the said project. This also caused a slowdown in the speed of construction of Athens A3 as it took 3-4 months to replace the labourers who left. In respect of the labourers who agreed to stay, the Respondents had to provide for their accommodation and food. This additional cost put a further strain on the Respondents' finances. Hence, demonetisation, which was a government effected order/ rule and was a factor beyond the control of the Respondents. Hence, under Clause 18(ii) and 18 (viii) of the Agreement, due to the 4 months delay caused by demonetisation, the Respondents are entitled to a reasonable four-month extension of the date of delivery of possession of the said flat.

6. According to the Respondent, In April 2017, the government implemented the GST. The said new tax measure was not understood properly by the Respondents' suppliers of material for several months and most of Respondents' suppliers hesitated in supplying material for two months as they were not certain about the effect of GST on their business. They utilized those two months for stock-taking and for adopting compliance measures to ensure compliance with the new GST regime. By the time the suppliers got a good understanding of the effect of GST, had taken measures to comply with the same and resumed supplying material regularly, two months had been lost and that affected the Respondents' construction schedule. Moreover, since the Respondents themselves were not certain as to the effect of GST on their business, they did not raise any demand notices for two months in which period they got a good understanding of the effect of GST and also adopted GST compliance measures. Hence, introduction of the GST, which was a government effected order/ rule and was a factor beyond the control of the Respondents. Hence, under Clause 18 (iii) and 18 (viii) of the Agreement, due to the effect of the introduction of the GST on the Respondents' construction schedule, the Respondents are entitled to a reasonable two-month extension of the date of delivery of possession of the said flat. Despite all the abovesaid difficulties, since resuming work in

May-June 2015, the construction of all 13 slabs of Athens A3 were complete by July 2016. Thereafter, throughout 2017 and 2018, the Respondents focused on completion of construction of common amenities such as club house, gym, roads, etc. In respect of the common amenities such as club house, swimming pool, etc., to be shared by the occupants of the said project alongwith the occupants of the other eight buildings, construction of atleast 95% or more of the said amenities is complete. In respect of most of the other eight buildings of The Metrozone scheme, construction of 12 of the 13 slabs of each of those buildings is complete. Four of those buildings have received Occupation certificates and a few others have applied for the same. The Respondents had registered the said project under The Real Estate (Regulation And Development) Act 2016 and for the said project, they were allocated project registration number P51600009518 and they were issued a Registration Certificate dated 22.08.2017. At the time of and since registering under RERA, they have fully complied with all the applicable provisions of RERA and of any Rules framed thereunder. At the time of the said registration, the Respondents had submitted their Engineer's certificate showing that 52% of the project had been constructed. They had also submitted a CA's certificate showing that 57% of the total estimated cost had been incurred for the construction of the said project. The said Architect's Report and the said CA's Report were submitted in accordance with Rule 4 of the Maharashtra Real Estate (Regulation and Development)(Registration of real estate projects, Registration of real estate agents, rates of interest and disclosures on website) Rules 2017. Whereas the Agreement executed in favour of the Respondent in December 2012 was at the rate of Rs. 2450/ sq. ft, bookings made in the same The Metrozone scheme in 2019 have been made at a lower rate. For example, a registered agreement (dated 11.2.2019) executed for flat no. A3 502 was executed at the rate of Rs. 2552/ sq. ft. Hence, in the last 7 years since the Respondent made his booking, there has been virtually no appreciation in the property rates of flats in the RERA registered projects of the Metrozone scheme including the Athens A3 project.

