

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-4**

**Dated 28th September 2022**

**Present**

**Shri. H.C. Kishore Chandra, Chairman**

Complaint No.	<b>CMP/211201/0008654</b>
Complainants	<b>Agnel Basil Pereira &amp; Wilma Lidwin Pereira</b> Flat 301, Sri Sri Paradise 3 <sup>rd</sup> Main New Thippasandra Bengaluru-560 075  <b>(In person)</b>
Respondent	<b>1.Casa Grande Garden City Builders Private Limited</b> No: 34/ 1, 4 <sup>th</sup> Floor Meanee Avenue Road Ulsoor Road Near Ulsoor Lake Bengaluru-560 042. <b>(represented by Dr.M.Sunil Sastry &amp; M/s Sastry &amp; Co, Advocates)</b>  <b>2. Axix Bank Limited</b>

**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA Act, against the project 'Casagrand and Royce' developed by "Casa Grande Garden City Builders Private Limited" in the limits of Sy.No. 92/2, 92/3, Hoodi Village, K.R. Puram, Bengaluru East, Bangalore Urban for the relief of refund with interest.

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2. This project has been registered under RERA bearing registration no. PRM/KA/RERA/1251/446/PR/ 171127/002464.

### 3. The brief facts of the complaint is as under:-

(a)The complainants submits that they have jointly booked a flat D-406 on 15.1.2018 in the project “**Casa Grand Royce**” of the respondent. The complainants have entered into an agreement of sale dated 23.02.2018 with the respondent in the project to purchase the apartment No.D-406 in Block D situated at Hoodi Village, Krishnarajapuram Hobli, Bangalore East Taluk for a sale consideration of Rs.1,03,00,500/- plus applicable taxes plus corpus, totally Rs.1,15,86,560/- subject to terms and conditions enumerated in the agreement of sale.

(b)The complainant alleged in the complaint that the respondent obligated to hand over the possession of the apartment on or before 20/12/2019 but till date it was not delivered. The complainants have paid totally a sum of Rs.1,03,72,882/- in instalment basis to purchase aforesaid apartment.

(c) It is contends that the respondent did not pay any compensation or interest for the delay in completion of the project, suffered excessive interest costs from Axis Bank due to the developer not fulfilling its promise of bearing subvention interest(interest during construction period which was delayed wrongly by the developer) as promised, several structural defects, Association forcibly added buyers as member and demanding monthly maintenance charges and the developer did not hand over the copy of the sale agreement and tripartite agreement after their signatures. Therefore, the complainants have filed this complaint seeking relief of refund of amount with interest. Hence the complaint.

4. After registration of the complaint, in pursuance to service of notice, the respondent-1 appeared before this Authority through its counsel Sri. M. Sunil Sastry and filed written submissions as under:

*Handwritten signature*

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5. The respondent denies the entire allegations made against them by the complainant as false.

6. It is submitted that respondent-1 has delivered what was promised to the complainants in terms of agreement of sale and that it was premature for the complainants to come to the conclusion that the Respondent-1 has violated the RERA Act, 2016.

7. It is further submitted that the respondent no.1 has facilitated the purchase of flat at the hands of the respondent no.2 by only introducing the respondent-2 as approved bankers but for that there is no privity between the respondent and the respondent no.2 for persons interested to purchase the flat to avail pre-approved loan.

8. The respondent submits that the interest subvention scheme was only for 18 months and not till the completion of the project and that the respondents has not charged any interest from the complainants under interest subvention scheme as alleged by them.

9. It contends that the respondent-1 has constructed the multi-storeyed flat in accordance with the sanction plan approved by the competent statutory authority. It is submitted that the competent statutory authority after due inspection has given occupancy certificate on 25.02.2020.

10. It is further submitted that as per the agreement of sale, the respondent shall endeavour to hand over possession on or before 20/12/2019 but subject to force majeure circumstances and reasons beyond control of the respondent as per clause 7.5 of the agreement of sale dated 23.02.2018.

11. It is submitted that the construction of the flat in so far as the complainant was concerned went on as scheduled, but because of force majeure reasons such as demonetization, shortage of supply of building materials, sand, lorry owners strike and act of god, the he could not complete the project as agreed.

