

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 6

Dated 8th JANUARY, 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/221006/0010049

COMPLAINANTS.....

**R. SATHYANARAYANA &
S. SAVITHA
NO.694, 1ST MAIN
SHIVARATHRESHWARA NAGAR
BANNIMANTAP
MYSORE-570015.**

(IN PERSON)

Vs

RESPONDENTS.....

**1.M/S. SWISS COTTAGE INFRAWORLD
NO.77, HOSUR MAIN ROAD
NEAR AYYAPPA TEMPLE
MADIWALA
BANGALORE-560068.**

**2. DILIP B SALIAN
NO.77, GRAND KRISHNA ROOMS
HOSUR MAIN ROAD
AYYAPPA TEMPLE
MADIWALA
BANGALORE-570068.**

(IN PERSON)

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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**ZUARI PARK VIEW**" developed by **M/S. SWISS COTTAGE INFRAWORLD** situated at Zuari Park View, Kesare Village, Mysore Taluk, Mysore District for the relief of refund of interest charges.

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2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1268/378/PR/180519/001758 and is valid till 31/01/2020. The registration was extended by the Hon'ble Authority for a period of 12 months valid till 31/01/2021.

Brief facts of the complaint are as under:-

3. In June 2018, the complainants had booked a plot bearing No.175 in the joint name, in the project of the respondents and entered into an agreement for sale dated 12/9/2018. The complainants have paid Rs.10,53,000/- to the respondents on various dates. The respondents had assured in writing that the plot will be completed in all respects and offered for registration by December 2018. As per the agreement, the respondents were supposed to handover the plot with all amenities/facilities by 31/1/2020. The project work was delayed for the reasons best known to the respondents and kept on dragging till February 2021. The registration process information was conveyed only on 17/2/2021 and the details were furnished on 23/3/2021. The complainants had paid balance amount of Rs.5,06,336/- through cheque. The draft sale deed sent by the respondents was returned duly corrected on 17/3/2021.
4. The complainants had received a communication from the respondents on 15/4/2021 demanding payment of Rs.62,253/- towards interest charges and registration process was kept pending. The request for waiver of this interest was turned down and the amount was collected forcibly and the registration of sale deed was executed on 26/8/2021. The respondents have also collected Rs.18,000/- as incidental charges, for which no receipt was given. There was delay of 14 months in execution of the project, hence their claim for interest charges is not justified, as the amount of Rs.15,59,336/- was lying with them from

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9/4/2021, which is also eligible for payment of delay interest. The delay has also resulted in excess charges of stamp duty and registration compared to the amount payable in 2020.

5. The complainants submit that collection of Rs.63,000/- by the respondents is illegal. Thus, the complainants have approached this Hon'ble Authority for refund of excess amount of Rs.63,000/- with interest, compensation of Rs.63,000/- for the inconvenience, stress and mental agony. Hence, this complaint.
6. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through its counsel/representative, and have filed their statement of objections as under:-
7. The respondents submit that the entire allegations made by the complainants in their complaint against them is false. The complainants entered into an agreement of sale dated 12/9/2018 for purchase of a plot bearing No.175 in the project for a total sale consideration of Rs.15,30,000/- as per terms and conditions. The respondents vide their email dated 19/2/2019 requested the complainants to make payment of 3rd and 4th installment according to the payment schedule, but the complainants had failed to make payments. As such, the respondents have charged Rs.63,000/- as delay interest.
8. The complainants were communicated to make a payment of Rs.8,41,027/- on completion of plot demarcation and completion of road work well within the stipulated period. Whereas the complainants had made payment of Rs.3,00,000/- on 22/3/2019 and Rs.1,00,000/- on 30/6/2019 and paid the balance amount after the lapse of two years i.e.