7. According to the Respondent, Clause 18 of the Agreement for Sale dated 5.3.2014 clearly states that the Respondents are entitled to a reasonable extension of the date of possession due to delay on account of any notice or order issue by any Government or public/ competent Authority. Clause 18 of the Agreement for Sale dated 5.3.2014 covers and applies to the said Stop Work Notice dated 11.7.2013 issued by the MPCB; and hence, the Respondents are entitled to extend the date of possession on account of the delay that occurred due to the stoppage of work due to the said Stop Work Notice dated 11.07.2013. The Respondents are not liable to pay interest to the Complainant for delay in delivery of possession as they have not breached or violated the terms of their Agreement with the Complainant and are entitled to claim a reasonable extension of the delivery/ possession date under Clause 18 of the Agreement. The Proposed Directions issued on 4.09.2013 by the Principal Secretary of the Environment Department had been withdrawn by him on 22.10.2013 after hearing the Respondents on 27.09.2013 and after considering the documents submitted by the Respondents on 11.09.2013. The Principal Secretary of the Environment Department, while withdrawing the Proposed Directions, had observed that prima facie, there was no malafide intention on the part of the Respondents and they had not violated the EIA Notification 2006. The Stop Work Notice dated 11.7.2013 was illegal, in violation of the Government Direction dated 29.6.2013 and had been issued even though the construction carried out till then was less than 20,000 sq. ft. The fact that the Principal Secretary of the Environment Department had withdrawn his Proposed Directions because he had been convinced that the Respondents had not violated the EIA Notification 2006 proves that the Stop Work Notice dated 11.7.2013 had been issued even though the Respondents had not violated the said EIA Notification 2006. Since the Stop Work Notice had been issued on account of the Environment Department's failure to grant EC, the Respondents are not responsible for construction work being stopped for almost 18 months and hence; are entitled to claim a reasonable extension of 18 months of the flat delivery/ possession date

on this ground. Environmental Clearance was received on 6.2.2015, it was impossible for the Respondents to immediately resume work. After obtaining EC, it took the Respondents approximately four months to re-organize and re-source the labour required to recommence construction which recommenced from May 2015. The delay of 17-18 months, when construction work had been stopped due to the Stop Work Notice, also put tremendous financial strain on the Respondents who had borrowed money from banks and financial institutions for completing the said project. Neelkamal Realtors is not an authority for the proposition that a purchaser is entitled to interest even when a project gets delayed due to the delay of the Division Bench in Neelkamal Realtors did not have occasion to consider the impact of a Stop Work Notice on a project and hence, is not an authority for the proposition that a purchaser is entitled to interest for delay in delivery of possession even when a project gets delayed due to an illegal Stop Work Notice which itself was issued on account Environment Department in granting Environmental Clearance. Since the Division Bench judgment in Neelkamal Realtors states that, "RERA does not contemplate rewriting of contract between the flat purchaser and the promoter", the Respondents can seek a reasonable extension of the date of delivery of possession of the said flat under clause 18 of the Agreement of Sale dated 5.3.2014. "RERA does not contemplate rewriting of contract between the flat purchaser and the promoter" in para 119 of the Division Bench judgment in Neelkamal Realtors means that a purchaser and a developer are bound by the terms of the Agreement between them even after enactment of RERA and hence; the Respondents can and are entitled to seek a reasonable extension of the date of delivery of possession of the said flat under clause 18 of the Agreement of Sale dated 5.3.2014. the Division Bench judgment in Neelkamal Realtors is merely an answer to the constitutional challenge to various provisions of the RERA Act and since it was not a judgment on the facts of any particular case, any observations made by it are strictly obiter dicta. In any case, it has now been correctly interpreted by the Real Estate Appellate Tribunal in its judgment

dated 16.5.2019 in M/s Akshar Space Pvt. Ltd. Since the Division Bench judgment in Neelkamal Realtors was not delivered on the facts of any particular case, it is not an authority for the proposition of law that irrespective of the genuine efforts of a promoter and irrespective of the factors beyond the control of a promoter, interest must be granted for delay in delivery of possession in a complaint under section 18. In any case, it has now been correctly interpreted by the Real Estate Appellate Tribunal in its judgment dated 16.5.2019 in M/s Akshar Space Pvt. Ltd.

8. According to the Respondent, in answer to the constitutional challenge to section 18(1)(a) of RERA 2016, the Division Bench in Neelkamal Realtors, in para 126, observed that, "But in case, inspite of making genuine efforts, a promoter fails to complete the project, then the concerned authorities, adjudicators, forums, tribunals would certainly look into genuine cases and mould their reliefs accordingly." These observations in Neelkamal Realtors were noted by the Real Estate Appellate Tribunal in its judgment dated 16.5.2019 in M/s Akshar Space Pvt. Ltd. In view of the observation of the Division Bench in Neelkamal Realtors in para 126 and in view of the circumstances of the present case where construction activity was stopped for almost 18 months due to an illegal Stop Work Notice which itself was issued because the Environment Department took almost three years to grant EC, this Authority must mould its relief in order to serve the ends of justice and the Complainant is not entitled to interest or compensation for delay in delivery in possession. The Respondent deny that the Complainant has made last payment of Rs. 1,00,000/- in the year 2017. I say that the last payment was received on 09.01.2013 which means that the total amount received from the Complainant as principal amount towards the flat consideration is Rs. 13,01,026/-. Even though all 13 slabs were complete by July 2016 itself, the Complainant has not made any payments after 2013.
9. The Complainants have uploaded written notes of arguments and contended that in an order passed in the Civil Appeal No. 3533-3534 of 2017 in the case of M/s. Fortune

