

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
Karnataka Real Estate Regulatory Authority Bangalore  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಒಪ್ಪಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,  
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

CMP-524

**BEFORE AD JUDICATING OFFICER**  
**PRESIDED BY SRI K. PALAKSHAPPA**  
**DATED 18<sup>th</sup> December 2020**

<b>Complaint No.</b>	<b>CMP/180228/0000524</b>
<b>Complainant :</b>	Rani appaiah P.B. No.26, Gundigadde Estate Balele Post, Kodagu- 571219. In person through her Son
<b>Opponent :</b>	Sri. Srihari pathak and M/s Pathak Developers Pvt. Ltd., No.2997/2 , Rukma Complex, Kalidasa Road, Kodagu-570002. Rep. by Smt. H.H. Sujatha Advocate

**JUDGMENT**

1. This Complaint is filed by the complainant against the developer seeking for the recovery of money with interest. But during the course of hearing her son has appeared with her power of attorney and filed a memo stating that the prayer has been changed to delay compensation.
2. After registering the complaint notice has been issued to the parties, the complainant has appeared through her son with power of attorney where as the respondent has appeared through his advocate and filed his objections.

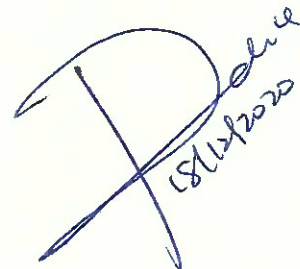
*(Signature)*  
18/12/2020

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As per order dated  
12.08.2021 amendment  
is carried out.  
12/8

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3. Since this complaint was filed against the unregistered project the Secretary has made some interrogation by summoning the parties. Later the case was transmitted to Adjudicating Officer. After receipt of the same notice has been issued. This case was called on 21/01/2020 and on that day son of the complainant has appeared with authority letter. Advocate has appeared on behalf of the developer. The case was posted to 27/03/2020 but on that day it was not called on account Covid-19 and it was ordered to stop the hearing in open court. Further from 21/03/2020 till 17/05/2020 lock down was declared and as such hearing was not done. Further as per office note, the personal hearing was deferred and as such the parties have been called for hearing through Skype.
4. Sri Poonacha power of attorney holder of the complainant has appeared through Skype but no response from the developer.
5. On going through the case papers it is noticed that the Secretary has called the parties where the developer has filed a memo in the form of objection statement admitting the liability.
6. In view of the same I posted the matter for judgment on merits.
7. The point that arise for my consideration is
  - a. Whether the complainant proves that she is entitled for delay compensation?
  - b. If so, what is the order?

  
18/12/2020

8. My answer is affirmatively in part for the following.

REASONS

9. This Complaint is filed by the Complainant seeking for the recovery of money with interest from the developer towards the purchase of flat bearing no. G-2. Since she is considerably aged has given a letter to this authority stating that her son will conduct the case. Her letter reads as under:-

*I have been asked to appear before the commission on 6<sup>th</sup> of this month after meeting the developer, which could not be done, on account of the fact, the developers were exercise for all my calls and thus denying an opportunity to meet and discuss as directed by RERA in the course of their hearing on 22/6/2018.*

*I am P. Rani Appaiah, aged 70, wife of P.D. Appaiah, aged 82 years and currently residing in our village in interior coorg. I am unable to attend RERA hearing in Bangalore due to age and health reasons of husband and self. In the past also I had entrusted my son P.A. Poonacha, the responsibility of handling all email correspondence with pathak builders when I failed to contact their director Ms. Shradha Pathak, I requested my son to try and reach out to any of the employees of pathak Builders. My son has contacted Miss Pragathi Gupta, a long time employee of pathak builders, spoken to here over the telephone and tried to reach an amicable solution. I authorise my son to represent me for the hearing of RERA to be held at Bangalore. I*

*P. Rani Appaiah*  
18/06/2018

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*request you to kindly oblige considering my age of health.*

10. Based upon the same the son has appeared before the secretary and submitted that he wanted to take the delay compensation in the place of relief for refund of the amount. I would like to say that since the original complainant Rani Appaiah has filed the complaint for refund but now it has been changed. I would say that the same has not been denied by the other side. Therefore the prayer made by the complainant through herself for delay compensation may be considered in case it is permissible.
11. During the interrogation made by the Secretary the developer who has appeared in person has given a letter admitting the transaction. The complaint has produced the receipts for having paid the amount to the developer. Xerox copy of the allotment letter has been produced. In the sale agreement dated:25/10/2010 at clause no.7 the developer has agreed to complete the project within 18 months from the date of agreement but till today it is not performed by him. He has not obliged to complete the project and failed to execute the sale deed. The agreement of sale was executed in the year 2010 where as this complainant has been filed in the year 2018. At the time of argument it was submitted that the complainant has paid full consideration amount of Rs.36.25 lakhs. In view of the non performance as per the terms of the agreement naturally the complainant has sought for refund of the amount. However at the time of argument a representation has been given requesting for compensation amount. At

*[Handwritten Signature]*  
18/12/2024

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this stage I would say that though the developer is represented by an advocate neither denied nor disproved the allegations made by the complainant. As per Section 18 of the act it is the wish of the buyer either to continue with the project or to go away from the same. Originally the complainant opted for refund but now changed her intension to pray for delay compensation. The developer ought to have delivered the possession on or before in the year 2012 but he made the complainant to wait for a long 8 years to take the fruit. As per the observation made by the hon'ble Apex Court a buyer shall not be made to wait indefinitely. Based upon the said principle and also as per Section 18 the complainant is entitled for delay compensation since the project is not completed as on 01/05/2017. The developer has failed to place sufficient evidence before this authority as to why he has not completed the project as agreed. Further he also failed to place evidence as to why he has not obtained the occupancy certificate till today. For the above said reasons the complainant is entitled is for interest from the due date till the developer delivers the possession by executing the sale deed after obtaining the occupancy certificate. Hence, I allow this complaint.

12. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 28/02/2018. Originally the case was handled by the Secretary and afterwards it was transmitted to Adjudicating Officer in the month of January 2020. After issuance of notice the parties have appeared on 21/01/2020. When the case was posted to

*R. Perve*  
28/12/2020

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27/03/2020 physical hearing of the case has been stopped in view of Covid-19 and from 24/03/2020 lock down was declared till 17/05/2020. Hence the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

**ORDER**

- a. The complaint no. CMP/180228/0000524 is allowed.
- b. The developer shall pay simple interest @ 9% per annum on the amount paid by the complainant from the due date till 30-04/2017 and @ 2% above the MCLR of SBI commencing from May 2017 till the possession is delivered by executing the Sale Deed after obtaining the Occupancy Certificate.
- c. The developer is also liable to pay cost of Rs.5,000/- to the complainant.
- d. The complainant may file memo of calculation as per this order after 60 days in case the developer has failed to comply with the same to enforce the order. Intimate the parties regarding this order.
- e. Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 18/12/2020)

**K.PALAKSHAPPA**  
Adjudicating officer