

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-560027

**BEFORE ADJUDICATING OFFICER, RERA  
BENGALURU, KARNATAKA  
Presided by Sri K PALAKSHAPPA  
Adjudicating Officer  
Date: 11<sup>th</sup> FEBRUARY 2020**

<b>Complaint No.</b>	<b>CMP/190813/0003875</b>
<b>Complainant</b>	Lylesh Vijay Menezes Flat No.205, Silicon Towrs, 4 <sup>th</sup> 'A' Cross, Byrasandra Main Road, CV Raman Nagar, Bangalore-560093 Rep.by Sri V.Vinayak Pai. Advocate
<b>Opponent</b>	R.J.Rishikaran Projects Pvt.Ltd., Pent House, RJ Manor Apartments, No.11/A, 80 Feet Road Bangalore-560034. Rep.by Sri Ashok B.Patil, Advocate.

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

1. Lylesh Vijay Menezes, Complainant filed this complaint bearing complaint no. CMP/190813/0003875 under Section 31 of RERA Act against the project "R J Lake Gardnia" developed by 'R.J.Rishikaran Projects Pvt.Ltd.,'for the relief of delay compensation at the first instance. The facts of the same reads as under:

1. *The Complainant was desirous of purchasing an apartment unit for himself and his family members in the year 2014 and approached the authorized representative of the Respondent when he learnt that the Respondent was constructing an apartment unit comprising of around 173 units in Bhattarahalli, Bidarahalli Hobli, Bengaluru. The authorized representative of the Respondent lured*

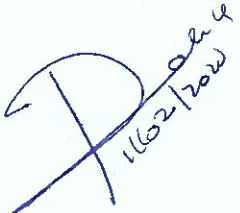
  
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the complainant into making an investment for the purchase of a 3 BHK apartment in the apartment complex being constructed by the Respondent proposed to be named as R. J. LAKE GARDENIA. 2. The Apartment complex consisting of around 2 towers was being put up in the property bearing Sy. No. 40/1 of Bhattarahalli Village, Bidarahalli Village, Bangalore East Taluk, on the total landed area measuring around 1,15,315 square feet. The Landed Property is morefully described as the Schedule A property. Vide agreement of Sale of Undivided Share dated 02/06/2014, the Complainant agreed to purchas ed an undivided share of 579.41 square feet in the Schedule A Property for a total consideration of Rs. 31,84,890/-. The undivided share agreed to be purchased by the Complainant is morefully described as the Schedule B property. Out of the total sale consideration of Rs. 31,84,890/-, the complainant has paid an advance of a sum of Rs. 6,36,978/- on the same day of the agreement and the remaining amount was payable in Installments as per the Annexure I(L) attached to the agreement. In addition to the undivided share in the Schedule A property, the Complainant has also entered into a construction agreement dated 02/06/2014 with the respondent wherein the Respondent has agreed to hand over a 3 BHK apartment unit along with 2 car parking spaces proposed to be constructed in the Schedule A property morefully described as the Schedule C Property for a total consideration of Rs. 85,00,655/-. Out of the total amount of Rs. 85,00,655/- the complainant has paid a sum of Rs. 18,83,987/- on the same day of the agreement and the remaining amount was agreed to be paid by the Complainant as per the Annecure I(a)(C) of the Construction Agreement. The Copy of the agreement of sale of undivided share dated 02/06/2014 is produced as DOCUMENT NO. 1. The copy of the Construction agreement dated 02/06/2014 is produced as DOCUMENT NO. 2. As per Clause 6 of the Construction agreement, the Respondent has promised that the possession of the completed Schedule C property would be handed over to the Complainant within 36 months from the date of the agreement i.e. within 31/05/2017. 3. The total agreed sale price of the Apartment unit proposed to be purchased by the Complainant including all the additional taxes, cess, charges, deposits payable to BWSSB, KPTCL (BESCOM) etc. was Rs.

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1,26,04,827 (Rupees One Crore Twenty Six Lakhs Four Thousand Eight Hundred and Twenty Seven only). The pricelist issued by the Respondent issuing the final price of the apartment unit is produced as DOCUMENT NO. 3. 4. Subsequently, as and when demanded by the Respondent, the Petitioner has made further payments totaling to a sum of Rs. 1,17,14,100.74 (Rupees One Crore Seventeen Lakhs Fourteen Thousand One Hundred and Seventy Four Paise only) in various installments to the Respondent. The Ledger account statement pertaining to the Complainants payment account maintained by the respondent and shared with the complainant is produced as DOCUMENT No. 4-6. The receipts issued by the Respondent having acknowledged the receipt of the sum of Rs. 1,16,05,061/- in various installments from the Complainant are produced as DOCUMENT Nos. 7-25. In addition to the amount of Rs. 1,16,05,061/-, the Complainant has also remitted a sum of Rs. 1,09,039.74 (Rupees One Lakh Nine Thousand And Thirty Nine and Seventy Four Paise Only) towards the TDS deductible on the entire transaction in favour of the Respondent on 12/08/2016 and the TDS certificate has also been issued to the Respondent. The copy of the TDS certificate downloaded from the TRACES website bearing Certificate No. XOCFKMK is produced as Document no. 26. Thus, the complainant, has in all made a payment of a sum of Rs. 1,17,14,100.74 in favour of the Respondents towards the purchase of the Schedule B and C Property and the amenities mentioned in the Agreements being constructed on the Schedule A property. 5. In spite of having paid more than 95% of the total amount due from the Complainant to the Respondent even as on 17/10/2017, the construction was progressing very slowly and the Respondent was not committal to the handing over of the possession even after the expiry of the agreed date of hand over of the possession.

