

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/220228/0009058**

**DATED THIS 27<sup>TH</sup> DAY OF DECEMBER, 2023**

**COMPLAINANTS.....**

- 1. KRISHNA KUMAR MISHRA &**
- 2. DR. SUNITI MISHRA,**  
Flat No.#601, PB Block,  
Alpine Eco Apartments,  
Outer Ring Road, Doddanekundi,  
Bengaluru - 560037.

**(In person)**

**V/S**

**RESPONDENT.....**

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

**(Rep. By B K Sanjay, Advocate)**

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

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 interest on delay period.
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 complainants have booked a plot bearing No.147 in the project Landstar Earth Shine of the respondent by entering into an agreement of sale dated 22/04/2014 and sale deed dated 27/08/2014. 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. 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.,
5. In support of their claim, the complainants have produced in all 6 documents such as copy of payment receipts, allotment details, mail conversations between the complainant and respondent, agreement to sell dated 22/04/2014 and absolute sale deed dated 27/08/2014.
6. Respondent has not produced any documents in support of his defence.
7. 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.
8. Heard arguments.

Ad

HWS

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

1. Whether the complainants are entitled for the relief claimed?
2. What order?

10. **Our findings on the above points is as under:-**

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

**REASONS**

11. **Our finding on point No. 1:-** The grievance of the complainants is that, they have purchased a plot bearing No.147 in the project Landstar Earth Shine of the respondent by entering into an agreement to sell on 22/04/2014 and absolute sale deed on 27/08/2014 and paid Rs.16,40,972/- (Rupees Sixteen Lakh Forty Thousand Nine Hundred and Seventy Two Only). The respondent was supposed to complete the project along with all the amenities as promised in the agreement of sale on or before 30/06/2014. However, the respondent has not completed the project and not provided all the amenities as agreed.

12. 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.,

13. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 22/04/2014. 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 to the complainants on 30/06/2014. The respondent had not completed and handover the possession of the said plot to the





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complainants agreed. The respondent has executed the sale deed of the said residential plot on 27/08/2014 without completing amenities of the project. Therefore, the complainants are entitled for interest on delay period interest.

14. 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'.*

15. 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 project. Such right of an allottee is specifically made*

*Ab*

*Ab*

*Ab*

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*'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.

16. As per section 18 of RERA Act, the respondent is liable to pay interest on 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. Therefore, the complainants are entitled for interest on delay period.
17. The complainants vide their memo of calculation as on 06/10/2023 have claimed an amount of Rs.14,77,363/- (Rupees Fourteen Lakh Seventy seven Thousand Three Hundred and Sixty Three only) as interest on delay period calculated from 30/06/2014 to 06/10/2023. The respondent has not filed its memo of calculation despite several opportunities were given.
18. Herein this case, the respondent has executed the sale deed on 27/08/2014 in favour of the complainants without completion of amenities as agreed in the agreement of sale dated 27/04/2014. It is the responsibility of the complainants not to agree to get executed the sale deed for incomplete project and amenities. Therefore, the complainants

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are liable for interest on delay period from 30/06/2014 to 27/08/2014 amounting to Rs.20,764/- (Rupees Twenty Thousand Seven Hundred and Sixty Four).

19. Further, the respondent has failed to register the project under RERA even after passing of interim order dated 12/12/2022 by this Authority.
20. Having regard to all these aspects, it would be just and appropriate to direct the respondent to pay interest on delay period, provide all the amenities as agreed and to register the said project under RERA. Accordingly, the point raised above is answered in the Affirmative.
21. **Our finding on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following.

**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/220228/0009058 is hereby allowed as under:-

1. The respondent is hereby directed to pay Rs.20,764/- (Rupees Twenty Thousand Seven Hundred and Sixty Four) towards interest on delay period calculated at the rate of 9% from 30/06/2014 to 27/08/2014 to the complainants within 60 days from the date of this order.
2. Further, the respondent is directed to complete and provide amenities as agreed in the agreement of sale dated 22/04/2014 to the complainants within 60 days from the date of this order.







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3. 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
4. The complainants are 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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