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- on 20/4/2021. The respondents have enclosed a copy of the accounts in respect of Plot No.175. There is also an email communication dated 13/8/2021 from the complainants in which they have admitted that they have defaulted in making payment on time.
9. The respondents submit that the complainants have alleged that the respondents had promised to complete the project within December 2018 is baseless and contrary to terms agreed under agreement of sale and contends that the project completion date of 31/1/2021. The respondents submit that they had applied for release of plots from the competent authority on 11/03/2019 itself, but due to Covid-19 pandemic, there was a delay in getting the release of the plots. The competent authority issued the release order on 15/01/2021 which was beyond the control of the respondents.
10. The respondents contend that they had intimated them to come forward for registration well within the reasonable time by making all remaining payments, which they failed to do so. The respondents deny that they have collected Rs.63,000/- forcibly. In fact, the complainants have made this payment on their own consent. They also submit that they have waived off an amount of Rs.46,199/- on the request of the complainants.
11. The respondents submit that the final layout plan was approved by BMICAPA on 15/01/2021 and the sale deed was executed in favour of the complainants on 26/8/2021 after all the dues were cleared. Now after the transaction is completed, the complainants with a view to harass the respondents have filed this complaint without any grounds. In view of the above, the respondents contend that they are not liable to

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pay any delay period interest to the complainants and pray the Hon'ble Authority to dismiss the complaint.

12. The complainants in their rejoinder have submitted that the respondents have shifted the blame for delay from Covid-19 to delay in issuance of release order by the competent authority and that the photographs enclosed by them do not show completion of work. The respondents email dated 17/10/2020 regarding drainage work clearly show that the work was not complete even after 9 months of the date of completion of the project. The complainants submit that Covid-19 prevented them to make last payment of Rs.5,06,336/- as they were not able to move out of the house because of lockdown and other factors.
13. The respondents claim that the complainants have paid interest charges voluntarily is false as the amount was paid under protest and that their request for waiver of interest was turned down and registration was not done until the payment was made.
14. After the registration of the sale deed, the complainants have approached RERA for justice and not with any malafide intention. The respondents have attributed the delay on account of Covid-19. The complainants have incurred loss and had to pay extra registration charges over guidance value. The complainants pray that if the Hon'ble Authority feels that the payment of interest for delayed payments is justified, the Hon'ble Authority may please direct the respondents to make payment for delay period as calculated vide memo of calculation as on 15/3/2023.
15. In support of their defence, the respondents have filed copies of documents such as, email correspondence with the complainants,



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progressive photographs of the project, application for allotment, agreement for sale and sale deed dated 26/8/2021. The respondents have not filed their memo of calculation as they contend that they are not liable to pay delay compensation to the complainants as there was no delay from them and the delay was due to delay in the release order by the competent authority.

16. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale and Sale Deed dated 26/8/2021. The complainants prayer for refund of Rs.63,000/- collected by the respondent as interest for delay in making scheduled payments, whereas the complainants are claiming delay period interest vide their memo of calculation as on 15/3/2023.

17. This case was heard on 21/12/2023, 7/2/2023, 16/3/2023, 7/6/2023, 18/7/2023, 12/9/2023, 28/11/2023 and 14/12/2023. Heard arguments of both sides.

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

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

19. **My answer to the above points are as under:-**

1. In the Negative.
2. As per final order for the following -

REASONS

20. **My answer to Point No.1:-** It is undisputed that there was a delay in handing over the plot to the complainants by the respondents due to Covid-19 pandemic, lockdowns, non-availability of manpower and due to



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delay in the issue of the release order by the competent authority and it is obvious that the complainants were supposed to get the plot delivered by 31/01/2020.

21. The Hon'ble Authority has perused the written submission/statement of objections filed by both the respondents and the complainants. 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, and hence, it is necessary that it shall be free from any ambiguity and vagueness. Here in this case, the Authority has noticed that the respondents have applied for release of sites from the competent authority on 11/3/2019 itself, whereas the competent authority has issued the release order on 15/1/2021. This Authority has also observed that the complainants vide their email dated 13/8/2021 have admitted that they have delayed in making scheduled payments to the respondents. The respondents have also waived off an amount of Rs.46,199/- on the request of the complainants and have collected Rs.63,000/- as interest charges. The respondents have intimated the complainants well within the reasonable time to come forward for registration by making all the remaining payments, but the complainants have failed to come forward for the registration in time and finally got the sale deed executed on 26/8/2021 in their favour.

22. These being the facts, the Hon'ble Authority has rejected the plea of the complainants for refund of Rs.63,000/- collected by the respondents as interest on delay in making the scheduled payments and dismiss the complaint.

23. Accordingly, the point raised above is answered in the Negative.

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24. **My answer to Point No. 2:-** In view of the above discussion this complaint deserves to be dismissed. Hence, I 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.00434/2023** is hereby dismissed.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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