Infrastructure and anr. VS Trevor D'Lima and ors. by the Hon'ble Supreme Court on 12/03/2018, in paragraph 15 it is quoted that: Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. The Booking Letter was issued in the year 2012 where we have first paid the token amount and the Agreement for Sale got signed and executed in 2013; today we are well in 2024. Thus, it is over 11 years since the issue of Letter and as per the Judgement cited above, there is clearly a delay in possession and therefore, the Complainants have a right to claim refund and interest under Section 18 of the RERA Act. In an order passed in the Writ Petition No. 2737 of 2017 in the case of Neelkamal Realtors Suburban Private Limited and anr. VS Union of India and ors. by the Hon'ble Bombay High Court on 06/12/2017, in paragraph 259 it is quoted that: A perusal of Section 18 indicates that payment of interest including compensation or interest, as the case may be, is payable on account of default committed by the promoter. Although this Section does not consider a situation where the promoter is unable to complete or handover possession for no fault of his own, it would be open to him to claim frustration in such a case and return the money to the allottee with interest thereby stopping the interest that is to be paid till handing over possession. The provisions of RERA ensure that the allottees' money is not misused or unreasonably retained by the promoter.". Para No 25 of New tech judges says that unqualified right of allottees to seek refund referred under section 18(1)(a) and section 19(4) is not depend on any contingency. The view held in the Bombay High Court Judgment M/s Newtech Promoter and Developers Pvt. Ltd. v/s State of Uttar Pradesh in Para "25. The unqualified right of the allottee to seek a refund referred under Section

18(1) (a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee. If the promoter fails to give possession of the apartment, plot, or building within the time stipulated under the terms of the agreement, regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government, including compensation in the manner provided under the Act. With the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled to interest for the period of delay till handing over possession at the rate prescribed. The Hon'ble Real Estate Appellate Tribunal, while deciding the case in favor of an allottee, held a view in Shree Shakun Realty Pvt Ltd v. Mr. Vijay Solanki in Appeal no.AT006000000021263 signifying that allottee who seeks withdrawal from the project on the ground of delay in possession is entitled for higher compensation without there being regard to mitigating factors as per respective terms of the agreement as the said allottee not staying with the project is not benefited from appreciation of price of the booked apartment/flat. In such cases, no other terms justifying the reasons for any delay except the date specified for possession in the agreement or in any other form would necessarily form the prime basis for considering entitlement of an allottee under Section 18 (1) of RERA. The Bombay High Court's recent order upheld the decisions by MREAT, emphasizing that the homebuyer is not responsible for issues like stop work notices and and it is the developer's responsibility to ensure timely completion of the project. The court stated that Section 18 of the RERA Act allows homebuyers to claim interest for delayed possession even after taking possession of the property. The Judgement clearly says that "So far as the issuance of stop cause notice by Pune Municipal Corporation is concerned, it cannot be said that the Appellant is not absolutely responsible for the same. If any accident/mishap occurs at

the site leading to issuance of stop cause notice, the responsibility of delay in completion of the project would obviously come on the shoulders of the promoter. Undoubtedly, the allottee is not responsible for issuance of the stop work notice. So far as the reason of restraint order passed by this Court on use of ground water for construction and on mining of sand is concerned, the said pretexts are of general nature. It is for the Promoter to ensure that the required construction material is made available for completion of the project within the agreed time. The Promoter cannot be permitted to cite reasons such as nonavailability of ground water or sand for the purpose of avoidance of liability to pay interest under Section 18, which liability is interpreted by the Apex Court in M/s. Newtech Promoters and Developers Pvt. Ltd. to be absolute and unconditional”.

