

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 FULL BENCH

PRESENT:

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

SMT. NEELMANI N RAJU, HON'BLE MEMBER

SHRI. GURIJALA RAVINDRANADHA REDDY, HON'BLE MEMBER

COMPLAINT NO. CMP/UR/220317/0009144

DATED THIS 27TH DAY OF DECEMBER, 2023

COMPLAINANT.....

MANCY THOMAS,
B118, Cumins Genesis,
Kalkere Main Road,
Horamavu,
Bengaluru - 560043.

(In person)

v/s

RESPONDENT.....

**JAIN HEIGHTS AND STRUCTURES PVT.
LTD.,**
'SOLUS', 11th Floor,
No.2, 1st Cross, JC Road,
Bengaluru - 560027.

(Rep. By B K Sanjay, Advocate)

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1. This complaint is filed under section 31 of the RERA Act against the project "Landstar Earth Shine" developed by "Jain Heights and Structures Pvt. Ltd.," situated in Aalambadi Village, Lakkur Hobli, Malur Taluk, Kolar District for the relief of refund with interest.
2. This is an unregistered project. This Authority has passed interim order on 12/12/2022 directing the respondent to register the project 'Landstar

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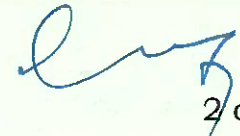
Earth Shine' under RERA. But, the respondent has failed to register the project.

Brief facts of the complaint is as under:-

3. The complainant has booked a plot bearing No.181 in the project Landstar Earth Shine of the respondent by entering into an agreement of sale dated 26/11/2013 and sale deed dated 30/04/2014. Respondent has assured to complete and provide all listed amenities in the agreement for sale before August 2014. In spite of repeated reminders, respondent has not completed the project even after 7.5 years of registration of sale deed. There was a civil dispute between landowner and developer in arbitration case A.C. No.72/2020, in which final award has been passed in favour of the landowner on 15/09/2021. Hence, this complaint.
4. During the proceedings, the complainant has submitted that he would like to amend the prayer from refund with interest to interest on delay period. But, he has not filed any such application to amend the prayer. Hence, the prayer of complainant is considered as refund with interest.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through his counsel by filing vakalat. However, he has not contested the matter by filing statement of objections, producing documents etc.,
6. In support of his claim, the complainant has produced in all 10 documents such as copy of agreement of sale dated 26/11/2013, sale deed dated 30/04/2014, E- Khata, site photographs, allotment letter with total consideration value, payment receipts, request letter to developer to pay refund, Minutes of meeting dated 23/02/2019, LICHL loan application from, loan sanctioned on 21/12/2014 and e-mail communications from the builder and letter from Jain Heights regarding civil dispute between landowner and developer.







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7. Respondent has not produced any documents in support of his defence.
8. Hearings were conducted on 19/08/2022, 16/09/2022, 10/10/2022, 17/10/2022, 18/11/2022, 09/12/2022, 09/01/2023, 05/09/2023, 19/09/2023 and finally on 10/10/2023.
9. Heard arguments.
10. **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?
11. **Our findings on the above points is as under:-**
 1. In the Partly Affirmative.
 2. As per final order for the following

REASONS

12. **Our finding on point No. 1:-** The grievance of the complainant is that, he has purchased a plot bearing No.181 in the project Landstar Earth Shine of the respondent by entering into an agreement to sell on 26/11/2013 and absolute sale deed on 30/04/2014 and paid Rs.10,52,820/- (Rupees Ten Lakh Fifty Two Thousand Eight Hundred and Twenty Only). The respondent was supposed to complete the project along with all the amenities as promised in the agreement of sale on or before June 2014. However, the respondent has not completed the project and not provided all the amenities as agreed.
13. In response to the notice, the respondent has appeared before this Authority through its counsel, but he has not contested the matter by filing statement of objections etc.,

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14. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 26/11/2013. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be 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 the said residential plot along with promised amenities to the complainant on or before June 2014. The respondent had not completed and handover the possession of the said plot to the complainant as agreed.
15. Herein this case, the respondent without completing the project and amenities has executed the sale deed in favour of the complainant on 30/04/2014 i.e., before the completion date mentioned in the agreement of sale dated 26/11/2013. Therefore, it is the responsibility of the complainant not to agree to get executed the sale deed for incomplete project and amenities. Hence, the complainant is not entitled for the relief of refund with interest.
16. Further, the respondent has failed to register the project under RERA even after passing of interim order dated 12/12/2022 by this Authority.
17. Having regard to all these aspects, it would be just and appropriate to direct the respondent to provide all the amenities as agreed in the agreement and to register the said project under RERA. Accordingly, the point raised above is answered in the partly affirmative.
18. **Our finding on point No.2:-** In view of the above discussion, the complaint deserves to be partly allowed. Hence, we proceed to pass the following.

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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/UR/220317/0009144 is hereby allowed as under:-

1. The respondent is hereby directed to complete and provide amenities as agreed in the agreement of sale dated 26/11/2013 to the complainant within 60 days from the date of this order.
2. Further, the respondent is directed to register the project 'Landstar Earth Shine' under section 3 of the Real Estate (Regulation and Development) Act, 2016 within 30 days from the date of this order
3. 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.


(G.R. REDDY)
Member
K-RERA


(NEELMANI N RAJU)
Member
K-RERA


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

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