

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 12TH JANUARY 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/201014/0006850

COMPLAINANTS.....

**HEMANT KUMAR RAJPUT &
ESHA GUHA
T0128A
PASHMINA WATERFRONT
BHATTARAHALLI
K.R. PURAM
BANGALORE-560049.**

**(BY MR.PRASAD K.R. RAO &
MRS. INDIRA PRIYADARSHINI,
ADVOCATES)**

V/S

RESPONDENT.....

**LILY REALTY PVT LTD
No.19/1, DODDAMANE BUILDING
2ND FLOOR, VITTAL MALLYA ROAD
BANGALORE-560001.**

**(BY MR.ARVIND RAO, ADVOCATE
& DUA ASSOCIATES)**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**Pashmina Waterfront Phase-I**" developed by "**LILY REALTY PVT LTD**" situated at Katha No.149, Ward No.52, Bhattarahalli Village, Bidarahalli Hobli, Old Madras Road, Bengaluru East, Bengaluru Urban for the relief of interest on delay period.

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2. This project has been registered under RERA bearing Registration No.PRM/KA/RERA/1251/446/PR/171014/000345 valid till 31/12/2018.

Brief facts of the complaint are as under:-

3. The complainants had booked a flat bearing No.T0128A, 28th Floor, Tower-T01, Wing-A in the project of the respondent and entered into sale agreement and construction agreement dated 9/11/2018 and have paid Rs.79,06,900/- (Rupees Seventy Nine Lakh Six Thousand Nine Hundred only) to the respondent on various dates. The complainants have also taken housing loan from Axis Bank. The respondent was supposed to handover the flat to the complainants by 31/12/2018 with a grace period of six months i.e. latest by 30/6/2019.
4. The complainants submit that after continuous follow up with the respondent, they got the sale deed executed in their favour on 20/8/2020 after paying the balance amount of Rs.9,57,095/- to the respondent, though the flat was not completed. The complainants submit that when they requested the respondent to pay interest for the delay period, the respondent refused to pay any interest to them. Thus, the complainants have approached this Hon'ble Authority and pray for directions to the respondent to pay interest for the delay period; to desist from collecting maintenance charges though one year maintenance charges has already been paid; to stop restricting usage of amenities such as club house, spa, etc.; to provide lifts, to maintain car parking area ensuring that the water is not clogged; full control of property to be given to the Association. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and

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have contested the matter by filing statement of objections on its behalf as under:

6. The respondent denies each and every allegations made against them by the complainants are not maintainable in the eyes of law. The respondent submits that the complainants have been allotted a flat in the project and have executed sale deed in favour of the complainants on 20/8/2020 and that they are in peaceful possession of the flat. The respondent submits that they have obtained the occupancy certificate from the competent authority on 29/6/2019 which clearly shows that the project is completed with all amenities. The respondent contends that the complaint has been filed after the occupancy certificate has been obtained. The respondent contends that the Hon'ble Authority does not assume jurisdiction to adjudicate the complaint from the date of the execution of the sale deed.
7. The respondent contends that the complainants have failed to adhere the provisions of the RERA Act by not taking possession of the flat within two months from the date of obtaining occupancy certificate. The construction of the project has been completed as per agreed timelines. There was delay by BBMP in granting occupancy certificate due to the directions issued by the Hon'ble National Green Tribunal vide its Order dated 7/5/2015 not to sanction any construction projects. On 4/5/2016, the National Green Tribunal constituted a committee and issued certain directions to the Planning Authorities and also to the State with regard to the buffer zone to be maintained from the edges of Lakes and Rajakaluves. In view of this, the BBMP had suspended the issuance of occupancy certificate. After approaching the Hon'ble High Court of Karnataka seeking writ of mandamus against BBMP authorities for

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issuance of occupancy certificate on account of the NGT Orders, the respondent obtained the occupancy certificate on 29/6/2019.

8. The respondent contends that the relief sought by the complainants is formation of association and usage of amenities, which falls under the provisions of the Karnataka Apartment Ownership Act, 1972 and hence, no relief can be granted under the provisions of RERA Act, 2016.
9. The respondent contends that the flat was supposed to be handed over by June 2019, the Occupancy Certificate was obtained on 29/6/2019 and despite repeated requests and reminders the complainants have failed to come forward to execute the sale deed. The respondent submits that with the spread of Covid-19 pandemic, the usage of common amenities was restricted. It was also not proper on the part of the respondent to allow the residents to use common facilities like swimming pool, gym, spa, etc., without prior permission of the concerned authorities.
10. The complainants have defaulted in paying maintenance fee. By virtue of this complaint they are trying to evade the payment of maintenance amount, which is illegal and prays the Hon'ble Authority to dismiss the complaint.
11. In support of their claim, the complainants have produced documents such as copies of Sale Agreement, Construction Agreement, housing loan documents, payment receipts, sale deed, email correspondence with the respondent and memo of calculation for delay period interest as on 11/01/2024.