Relief Sought from RERA : Reliefs as per the facts of the complaint

- In pursuance of the notice issued by this authority, complainant has appeared through his advocate Sri V.Vinayak Pai and respondent also appeared through his advocate Sri Ashok B.Patil.

A handwritten signature in blue ink, followed by the date 11/02/2020.

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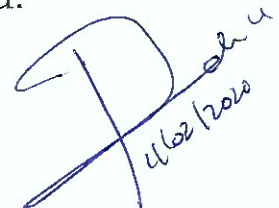
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3. At the first instance the complainant has filed complaint for delay compensation, but during the course of the trial, the learned counsel for the complainant has filed a memo seeking for the relief of refund of the amount. The developer has filed objections with regard to the first prayer as well as amended prayer also.
4. I have heard arguments of the complainant and posted for judgment.
5. The points that arise for consideration are:
  - a. Whether the complainant is entitled for the relief as prayed in the complaint?
  - b. If so, what is the order?
6. My answer to the above point is in the partly affirmative for the following

**REASONS**

7. The relationship between the complainant and the developer is not in dispute. It is also an admitted fact that the developer has executed agreement of sale in favour of the complainant on 02/06/2014. It was agreed in the agreement of sale that the developer has to complete the project on or before 01/06/2017, but till today the project has not been completed because it is not the case of the developer that he has obtained occupancy certificate. It means as per agreement, the developer has failed to complete the project and deliver the possession to the complainant. It is also an admitted fact that, total sale consideration is Rs.1,26,04,827/-, out of this, the complainant has paid Rs.1,17,14,100/-, these facts are not disputed.

  
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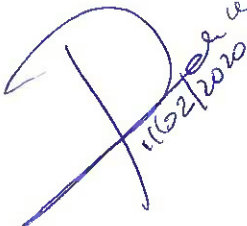


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8. The only dispute with regard to non completion of the project. Of course the developer has given his own reasons for non completion of the project within time. It is the case of the developer that he could not able to get the raw-materials, sufficient water and other things. In para-7 he says that super structure of the building is completed with plastering, the plumbing work is completed up to 12 floors, electrical work is going on, fire fighting is completed till 17 floors, laying of floor tiles and bath room tiles work is going on, fixing UPVC windows and external painting work is commenced and by this way he has given his own explanations. This objection statement has been filed by the developer on 19/12/2019 and as such as on the date of filing this objecting statement also 100% work was not completed. The assured date was June 2017, but even in the end of 2019, he was not in a position to complete the project. Therefore, as per Sec.18, the developer is either liable to pay delay compensation or refund of the amount when he failed to complete the project as agreed.
9. Of course, at the first instance the complainant has sought delay compensation, now he had changed his relief. I would say that the developer has produced some photos similarly, the complainant has also produced some photos. By looking into the photos produced by the complainant, it is clear that project will take some more time for completion. As per observation made by the Apex Court in Pioneer case the maximum waiting period is about two years. Here already two years has been elapsed and therefore, defense taken by the developer for completing the project by giving some reasons will not work out. Hence, I say that the complainant is entitled for the refund of the amount.

  
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10. However, the complainant has produced some calculation memo stating that he is entitled for refund of the amount of Rs.1,81,94,004.77 from the developer as he calculated the interest @ 12% p.a. I would say that, rule 16 has fixed the rate of interest and authority has to give interest what the law says. Therefore, calculation made by the complainant is not sustainable. The complainant has also claims Rs.10,00,000/- towards mental agony, but Hon'ble Apex court has held that the relief under mental agony cannot accepted. In this regard I would like to rely upon the decision which reads as under:

*When compensation for mental agony can be granted: - in the case of Ghaziabad Development Authority v. Union of India, (2000)6 SCC 113 wherein whilst considering a case of breach of contract under Section 73 of contract Act, it has been held that no damages are payable for mental agony in case of breach of ordinary commercial contract. The Supreme Court considered the case of Lucknow Development Authority AIR1994 SC 787 and held the liability for mental agony had been fixed not within the realms of contract but under principals of administrative law. In this case the awards towards mental agony was deleted on the ground that these were no pleading to the effect and no finding on that point.*

11. For the above reasons, the complainant is not entitled under the mental agony and hence, I allow this complaint in part.
12. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. The said 60 days to be computed from the date of appearance of the parties. This complaint was filed on 13/08/2019. In this case the parties were present on 24/09/2019. After hearing arguments of the parties, the matter came up for judgment and as such there is some delay in disposing of this complaint. With this observation, I proceed to pass the following.

*D. J. 14/02/2020*

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**ORDER**

- a. The Complaint filed by the complainant bearing No. CMP/190813/0003875 is hereby allowed in part.
- b. The developer is hereby directed to return an amount of Rs.1,17,14,100/- together with interest @ 9% on the respective amount paid on the respective dates till 30/04/2017 and @ 2% above MCLR of SBI commencing from 01/05/2017 till realisation of the entire amount.
- c. The developer shall also pay Rs.5,000/- as cost of the petition.
- d. The complaint shall execute the cancellation of agreement of sale after realisation of entire amount.
- e. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 11/02/2020).

(K.Palakshappa)  
Adjudicating Officer

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