

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

**Karnataka Real Estate Regulatory Authority Bangalore**

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು 560 027

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**BEFORE ADJUDICATING OFFICER**  
**PRESIDED BY SRI I.F. BIDARI**  
**DATED 30<sup>th</sup> MARCH 2021**

<b>Complaint No</b>	<b>CMP/200820/0006395</b>
<b>Complainant:</b>	Sri. Sumit Raj Anand # 2550, Ground Floor, 14 <sup>th</sup> Cross, HSR Layout Sector 1, Bengaluru - 560 102 (In Person)
<b>Respondent:</b>	Janapriya Engineers Syndicate Pvt. Ltd., 8-2-120/86, Road No.2, Banjara Hills Hyderabad - 500 034 (By: Sri. K. Bhanu Prasad & Associates Advocates)

**J U D G M E N T**

Sri. Sumit Raj Anand (here-in-after referred as complainant) has filed this complaint bearing no. CMP/200820/0006395, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent M/s Janapriya Engineers Syndicate Pvt. Ltd., (here-in-after referred as respondent) seeking relief of refund of amount with interest.

2. The brief facts of the case are as under:

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The respondent M/s Janapriya Engineers Syndicate Pvt. Ltd.,, is developing a Real Estate Project (Pine Grove) (here-in-after referred as project) in converted immovable property in all measuring 5 acres 17 guntas (comprising of 1 acre 32 guntas in survey No. 78/6 and 3 acres 25 guntas in survey No. 79/1) of Doddanagamangala Village, Bengaluru South Taluk. The complainant has entered into an agreement of sale and construction agreement both the dated: 10.12.2015 (here-in-after referred as agreement of sale and construction agreement respectively) with the respondent to purchase a flat No.C-608, being constructed on 6<sup>th</sup> floor measuring 1,845.29, sq.ft. with a parking area together with undivided share of land measuring 844.98 sq.ft., in aforesaid property for consideration amount of Rs.80,86,746/- subject to the terms and conditions enumerated in the agreements. The complainant alleged in the complaint that the project ought have at have been completed by 2017 even after grace period but till in August 2020 it was not completed. The project is not as per promised amenities and respondent has no intention or plans to deliver against the same. Therefore the complainant filed this complaint seeking relief of refund of amount with interest.

3. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent has appeared through its Advocates. The respondent has filed the statement objections admitting



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the fact that complainant has entered into an agreements. The project was not registered with RERA Act when the agreements were entered between the parties but registered subsequently. Therefore, the RERA Act cannot be made applicable in-respect of the agreements, entered between the parties and in-respect of apartment mentioned therein. The construction of apartments in the project, including the apartment in this case delayed because of demonetization, shortage of river bed sand, reasons beyond the control of the respondent mentioned in the objection statement. It is contended that the construction work of the project delayed for about 2 months due to Covid-19 pandemic. Thus respondent is contending that because of force majeure or acts beyond the control of the respondent, the construction of apartment in the project delayed and not for any reasons. The respondent is making all efforts to complete the construction of the project and handover possession of the flat by end of December 2020 or early part of January 2021. The respondent has not committed breach of the agreements. The delay in completion of project is not deliberate or intentional but for aforesaid reasons. These main grounds among others urged in the statement objections, prayer to dismiss the complaint.

4. I have heard the complainant who appeared in person also heard Smt. Indumathi Advocate for the respondent, through skype. Perused the records and the materials placed on record.

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5. The points that would arise for consideration are:
- (1) Whether the complainant is entitled for refund of amount with interest ?
  - (2) What order?
6. My finding on the above points is as under:

Point No.1: Partly in the affirmative.

Point No.2: As per final order, for following:-

**REASONS**

7. Point No.1: As rightly submitted by the complainant Sumit Raj, he himself and his mother Smt.Bina Saha together have entered into construction agreement Dt.10.12.2015 and Agreement of sale Dt. 10.12.2015 respectively with the respondent / developer and the owners of the "Schedule - I" immovable property described in the agreement of sale, where-under agreed to purchase an apartment bearing No. C-608 being constructed in the project, on 6th floor for consideration amount of Rs.80,86,746/- subject to terms and conditions of the agreement. The fact of parties entering into these agreements is admitted one. As per the terms of the construction agreement the apartment was to be handed over to the purchaser within a period of 30 months from the commencement date March 2015 with a grace period of 6 months but admittedly as on today possession of apartment has not been handed over to the complainant and his mother.