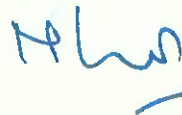
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12. In support of their defence, the respondent has produced documents such as copies of Sale Agreement, Construction Agreement, Sale Deed. The respondent has not filed its memo of calculation.
13. This case was heard on 10/8/2022, 22/9/2022, 13/10/2022, 02/11/2022, 11/01/2023, 15/02/2023, 21/3/2023, 7/6/2023, 18/7/2023, 12/9/2023, 2/11/2023 and 10/1/2024. Heard arguments of both sides.
14. **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?
15. **My answer to the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following -

REASONS

16. **My answer to Point No.1:-** From the materials placed on record, it is undisputed that in spite of entering into an agreement for sale and construction agreement and accepting substantial sale consideration amount from the complainants, the respondent has failed to handover the possession of the flat till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement, which certainly entitles the complainants herein for interest on delay period.
17. The Hon'ble Authority has perused the statement of objections submitted by the respondent. The Hon'ble Authority has not accepted the



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contentions raised by the respondent in their objections as they have not substantiated with documentary evidence.

18. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s 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 month's delay in handing over possession at such rates as may be

prescribed."

19. As per section 18(1) of RERA Act, in case the allottee wishes to withdraw from the project, the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

20. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the

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promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

21. The complainants vide their memo of calculation as on 31/7/2022 have claimed an amount of Rs.35,47,993/- (Rupees Thirty Five Lakh Forty Seven Thousand Nine Hundred and Ninety Three only) as interest on delay period calculated from 31/12/2018 till 31/7/2022, whereas the complainants are entitled for interest on delay period from 30/6/2019 till 20/8/2020, the date on which the sale deed was executed. Despite several opportunities were given, the respondent has failed to submit their memo of calculation.
22. The Hon'ble Authority has not accepted the memo of calculation submitted by the complainants as on 31/7/2022 and have considered the interest on delay period from 30/6/2019 till 20/8/2020, the date on which the sale deed was executed in their favour.
23. Therefore, it is incumbent upon the respondent to pay interest for the delay period which is determined as under:

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION AS PER AGREEMENT	79,06,900	30-06-2019
2	SUBSEQUENT PAYMENT 1	9,57,095	17-08-2020
3	TOTAL PRINCIPLE AMOUNT	88,63,995	
4	TOTAL DELAYED INTEREST as on 20/08/2020	9,11,653	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 79,06,900						
1	30-06-2019	30-07-2019	30	8.65	10.65 as on 10-06-2019	69,212



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2	30-07-2019	30-08-2019	31	8.6	10.6 as on 10-07-2019	71,183
3	30-08-2019	30-09-2019	31	8.45	10.45 as on 10-08-2019	70,176
4	30-09-2019	30-10-2019	30	8.35	10.35 as on 10-09-2019	67,262
5	30-10-2019	30-11-2019	31	8.25	10.25 as on 10-10-2019	68,833
6	30-11-2019	30-12-2019	30	8.2	10.2 as on 10-11-2019	66,287
7	30-12-2019	30-01-2020	31	8.2	10.2 as on 10-12-2019	68,497
8	30-01-2020	29-02-2020	30	8.2	10.2 as on 10-01-2020	66,287
9	29-02-2020	29-03-2020	29	8.15	10.15 as on 10-02-2020	63,764
10	29-03-2020	29-04-2020	31	8.05	10.05 as on 10-03-2020	67,490
11	29-04-2020	29-05-2020	30	7.7	9.7 as on 10-04-2020	63,038
12	29-05-2020	29-06-2020	31	7.55	9.55 as on 10-05-2020	64,132
13	29-06-2020	29-07-2020	30	7.3	9.3 as on 10-06-2020	60,439
14	29-07-2020	20-08-2020	22	7.3	9.3 as on 10-07-2020	44,321
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 9,57,095						
1	17-08-2020	20-08-2020	3	7.3	9.3 as on 10-08-2020	732
					TOTAL DELAYED INTEREST as on 20/08/2020	9,11,653

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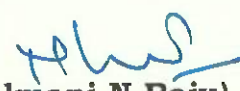
24. Accordingly the point raised above is answered in the Affirmative.
25. **My answer to point No.2:-** In view of the above discussion, I proceed to pass the following -

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/20104/0006850** is hereby allowed.

Respondent is directed to pay a sum of **Rs.9,11,653/- (Rupees Nine Lakh Eleven Thousand Six Hundred and Fifty Three only)** towards interest on delay period to the complainants within 60 days from the date of this order, calculated at 9% from 30/06/2019 to 20/8/2020, the date on which the sale deed was executed.

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 order of this Authority.


(Neelmani N Raju)
Member, KRERA

24. According to the public notice above is attached in the affirmative.
25. My answer to point No. 2. In view of the above discussion, I proceed to
pass the following:

ORDER

In exercise of the power conferred upon Section 31 of the
Federal Reserve Act, 1914, the
Federal Reserve Board of Governors is hereby
ordered to pay a sum of \$2,100,000.00
to the order of the Federal Reserve Bank of
New York, New York, on or before the date of this order.
The conditions are that the amount shall be used for the
purpose of making advances to the Federal Reserve Bank of
New York, New York, in accordance with law if the bank fails to pay the
amount as per the order of this Board.

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Member, FEDERAL RESERVE BOARD