

PROCEEDINGS OF THE AUTHORITY

BEFORE BENCH-5

PRESIDED BY HON'BLE MEMBER G.R. REDDY

COMPLAINT NO.CMP/221226/0010522

Dated 22ND NOVEMBER, 2023

COMPLAINANTS : 1. Mr.Malyadri Vallapuneni
2. Ms.Surekha Vallapuneni

Both are residing at No.108
Jeevandi Presidency,
Suddagunte Palya, C.V.Raman
Nagar, Bangalore:560 093

(By M/s.Catalyst Law, Advocates)

RESPONDENT / : M/s.Lily Realty Pvt Ltd.
PROMOTER No.19/1, Doddamana Building,
2nd Floor, Vittal Mallya Road
Bangalore : 560 001

(By M/s.Dua Associates, Advocates)

PROJECT NAME & : PASHMINA WATERFRONT-PHASE-1
REGISTRATION NO. PRM/KA/RERA/1251/446/PR/
171014/000345

J U D G E M E N T

This complaint is filed under Sec-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project **PASHMINA WATERFRONT-PHASE-1** praying for a direction to pay delay period interest and for other reliefs:



BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. The complainants have entered into an agreement of sale on 07.04.2018 for purchase of an apartment in the project known as **PASHMINA WATERFRONT-PHASE-1**, developed by the Respondents. The project completion date as per agreement was 30.06.2019. The complainants have paid an amount of Rs.84,71,860/- (Rupees Eighty Four Lakhs Seventy one Thousand eight hundred sixty only) to the respondent till the date of complaint. Since there was delay of more than three years in handing over the apartment, the complainants have filed the above complaint before the Authority praying for the following reliefs:

- a) Direct the Respondents to complete the construction and handover the apartment and
- b) Direct the Respondent to pay the delay period interest.

2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 30.06.2019. The promoter-respondent was required to complete the project and hand over possession of the apartment by 30.06.2019. In cases where the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee as per the agreement entered into between the parties, the Complainants have the right under the Act to file the complaint before the Authority, accordingly filed the above complaint and the same is admissible for relief in accordance with Section 18 of the Act.

3. After registration of the complaint, the Authority issued notice to both Complainants and the Respondent to appear before the Authority. In pursuance of the notice, the respondent has appeared before the Authority through its counsel and filed memo of appearance and has undertaken to file Vakalath and statement of objection in the next date of hearing and prayed for time. The complainants also appeared before the Authority and filed various documents in support of its contention like, MOC for delay period interest, agreement to sell, construction agreement, payment details, bank statement, copy of the receipts issued by the respondent etc., and the matter was adjourned for filing statement of objections etc., by the Respondent.

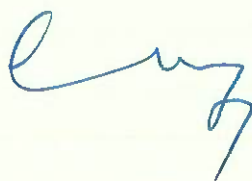
4. In the complaint, the complainants have submitted that the project is delayed by more than two years and the respondent issued an e-mail admitting their failure to complete the project and offered a paltry sum of Rs.2,02,246.77 as rebate in respect of unfinished works. The complainants submitted that the said amount offered by the respondent was rejected on the ground that the total work pending at that time included flooring, doors, painting, UPVC works, MEP works and etc., and the amount offered by the Respondent will not be sufficient to complete all the works mentioned above. In view of rejection of the offer made by the respondent by the Complainants, the respondent issued a demand notice alleging that the complainants were due a sum of Rs.31,30,526/- with Rs.8,77,025/- claiming as interest towards delay in payment. The complainants have replied to the demand made by the respondent informing the respondent that the complainants have paid all the dues well in time and before the due date. At no

point of time the respondent has informed the complainants about the balance payment due. It is only on rejection of the offer made by the respondent which is undervalued on account of pending works. The complainants have also informed the respondents that they are ready for registration and execution of the sale deed if the apartment is in liveable condition. The remaining instalments payable by the Complainants is pending from the bank loan disbursement and will be released by the bank only on the date of registration. The complainants have requested the respondent to share the plan of completing the pending works and registration. Instead of replying, the respondent sent a letter purporting to unilaterally terminate the agreements, alleging unpaid consideration. Since the Respondent has not communicated anything about registration of the apartment, the complainants were forced to issue Legal Notice to the respondent calling upon the respondent to issue revised formal demand letter, deliver possession of the apartment by executing the registration of the sale deed. The respondent received the legal notice and failed to reply to the legal notice intimating the complainants about registering the apartment. Hence, the complainants have approached this Hon'ble Authority for a direction to the respondent to complete the construction of the apartment in all respects and handover the same to the complainants. In the said legal notice, the complainants have also called upon the respondent for payment of delay period interest.

5. During the hearing on 26.7.2023, the complainants have also filed an application praying this Authority to restrain the promoter from taking any precipitative action in respect of the

apartment booked by the complainants during the pendency of the proceedings before the Authority by further directing the respondents to pay delay period interest and to register the apartment in favour of the complainants. On 26.7.2023, the advocate appearing for the Respondent filed Memo of appearance and has undertaken to file vakalath and prayed time for filing statement of objections. The Advocate who appeared for the respondent was directed to inform the Promoter not to initiate any coercive steps against the complainants till the disposal of the above complaint. The Respondent-Promoter is also directed to withdraw the notice / demand letter, if any, issued to the complainant regarding cancellation of the agreement and demand for paying additional money in respect of the agreement already entered with the Respondent. The hearing of the complaint was adjourned to 13.09.2023.

6. On 13.09.2023, both complainants and the Respondent were present. Complainants filed MOC for delay period interest with supporting documents and served the same on the respondent. The Respondent was given sufficient time to file statement of objections but not filed the statement of objections. On a perusal of the documents filed and oral submissions made before the Authority, it is evident that complainants have paid advance sale consideration amount and admittedly there is a delay in handing over the apartment as per the agreement. Hence the complainants are entitled to delay period interest u/s 18 of the Act. The Promoter-Respondent has not submitted any memo of calculation.

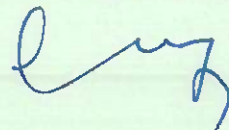


7. Since, the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee as per the agreement entered into between the parties, this complaint is admissible for relief in accordance with Section 18 of the Act and the respondent-promoter is liable to pay the delay period interest to the complainants as per the Act.

Hence, the Authority passes the following

ORDER

1. In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing CMP/221226/0010522 is hereby allowed.
2. Respondent-Promoter is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 30.06.2019 till the date of handing over possession along with occupancy certificate. The promoter shall pay the interest for the delay period as arrived at by the Complainants amounting to Rs.33,15,707/- (Rupees Thirty three lakhs fifteen thousand seven hundred seven only) within 60 days from the date of this order. The Promoter-Respondent is also liable to pay delay period interest every month for the subsequent period of delay and up to the date of completion and handing over of the apartment as per the agreement of sale. The Complainants are at liberty to initiate action for recovery in accordance with law, if the respondent fails to pay the amount as per the orders of this Authority.
3. Respondent-Promoter is directed to execute the Sale Deed in favour of the complainants after receiving the balance sale



consideration, if any, payable by the complainants with all amenities as per agreement along with occupancy certificate within one month from the date of receipt of this order.

4. The Respondent-Promoter is directed not to take any precipitative action in respect of the apartment booked by the complainants till the registration and execution of the sale deed in favour of the complainants.


(G.R. REDDY)
MEMBER
FIFTH ADDITIONAL BENCH
K-RERA

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