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Therefore, there is no hesitation to hold that there is a delay in handing over possession of the apartment. The respondent in objections among others is contending that because of demonetization, shortage of river bed sand supply, hard rock encountered during excavation, order of Hon'ble National Green Tribunal, Chennai, heavy rain, delay in sanctioning permissions and clearance from the Government authorities, sand lorry owners strike, strike in connection with Cauvery water, Covid-19, the respondent unable to complete the construction of the project, including apartment in question, since, these reasons / events are force majeure. These reasons cannot be termed as force majeure reasons for the respondent not to complete the construction of the apartment and to handover the possession of the same to the complainant on due date. As per the terms of the construction agreement the respondent ought to have been handed over possession of apartment with OC on or before 01.04.2018.

8. The respondent has raised one more contention that the agreements were entered between the parties in 2015 which is much earlier to coming into force of RERA Act and Karnataka Real Estate (Regulation and Development) Rules 2016 (here-in-after referred as Rules). Therefore, the provisions of the RERA Act and Rules cannot be made applicable to the project and apartment in question. Admittedly

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construction of project has not been completed and OC has not been obtained till date, as such, project has been registered with Karnataka RERA as the project in question in this case is an ongoing project as per the provisions of RERA Act and Rules. The Hon'ble Haryana Real Estate Appellate Tribunal in appeal Nos. 52 & 64 of 2018 decided on 03.11.2020, in appeal No. Emaar MGF Land Limited Vs. Ms. Simmi Sikka and another and in appeal No. 64/2018 in the case of Ms. Simmi Sikka Vs. M/s. Emaar MGF land Limited, among others observed that provisions of the Act shall become applicable even to an unregistered project or projects which do not require registration with respective the fulfillment of the obligations as per the provisions of the Act, Rules & Regulations framed there-under. Therefore, it is made clear that in the instant case the project in question is ongoing project so, required to be registered, accordingly same is registered with K-RERA as such the provisions of the RERA Act and Rules are made applicable to the present case though the agreements were entered between the parties in the year 2015 before coming to the force of RERA Act. Under the circumstance there is no substance in the contention of the respondent that provisions of the RERA Act and the Rules not made up applicable in this case.

9. The respondent in statement objections is contending that the flooring work of the apartment

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is in progress and respondent would hand over possession of the apartment to the complainant in December 2020 or early part of January 2021 but till today i.e, on 30.03.2021, the respondent has not handed over possession of the apartment to the complainant and even not obtained and produced the CC in the case. Under the circumstances it may safely be said that there is an inordinate delay in handing over possession of the apartment to the complainant and his mother. The complainant is demanding for refund of entire part consideration amount paid to the respondent but the possibility of delay due to COVID-19, hard rock encountered in the plinth area of the project cannot be over ruled though same may not be consider as force majeure. The respondent is contending that construction of apartment in question is at the stage of completion, under the circumstances, in case refund is allowed at this stage of the project which is near completion, then it will adversely affect the rights of other allottees, who wish to continue with the project. Therefore, it is just to direct the respondent to pay delay compensation by way of interest to the complainant on the part consideration amount paid by the complainant in-respect of apartment, same will meet the ends of Justice. As per Rule 16, K-RERA Rules 2016 interest payable is @ 2% above the MCLR of SBI. Thus, I hold point No. 1 partly in the affirmative for consideration.

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10. As per the provisions contemplated U/sec. 71(2) RERA Act the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 20.08.2020, thereafter notices issued directing the parties to appear through Skype for hearing as because of COVID-19 pandemic the personal hearing before the Adjudicating Officer not yet commenced. The parties given the reasonable opportunities to contest the case, as such, the Judgment is being passed on merits, with some delay.

11. Point No.2: In view of my findings on point Nos. 1, I proceed to pass the following:-

**ORDER**

- (i) The complaint filed by the complainant bearing No.: CMP/200820/0006395 is partly allowed.
- (ii) The respondent is hereby directed to pay delay compensation to the complainant by way of interest @ 9% per annum on respective amounts, from the dates of receipt of respective amounts till 30.04.2017 and from 01.05.2017 @ 2% above the MCLR of SBI till the handing over of the possession of the apartment with occupancy certificate.
- (iii) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (iv) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with this order to enforce the order.





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(v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the  
DEO, corrected, verified and pronounced on 30.03.2021)



**I.F. BIDARI**

Adjudicating Officer-1

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