10. The Respondent has uploaded written notes of arguments and reiterated same facts.
11. Heard both the parties on 22/10/2024, The Advocate for the Complainant submitted that the Complainant booked the flat No. 901 + terrace area 114 sq. ft. The Complainant have booked the total area of 10575 sq. ft. The Agreement for Sale (AFS) was signed and executed in the year March 2013. As per the AFS the possession was promised to be given in the year December 2014. It is also submitted that the total consideration was agreed of at Rs. 37, 28,000/- + stamp duty of Rs. 1,86,000/- + registration charges of Rs. 31,000/-. The Complainant had paid Rs. 16,76,000/- towards consideration, and the date wise payment details are mentioned in para no. 4.5 of the complaint. The Complainant is bona-fide allottee as per section 2(d) of the RERA Act. The Advocate of the Complainant relied upon the para no. 259 of the judgement Neelkamal Realtors Suburban Pvt. Ltd. V/s The Union of India. The Advocate of the Complainant relied upon the para no. 25 judgement Newtech Promoters & Developers Pvt. Ltd. V/s The State of UP. It is submitted that the show cause notices do not hamper the right of the home buyer. The Advocate of the Respondent submitted that the payment made by the Complainant from March 2012 and the last payment was made in Jan 2013, as per schedule mentioned by the Complainant in the complaint itself. The last payment dated 12/04/2017 of Rs.

1,00,000/- is that payment which disputed by the Respondent. It is submitted that after Jan 2013 the Complainant has not paid any amount. It is also submitted that by July 2016 the Respondent completed the 13 slabs, and in Jan 2022 the Respondent got the OC (Occupation Certificate) also it is annexed with the written submissions. The OC is of dated 28/01/2022. The last payment made by the Complainant is in Jan 2013, the page no. 140 of the reply is the schedule of payment i.e. part of agreement annexures. It is also submitted that the Complainants are defaulters, they have not paid more than ½ of the consideration amount. The Complainant had paid only Rs. 13,00,000/- out of total consideration of Rs. 37,00,000/-. It is submitted that stop of work notice dated 11/07/2013 was issued by the MPCB on ground that the Respondent did not obtain Environmental Clearance and the same was cancelled by the Environment Ministry. It is also submitted that due to stop work notice the project was delayed. It is submitted that the Respondent was allowed as per clause 18 of AFS for extension in the time of delivering the flat possession. The Advocate for the Respondent relied upon the para no. 126 of the Neelkamal Realtors Suburban Pvt. Ltd. V/s The Union of India, to support the present matter of the Respondent. It is submitted that observation from para no. 25 of Newtech Promoters & Developers Pvt. Ltd. V/s The State of UP, is not binding upon this Authority.

12. Considering the rival contentions of the parties, following points arise for my determination. My findings thereon recorded as under for the reasons stated below:

REASONS

No.	Points	Findings
1	Whether the Complainants are entitled to withdraw from the project?	Affirmative
2	Whether the Complainants are entitled for refund of the amount as prayed for?	Partly Affirmative
3	What order?	As per final order

Reasons as to point nos. 1 & 2

13. At the outset, it is not in dispute that the Complainants booked Flat No. 901 admeasuring 943 sq. ft. along with terrace admeasuring 114 sq. ft. in the building 'Athens A3' of the Respondent's project 'Metrozone' at Nashik. A registered Agreement for Sale (AFS) was executed between the parties on 02.03.2013 for a total consideration of ₹37,28,871/-, excluding applicable taxes and other charges. It is also not in dispute that as per Clause 17 of the said Agreement, the Respondent was under an obligation to hand over possession of the said flat by December 2014, with a grace period of six months. Accordingly, the agreed possession date extended up to June 2015. However, even as of the date of hearing, i.e., 22.10.2024, the Complainants have not been handed over possession, thereby resulting in an inordinate delay of over nine years from the agreed possession date.
14. The Respondent's defence hinges on the contention that the delay in construction was caused due to several external factors beyond their control, including: (i) a Stop Work Notice issued by the Maharashtra Pollution Control Board (MPCB) on 11.07.2013; (ii) late grant of Environmental Clearance (EC) by the competent authority on 06.02.2015; (iii) post-EC difficulties in mobilizing labour and resources; (iv) demonetization in November 2016; (v) GST implementation in 2017; and (vi) water scarcity in Nashik during 2016-2017. The Respondent argues that these events cumulatively justify a reasonable extension of time under Clause 18 of the Agreement for Sale.
15. While this Authority acknowledges that certain delays may be attributed to regulatory or force majeure events, it is also a settled position of law that such delays must be duly communicated to the allottees in a transparent manner. In the present case, the Complainants have categorically stated—and the Respondent has not effectively denied—that no formal communication of any such delays, reasons for non-completion,

