

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY

DATED 9th November 2022

COMPLAINANT NO. CMP/200111/0005193

COMPLAINANT.....

Mahaveer L.J.
241, 1st Floor,
37th "A" Cross
Jayanagar
Bengaluru-560 069

**(represented by Ms.Shipla
Rani, Advocate)**

RESPONDENT.....

**M/s Prestige Estates
Projects Limited**
Prestige Falcon Towers
19, Brunton Road
Craig Park Layout
Ashoknagar
Bengaluru-560 025

**(represented by Mr.
Mohumed Sadiq, Advocate)**

JUDGEMENT

1. This complaint is filed under section-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project "**Prestige Bagamane Temple Bells**" developed by "**M/s Prestige Estates Projects Limited**" in the limits of Hosakerehalli Village, Uttarahalli Hobli, Bengaluru South Taluk, Bangalore District praying for delay in delivery of possession, interest on delay period and obtaining occupancy certificate.

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2. This project is not registered in RERA.

3. Brief facts of the complaint are as under: It is submitted that, the complainant has entered into an agreement of sale and construction both dated 07/01/2016 in respect of residential premises bearing No.4113 on the 11th floor/level of 4 Tower/Block” in the project “Prestige Bagamane Temple Bells” of the respondent. The complainant has already paid an amount of Rs.69,19,285/- till possession. The present complaint was filed in respect of failure to deliver possession of the said premises till date. The scheduled date of possession as per the said agreement was 30/06/2018 with 6 months grace period i.e. by 31/12/2018. Thus, the respondent had promised and assured that the said premises would be duly completed and possession thereof would be delivered latest by 31/12/2018. Further the occupancy certificate was obtained on 29/06/2019 thereby causing a delay of almost one year. The complainant sought relief for interest on delay period, delivery of possession of the flat and obtaining occupancy certificate. Hence, this complaint.

4. Earlier, this matter was heard by the Adjudicating Officer who has passed an order. As against these orders, the complainant has preferred appeal before the K-REAT which has remanded back all the appeals setting aside the orders of the Adjudicating Officer for fresh consideration in view of judgement of Hon'ble Supreme Court in M/s. Newtech Promoters and Developers Pvt. Ltd., v/s. State of UP and others (2021).

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5. After registration of the case, in pursuance of the notice served, the respondent through his counsel appeared before this Authority and filed objections as under:

6. The respondent has denied all the allegations made against it by stating that the complaint is false. It is submitted that the complainant and Mrs. Nayana V.J. had entered in agreement of sale dated 07.01.2016 for the purchase of undivided interest in the land situated at Hosakerehalli Village, Uttarahalli Hobli, Bangalore and also for construction of a residential apartment No. 4113 in the project "Prestige Temple Bells".

7. It is submitted that the construction of the apartment of the complainant and also the development of the entire project were completed as on 01.06.2017. Further, the Architect had issued form of completion certificate dated 02.06.2017 as per schedule VIII (Bye-law 5.5) certifying all the development works have been completed. Besides the consultant has issued structural stability certificate dated 01.06.2017.

8. It is submitted that the respondent on 08.06.2017 had filed application before the BBMP for issuance of occupancy certificate for the project. It is contended that the BBMP has delayed with regard to issue to occupancy certificate. In the meantime, the respondent delivered possession of the flat to the complainant on 06.06.2019 under acknowledgement. The complainant had moved into the flat and also started residing in the said flat since 01.12.2019.

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9. It is submitted that after inordinate delay, the BBMP has finally issued occupancy certificate for the project on 29.06.2019. Further, the respondent had completed the construction within the timeline and also delivered the possession of the flat to the complainant. It was the BBMP who delayed issuing occupancy certificate for the project and hence the respondent is not liable to pay any delay compensation to the complainant.

10. It is submitted that the complainant had failed to pay the instalment amounts in time on the specified dates as per agreement. It is contended that the complainant is liable to pay a sum of Rs.1,70,096/- as on 26.11.2019 to the respondent towards the delayed payments of instalment. Further, the complainant is liable to pay interest on Rs.1,70,096 till he settles the said amount to the respondent.

