

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 BEFORE BENCH-4**

**PRESENT:**

**SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN**

**COMPLAINT NO.: CMP/200830/0006478**

**COMPLAINT NO.: 21<sup>ST</sup> DAY OF SEPTEMBER, 2023**

**COMPLAINANT.....**

**VIJAY BENZER RICHARD,**  
No.455, 1<sup>st</sup> Floor,  
1<sup>st</sup> B Cross, 3<sup>rd</sup> Main,  
Mathikere Extension,  
Bengaluru - 560054.

**(Rep. By. Mohan Malge, Advocate)**

**V/S**

**RESPONDENT.....**

**ARATTUKULAM DEVELOPERS LLP,**  
106/A, 1<sup>st</sup> Main Road, 5<sup>th</sup> Block,  
Koramangala Industrial Layout,  
Bengaluru - 560034.

**(Rep. By its Authorized signatory)**

**\* \* \* \* \***

1. This complaint is filed under section 31 of the RERA Act against the project "Aratt Amora" developed by "Arattukulam Developers LLP" on Sy. No.102/1, 102/2, 105, 100/4, 101/1 and 106/3 at Lingapura Village, Kasaba Hobli, Anekal Taluk, Bengaluru Urban for the relief of interest on delay period.
2. This project is registered under RERA bearing Registration No. PRM/KA/RERA/1251/308/PR/180227/001335 valid till 31/07/2019.

*Asb*

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**Brief facts of the complaint are as under:-**

3. The complainant had purchased a villa bearing No.131 in the project 'Aratt Amora' of respondent wherein the complainant had entered into an agreement for sale dated 05/05/2016 for the total sale consideration of Rs.62,98,294/- (Rupees Sixty Two Lakh Ninety Eight Thousand Two Hundred and Ninety Four Only) and paid the same to the respondent on various dates. The respondent was supposed to handover the said villa in favour of the complainant within 2 years i.e., 05/05/2018 with all the amenities and facilities as per agreement of sale. However, the respondent has executed the sale deed of said villa in favour of complainant on 19/11/2019. Due to delay in handing over possession, the complainant had to pay EMI and rent. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, respondent has appeared before the Authority through his counsel and filed statement of objections as under:-
5. He has denied entire allegations made against them by the complainant as false. He contends that, the complainant had failed to make timely payment which delayed completion of certain stages of construction. After completion of the project, the respondent had obtained completion certification dated 25/03/2019. In fact, the complainant has made obligated to make payment of Rs.62,98,294/- (Rupees Sixty Two Lakh Ninety Eight Thousand Two Hundred and Ninety Four Only), but he had paid to the extent of Rs.56,17,898/- (Rupees Fifty Six Lakh Seventeen Thousand Eight Hundred and Ninety Eight Only) only and has refused to make full payment despite repeated follow-ups. Since, the complainant was not coming forward to make balance payment, the respondent had raised a final demand letter dated 30/04/2019 for balance payment of Rs.6,49,841/- (Rupees Six Lakh Forty Nine Thousand Eight Hundred and Forty One Only). The respondent was

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required to execute the sale deed upon entire payment of sale consideration by the complainant and possession of the villa was required to be handed over only at the time of execution of the sale deed as per the terms of agreement of sale.

6. Further, he contends that, he has completed the project by providing all the amenities with good quality installation. Hence, prayed to dismiss the complaint.
7. The complainant has filed rejoinder to the statement of objections of the respondent as under:-
8. According to him, the respondent has taken all vague defences. He had made the payment of entire sale consideration toward purchase of said villa and there is no delay in making payment. The respondent had issued no due certificate on 22/10/2019. Hence, prayed to allow the complaint.
9. In support of his claim, the complainant has produced in all 3 documents such as copy of agreement of sale dated 05/05/2016, absolute sale deed dated 19/11/2019 and payment receipts.
10. In support of its defence, the respondent has produced in all 5 documents such as copy of agreement of sale dated 05/05/2016, sale deed dated 19/11/2019 and payment receipts of the complainant.
11. Hearings were conducted on 17/06/2022, 15/07/2022, 05/08/2022, 26/08/2022, 19/09/2022, 14/10/2022, 07/11/2022, 25/11/2022, 19/12/2022, 30/01/2023, 24/02/2023, 24/03/2023, 24/04/2023 and finally on 12/06/2023.
12. Heard arguments.