or revised timelines was conveyed to the Complainants over the years. Further, there is no cogent material to show that the Respondent took timely steps to protect the interest of allottees by updating them on the progress or expected delay in delivery. Moreover, the Respondent has relied on Clause 18 of the AFS to justify the extension. However, the Hon'ble Supreme Court in *M/s Fortune Infrastructure & Anr. vs. Trevor D'Lima & Ors.* [Civil Appeal No. 3533-34 of 2017] has held that a flat purchaser cannot be made to wait indefinitely and is entitled to refund with interest and compensation. Similarly, the Hon'ble Bombay High Court in *Neelkamal Realtors vs. Union of India* (W.P. No. 2737 of 2017), though acknowledging force majeure in principle, observed that the promoter is bound to return the amount with interest if unable to deliver possession and the flat buyer does not wish to wait. The latest judgment of the Hon'ble Supreme Court in *Newtech Promoters and Developers Pvt. Ltd.* affirms that the right to seek refund under Section 18(1)(a) of the RERA Act is an unconditional and absolute right of the allottee, regardless of any external cause for delay, and that the promoter's liability to refund cannot be waived merely due to challenges faced in execution.

16. The Respondent's argument that the Complainants have defaulted in making further payments after 2013 is not entirely persuasive. The Complainants had paid a substantial amount—over Rs. 14,01,026/- nearly 50% of the agreed consideration. Given the prolonged delay and absence of possession even after a decade, the Complainants decision to withhold further payments appears justified in the circumstances. It is well settled that the builder-buyer relationship is reciprocal. The Respondent's inaction over the years coupled with lack of proactive engagement with the Complainants violates the fundamental expectation of good faith and fair dealing under the RERA framework.
17. The argument advanced by the Respondent that the delay caused due to MPCB's Stop Work Notice and EC delay is covered under Clause 18 and hence no interest or refund is payable, cannot be accepted in light of binding judicial precedents. The Stop Work Notice dated 11.07.2013 may have temporarily impeded construction, but it does not

absolve the Respondent from his statutory obligation to refund the amount if the allottee chooses to withdraw. It is the responsibility of the promoter to ensure that requisite approvals are in place before marketing or booking flats. The principle laid down in Shree Shakun Realty Pvt. Ltd. vs. Vijay Solanki by MREAT further supports the view that an allottee opting to withdraw due to delay cannot be compelled to accept possession or be denied refund solely due to the promoter's financial or regulatory struggles.

18. Thus, the delay in the present case is unjustified and unexplained from the perspective of the allottees. The Complainants have waited patiently for more than 10 years since booking, and for more than 9 years after the promised possession date, without being granted possession, without clear communication, and without any effective resolution. The continued delay, absence of committed possession, and lack of amenities have eroded the legitimate expectations of the Complainants.
19. In view of the foregoing discussion and considering the legal position under Section 18(1)(a) read with Section 19(4) of the RERA Act, 2016, this Authority is of the considered view that the Complainants are entitled to withdraw from the project and seek refund of the amounts paid, along with interest and cost as per RERA Regulations. Considering the submissions of the Complainants, in my opinion the Complainants are entitled for direction against the Respondent to refund the amount paid by the Complainants towards consideration of suit flat along with prescribed interest excluding amount paid to the Government. Hence, I answer point no. 1 affirmative and point no. 2 accordingly partly in affirmative. It is seen that the Respondent has neither refunded the consideration amount paid by the Complainants nor given possession of the suit flat to the Complainants, which constraints Complainants to file present complaint. Therefore, it is necessary for the Respondent to pay the cost of the complaint. Hence, I proceed to pass following order:

Order

The Present Complaint is allowed as follows:

1. The Complainants are entitled to withdraw from the project.
2. The Respondent / promoter is directed to refund the amount of Rs. 14,01,026/- (Rupees Fourteen Lakhs One Thousand and Twenty Six Only) along with interest at the rate State Bank of India's Highest Marginal Cost of Lending Rate (MCLR) plus 2% p.a as per Section 18 of Real Estate (Regulations and Development) Act, 2016 and Rule 18 of the Maharashtra Real Estate (Regulations and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of interest and Disclosures on website), Rules 2017 from 01.07.2015 till actual realisation of the refund amount.
3. The Respondent is also directed to pay Rs.20,000/- to Complainants towards costs of the present complaint.

RAVINDRA
PADMAKAR
AO
DESHPANDE

Digitally signed
by RAVINDRA
PADMAKARAO
DESHPANDE
Date: 2025.08.06
15:39:34 +05'30'

Ravindra Deshpande

MEMBER II, MahaRERA

Date:- 06.08.2025