11. It is further submitted that the complainant after taking possession has filed the above complaint after 7 months from the date of possession of the flat and renting out the flat. Hence, the respondent prays this Hon'ble Authority to dismiss the complaint.

12. In support of his claim, the complainant has submitted documents such as (1) Rejoinder (2) copy of hand over intimation email dated 7.12.2018 (2) copy of the email dated 31st October 2017 along with photographs (3) copy of the mail dated 2nd May 2018 along with photographs (4) copy of the sanction letter dated 19.02.2015 (5) copy of the relinquishment deed dated 06.03.2014 (6) copy of the judgement dated 10/10/2019 in CMP/190416/0002676







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13. In support of his defence, the respondent has produced documents such as (1) copy of agreement of sale (2) copy of construction agreement (3) copy of the certificate (4) copy of the application (5) copy of reminder letter (6) copy of the possession letter of the flat (7) copy of the moving in letter given by the complainant (8) copy of the occupancy certificate (9) copy of the statement of account (10) copy of the interest calculation statement for the delayed payments (11) copy of the GPA and undertaking (12) copy of the feed back form (13) memo with documents dated 20.02.2021(14) Memo with documents dated 15/6/2021(15) Memo dated 13.07.2020

14. Heard both the parties. This matter was heard on 24/08/2022, 30/08/2022.

15. On the above averments, the following points would arise for the consideration of the Authority.

1. Whether the complainant is entitled to the relief claimed?
2. What order?

16. Our findings on the above points are as under:

17. 1. In the Affirmative
2. As per final order for the following:

FINDINGS

18. **Our findings on point no.1:** The grievance of the complainant is that the respondent has defaulted and not handed over the possession of his flat as per terms of agreement of sale and construction. The respondent was required to hand over the possession of his respective

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flat on the due date i.e. by 30/06/2018 with 6 months grace period i.e. by 30.12.2018 as was envisaged in the terms and conditions of the agreement of sale and construction.

It is pertinent to note that the complainant has filed this complaint on 11/01/2020. The respondent has to hand over the possession of the flat by 30.12.2018 as per agreement. The respondent has handed over the flat to the complainant on 06.06.2019. Occupancy Certificate obtained by the respondent is dated 29.06.2019. From the date of handing over possession of the flat to the complainant i.e. from 31.12.2018 till 06.06.2019, there is a delay of more than 5 months.

As per Section 18 of RERA Act, in case the allottee wishes to withdraw from the project, the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Therefore, as per Section 18 of the Act, the promoter is liable to refund the amount received along with interest.

Since the respondent has accepted the substantial sale consideration and failed to keep up the promise to hand over possession of the flat to

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the complainant within the stipulated timeline, the complainant is entitled for interest on delay period for the delay in handing over possession of the apartment.

Having regard to all these aspects, we conclude that the complainant is entitled for interest for the delay period. Accordingly, the point raised above is answered in the Affirmative.

19. Our findings on point no.2: In view of the above discussion, we conclude that the complaint deserves to be allowed. Hence, we proceed to pass the following order:

ORDER

In exercise of the powers conferred under section 31 read with section 18 of the Real Estate(Regulation & Development) Act, 2016, the complaint bearing no. **CMP/20011/0005193** is hereby allowed.

1. The respondent is hereby directed to pay delay period interest to the complainant calculated at the rate of SBI MCLR + 2 per cent per annum from 31.12.2018 till 06.06.2019.

Asst

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Asst


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2. The respondent is directed to pay delay period interest to the complainant within 60 days from the date of this order, the complainants are at liberty to enforce the said order in accordance with law if the respondent fail to comply with the order.

No order as to costs.


(D. Vishnuvardhana Reddy)
Member-1
K-RERA


(Neelmani N Raju)
Member-2
K-RERA


(H.C. Kishore Chandra)
Chairman
K-RERA

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