

ಕರ್ನಾಟಕರಿಯಲ್ 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 BEFORE THE AUTHORITY

Dated 3rd November 2023

CMP/200223/0005500

Present

Hon'ble Chairman Shri. H.C. Kishore Chandra

Hon'ble Member Smt. Neelmani N Raju

Hon'ble Member Shri. G.R.Reddy

Complainant.....

Arunava Ghosh

Flat No: W1-B-502,
VasathiAvante Apartment,
37/1 St Anne's Church Road,
Rachenahalli,
Bengaluru - 560077.
(In person)

V/S

Respondent.....

Vasathi Housing Ltd

Plot no.41, H.No.8-2-269/S/41,
Sagar Society, Road no.2,
Banjara Hills,Bengaluru-500034.
(By Shri. Deepak Bhaskar, Advocate)

1. This complaint is filed under section 31 of the RERA Act against the project "VASATHI AVANTE" developed by "Vasathi Housing Ltd" of the respondent for the relief of completion of project, interest on delay period and compensation for mental harassment.

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2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1251/309/PR/171208/001088.
3. The said project is situated at sy no 84/1, BBMPKhata No-37/1/84/1, Rachenahalli Village, K.R.PuramHobli, Bengaluru North, Bengaluru Urban.

Brief facts of the complaint are as under:-

4. The complainant had booked a flat bearing No.W1-B-502 in the project 'VASATHI AVANTE' of the respondent on 19/07/2016 and entered into an agreement of sale and construction agreement both dated 11/08/2016 for a total sale consideration of Rs.59,15,065/-(Fifty nine lakh fifteen thousand and sixty five only). After more reminders the respondent has registered the said flat on 16/03/2018 with only bare minimum water and electricity. He has promised to complete all the pending amenities such as Sewage treatment plant (STP), water treatment plant (WTP), organic waste convertor (OWC), rain water harvesting (RWH), smart home devices such as tablet for home automatic, smart power meters and water meters for energy consumption, fire and gas leak sensors, CCTV, surveillance camera and security intercom, complete landscaping, club house, indoor and outdoor game areas, swimming pool, gymnasium, party hall etc., However as on 21/02/2020 none of the said amenities have been completed. The respondent had consistently been giving false dates of completion beginning with contractual date of December 2016 extended to June 2017 and then delayed to December 2017, January 2018, March 2018. The complainant had to take possession on 14/05/2018 out of compulsion and financial inability to pay both rent and EMI for an indefinite period. Even in August 2019 the basic amenities are incomplete. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through his counsel, but

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has not contested the matter by filing statement of objections, producing documents on his behalf etc.,

6. In support of their claim, the complainant has produced/uploaded copies of agreement for sale, construction agreement, photographs, payment receipts, minutes of meeting dated 26/08/2019 and email conversation.

7. This matter was heard on 13/07/2022, 26/07/2022, 05/11/2022, 30/11/2022, 15/02/2023 and 08/03/2023.

8. Heard arguments of both sides.

9. On the above averments, the following points would arise for our consideration:-

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

10. Findings on the above points is as under:-

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

Reasons

11. Findings on Point No.1:- The complainant has approached this forum seeking for the relief of interest on delay period and completion of project with all amenities. The grounds urged are that the complainant had booked a flat bearing No.W1-B-502 in the project of the respondent by entering into an agreement of sale on 11/08/2016. As per the said agreement the respondent was supposed to handover possession of the said flat to the complainant before 30/06/2017. The respondent has executed the registered sale deed on 16/03/2018 of said flat in favour of complainant without providing all the amenities as agreed in the agreement of sale dated 11/08/2016.

12. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 11/08/2016. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be

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properly enforced 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 said flat to the complainant in June 2017. But the respondent had not completed and handover the possession of the said flat to the complainant as agreed.

13. As per decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters vs The State of Uttar Pradesh 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'.

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

14. As per sec.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.58,85,065/- (Fifty eight lakh eighty five thousand sixty five only) to the respondent towards sale consideration.

15. Further, the complainant has sought for the relief of completion of project by providing all the amenities as agreed. Having agreed to provide several amenities and failure on the part of the respondent to complete the project with all the amenities, certainly entitles the complainant for claiming all such amenities.

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16. Further, the Complainant has also sought for the relief of compensation for mental harassment. This relief is not coming under the purview of this Authority. Hence, he has to file a separate complaint before Adjudicating Officer for the said relief.

17. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for interest on delay period as well as completion of project with all amenities.

18. The complainant has furnished memo of calculation as under.

S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 5,885,065						
1	01-06-2017	01-07-2017	30	8.15	10.15 as on 01-06-2017	49,095
2	01-07-2017	01-08-2017	31	8.15	10.15 as on 01-07-2017	50,732
3	01-08-2017	01-09-2017	31	8.15	10.15 as on 01-08-2017	50,732
4	01-09-2017	01-10-2017	30	8.15	10.15 as on 01-09-2017	49,095
5	01-10-2017	01-11-2017	31	8.15	10.15 as on 01-10-2017	50,732
6	01-11-2017	01-12-2017	30	8.1	10.1 as on 01-11-2017	48,854
7	01-12-2017	01-01-2018	31	8.1	10.1 as on 01-12-2017	50,482

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8	01-01-2018	01-02-2018	31	8.1	10.1 as on 01-01-2018	50,482
9	01-02-2018	01-03-2018	28	8.1	10.1 as on 01-02-2018	45,597
10	01-03-2018	01-04-2018	31	8.35	10.35 as on 01-03-2018	51,732
11	01-04-2018	01-05-2018	30	8.35	10.35 as on 01-04-2018	50,063
12	01-05-2018	14-05-2018	13	8.35	10.35 as on 01-05-2018	21,694
					TOTAL DELAYED INTEREST as on 14/05/2018	5,69,290

Sum and substance of the case is as under.

Date of agreement of sale	11/08/2016
Date of construction agreement	11/08/2016
Sale consideration	Rs.58,85,065/- (Fifty eight lakh eighty five thousand sixty five only)
Amount paid	Rs.58,85,065/- (Fifty eight lakh eighty five thousand sixty five only)
Promised date of possession as per AOS	30-06-2017
Date of sale deed	16/03/2018
Date of occupancy certificate	16/07/2020
Whether the possession has been handed over	14/05/2018
Prayer	completion of project, interest on delay period and compensation for mental harassment

Accordingly, the point raised above is answered in the Affirmative.

19. **Our findings on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following

Asb

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ORDER

In exercise of the powers conferred under section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/200223/0005500** is hereby allowed as under.

1. The respondent is directed to pay the interest on delay period on amount of Rs.5,69,290/- (Five lakh sixty nine thousand two hundred ninety only) at the rate of SBI MCLR+2% from 01/07/2017 upto 14/05/2018 within 60 days from the date of this order.
2. Further, the respondent is directed to complete the project 'VasathiAvanthe' with all amenities as agreed within 60 days from the date of this order.
3. The complainant is at liberty to file a fresh complaint before Adjudicating Officer on same set of facts for the relief of compensation for mental harassment.
4. Further, the complainant is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to costs.


(Neelmani N Raju)
Member
K-RERA


(G.R.Reddy)
Member
K-RERA


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