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13. **On the above averments, the following points would arise for my consideration:-**

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

14. **My findings on the above points is as under:-**

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

**REASONS**

15. **My finding on point No. 1:-** The complainant has approached this forum for the relief of interest on delay period from 16/09/2017 till handing over possession of the villa on the grounds that, as per the agreement of sale dated 05/05/2016 the respondent was supposed to handover possession of villa No. 131 to the complainant on 16/09/2017. But, he has failed to complete the project and to handover the possession of said villa as agreed. Further, the respondent has not provided all the amenities as agreed.

16. On the other hand, contention of the respondent is that, he had completed the project within agreed time and if at all there is a delay that is due to default on the part of the complainant to pay the balance sale consideration. He has completed the project by providing all the amenities with good quality as agreed.

17. Undisputedly, the complainant had purchased the villa No.131 in the project Aratt Amora of the respondent by entering to agreement of sale and respondent has executed the sale deed of the same on 19/11/2019 in favour of the complainant.

18. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 05/05/2016. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced

*As*

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in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale, the respondent was supposed to handover the possession of the said villa to the complainant on 16/09/2017. But the respondent had not completed and handover the possession of the said villa to the complainant till date.

19. As per decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s. Newtech Promoters V/s. The State of UP and other it is held as under:-

*Para No.22:- "If we take a conjoint reading of subsections (1), (2) and (3) of section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed'.*

20. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme Court it is held that:

*"In terms of section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the*

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*project. Such right of an allottee is specifically made 'without prejudice to any other remedy available to him'. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himashu Giri came under the later category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment".*

The said principle is aptly applicable to the present case on hand.

21. As per section 18 of RERA Act, the respondent is liable to pay interest for delay period. Considering the entire materials available on record, the delay in handing over possession being apparent, this Authority see no legal impediment in allowing the complaint as prayed. The complainant has paid Rs.62,98,294/- (Rupees Sixty Two Lakh Ninety Eight Thousand Two Hundred and Ninety Four Only) to the respondent towards entire sale consideration.

**Sum and substance of the case is as under**

Date of Agreement of sale	05/05/2016
Sale consideration	Rs.62,98,294/- (Rupees Sixty Two Lakh Ninety Eight Thousand Two Hundred and Ninety Four Only)
Amount paid	Rs.62,98,294/- (Rupees Sixty Two Lakh Ninety Eight Thousand Two Hundred and Ninety Four Only)
Promised date of possession as per AOS	16/09/2017
Date of sale deed	19/11/2019
Date of occupancy certificate	-
Whether the possession has been handed over	-
Prayer	Interest on delay period

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22. Further, the complainant had sought for the relief of rent amount of Rs.6,76,000/- (Rupees ) from 20/06/2018 to 20/09/2022 (52 months). The said relief is not coming under the purview of this Authority. Hence, the complainant is at liberty to file a fresh complaint seeking for such relief before Adjudicating Officer, RERA.
23. Therefore, it is incumbent upon the respondent to pay interest on delay period to the complainant. Accordingly, the point raised above is answered in the Affirmative.
24. **My findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we proceed to pass the following order.

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/200830/0006478 is hereby allowed

1. The respondent is directed to handover possession and to pay interest on delay period on the principle amount of Rs.62,98,294/- (Rupees Sixty Two Lakh Ninety Eight Thousand Two Hundred and Ninety Four Only) at the rate of SBI MCLR + 2% from 16/09/2017 till handover of the possession of the villa bearing No.131 in the project 'Aratt Amora' to the complainant within 60 days from the date of this order.
2. The respondent is hereby directed to complete all the pending works along with amenities as agreed within 60 days from the date of this order.



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3. The complainant is at liberty to file a fresh complaint before Adjudicating Officer, RERA for the relief of rent amount.
4. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with this order.

No order as to costs.

  
(H.C. KISHORE CHANDRA)  
Chairman  
K-RERA

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