

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

**Karnataka Real Estate Regulatory Authority Bangalore**

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

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**BEFORE ADJUDICATING OFFICER**

**PRESIDED BY SRI I.F. BIDARI**

**DATED 6<sup>th</sup> APRIL 2021**

<b>Complaint No.</b>	<b>CMP/200103/0005128</b>
<b>Complainant:</b>	Sri Chaitra Stephan Gudino, No.1/1, Gurumurthy Street, Halasur, Bengaluru – 560 008. (In Person)
<b>Respondent:</b>	Aswani Properties, No.50/7, 2 <sup>nd</sup> Floor, 16 <sup>th</sup> Main, 39 <sup>th</sup> Cross, Jayanagar, 4 <sup>th</sup> T Block, Bengaluru – 560041.

**J U D G M E N T**

Smt.Chaitra Stephan Gudino (here-in-after referred as complainant) has filed this complaint bearing no. CMP/200103/0005128, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent M/s Aswani Properties (here-in-after referred as respondent) seeking relief of return of amount paid along with the compensation in the form of interest for the delayed period.

2. The brief facts of the case are as under:

The respondent M/s Aswani Properties is developing and constructing multi residential apartment complex namely



"Aswani Aaesha – A Wing" (here-in-after referred as project) in a converted immovable lands described as "Schedule – 'A", in sale agreement dated:03-01-2014 @ Doddanagamangala village Bengaluru South Taluk. The complainant has entered into a sale agreement dated:03-01-2014 to purchase undivided right, title and interest in "Schedule – 'A" property to the extent of 315 sq.ft described in 'Schedule – 'B", to got construct a flat bearing No.A/3/002, in 'A' Wing on ground floor, having a super built up area of 775 sq.ft with a car parking area, for an amount described in the agreement as "Schedule – 'C" property, subject to terms and conditions mentioned in the agreement (here-in-after referred as sale agreement) with the respondent. The complainant alleged in the complaint that she booked the above flat in January 2013 with the commitment from builder/respondent to complete the construction and handover it within 30 months including 6 months grace period on or before July 2015. The complainant has already paid 85% of the total amount as agreed. The respondent till date has not handed over possession of the flat and there is no firm commitment from the builder as to the date of handing over the possession of the flat. The respondent did give many dates to complete and handover the flat but none of them were honoured. Therefore the complainant filed this complaint for the relief sought.

3. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent remained absent in-spite service of the notice.

4. I have heard the complainant who appeared in person, through skype. Perused the records and the materials placed on record.
5. The points that would arise for consideration are:
  - (1) Whether the complainant is entitled for refund of amount with compensation? If so, to what extent?
  - (2) What order?
6. My findings on the above points are as under:
  - Point No.1: Yes, to the extent as shown in the final order.
  - Point No.2: As per final order, for following:-

### **REASONS**

7. Point No.1: The materials on records disclose that the complainant has entered into an agreement of sale dated:03-01-2014 to purchase undivided right, title and interest in "Schedule - 'A' immovable property, situated in Doddanagamangala Village of Bengaluru South Taluk, to the extent of 315 sq.ft described in "Schedule - 'B", to got construct a flat bearing No.A/3/002, in 'A' Wing on ground floor, having a super built up area of 775 sq.ft with a car parking area, for an amount described in the agreement as "Schedule - 'C' property, subject to terms and conditions mentioned in the agreement with the respondent. The complainant during argument drawn the attention of the court to the copies of e-mail communications, payment



details and copies of receipts for having paid part consideration amount to the respondent on various dates mentioned there-in, in connection with aforesaid flat. These documents evidences that the complainant has already paid considerable consideration amount to the respondent. Admittedly the respondent remained absent in-spite of service of notice. The complainant is contending that respondent ought to have been handed over possession of the flat within 30 months from the date of agreement including 6 months grace period and it was on or before July 2015. Under the circumstances it is made clear that there is delay in handing over possession of the flat. These facts remained unchallenged. The complainant has produced the above discussed documents in support of her case. The version of the complainant is remained unchallenged under the circumstances I am constrained to believe the version of the complainant as same is supported by documentary evidence. The materials on records prove that there is a delay in handing over possession of the flat to the complainant more than 4 years. Admittedly till this date the respondent has not handed over possession of the flat to the complainant and the documents and materials on record support the version of the complainant under the circumstance there is no hesitation to hold that complainant is entitled for refund of the amounts paid to the respondent towards consideration of the above flat with interest by way of compensation. Thus I hold Point No.1 accordingly for consideration.



8. As per the provisions contemplated U/sec. 71(2) RERA Act, the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 03-01-2020, thereafter notices issued directing the parties to appear through Skype for hearing as because of COVID-19 pandemic the personal hearing before the Adjudicating Officer not yet commenced. The parties given the reasonable opportunities to contest the case, but in-spite of that respondent remained absent, as such; the judgment is being passed on merits, with some delay.
9. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

**ORDER**

- (i) The complaint filed by the complainant bearing No.: CMP/200103/0005128 is allowed.
- (ii) The respondent is hereby directed to return / refund the respective amounts, from the respective dates of receipt of such amounts to the complainant and along with interest there-on by the way of compensation @ 9% per annum, till 30-04-2017 and from 01-05-2017 @ 2% above the MCLR of SBI till payment of the entire amount.





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- (iii) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (iv) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with the same to enforce the order
- (v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 06.04.2021)

  
**I.F. BIDARI**

Adjudicating Officer-1