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The respondent further claimed that in view of the above averments he cannot be made amiable for delay in relation to the acts coming under the purview vis- Majeure and Force- Majeure. Hence, the respondent has prayed to dismiss the complaint filed by the complainants with a direction to the complainants to accept the possession of the flat allotted to them by making balance of payments.

12. In support of their claim, the complainants have produced documents such as details Bank of transactions of payment made to the promoter (b) Allotment letter dated 16<sup>th</sup> January 2018 from Casa Grande Garden City Builders Private Limited.

13. In support of defence, the respondent-1 has produced documents such as (a) Copy of the agreement of sale deed dated 23.2.2018 (c) copy of Occupancy certificate (c) copies of emails (d) copy of the completion certificate (e) copy of the registration certificate (f) copy of the extension certificated issued by RERA(g) Copy of form-OC/sketch plan issued by the concerned authority, (h) copy of quarterly filed by the respondent (i) copy of the Form-4 issued by the Chartered Accountant and (j) copy of the architect certificate.

14. 16. Heard both the parties.

15. On the above averments, the following points would arise for my consideration.

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

17. My findings on the above points are as under:

1. In the partly affirmative  
2. As per final order for the following findings.

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18. **My findings on point no.1:**

(a) It may be noted that the complainant has filed complaint No. **8654** before RERA on 01/12/2021. The respondent has obtained occupancy certificate on 25.02.2020. The complainants have violated section 19(10) of RERA Act which clearly mandates the allottees to take the possession of the apartment within 2 months from the date of obtaining the occupancy certificate

(b) It is pertinent to note that as per the agreement of sale the date of delivery to the complainant was to be on 20.12.2019 and the occupancy certificate was received on 25.02.2020. Hence, there is a delay of only two months in handing over the possession as per section 18 of the Act.

(c) It is apparent from the records that, the promoter has communicated the complainant from time to time through e-mail dated 18<sup>th</sup> October 2019, 27/8/2020, 07/09/2020 with regard to status of completion the flat which is ready of occupation with all amenities. It is evident that, despite communication made by the respondent to the complainant to get registered the flat D-406 in question by making balance payment of Rs.6,47,516/- to the respondent, the complainant neither came forward nor shown any interest towards registration of the flat in her favour.

(d) The Authority has taken note of the judgement passed by the Hon'ble Supreme Court in Civil Appeal no.5785/2019 between IREO Grace Realtech Private Limited V/s Abhishekh Khanna, wherein it is held that:

*"Allottees are obliged to take possession of the apartments, since the construction was completed, and possession offered after the issuance of Occupancy*

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*Certificate. The Developer is however obliged to pay delay compensation for the period of delay which has occurred from the date of agreed date till the date of offer of possession was made to the allottees”.*

(e) The decision of Hon'ble Supreme Court applied in this case where there is only 2 months delay. It may also be noted herein that COVID 19, a global pandemic erupted during March 2020 and COVID 19 was declared as pandemic and seconded by Union of India and various other statutory authorities including in State of Karnataka, National, State and local area, lockdown was declared from time to time affecting the mobility of raw materials and goods required for the purpose of constructions. It may be noted here that the timelines cannot be pressed into service by the complainant in view of section 56 of the Indian Contract Act, 1872.

(f) It is further noted here that the complainant claimed relief of interest on delay period. From the materials available on record, it is apparent that the respondent is endeavour to hand over the possession of the flat to the complainant by 29/12/2019. The respondent has obtained occupancy certificate from the competent authority on 25.02.2020. The complainant has filed this complaint in CMP No. 8654 on 01/12/2021 after more than one year after completion of the project. Therefore, I am of the opinion that there seems to be no undue delay on the part of the respondent in handing over the possession of the flat to the complainant except there is a delay of just mere 2 months reasons for which the respondent has explained.

(g) Having regard to all the aspects, I conclude that the complaint is entitled for interest on delay for a period of two months. Accordingly, the point above is answered in partly affirmative.

**19. My findings on point no.2:** In view of the above discussion, I proceed to pass the following order:

6/12/21


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**ORDER**

1. In exercise of the powers conferred under section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/211201/0008654** filed under section 31 of the Act is hereby partly allowed.
2. The respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 29/12/2019 till the date of occupancy certificate dated 25.02.2020.
3. The respondent shall register the property in favour of the complainant after receiving any amount due from them as per the agreement of sale deducting the delay period interest.
4. No order as to costs.

  
(H.C. Kishore Chandra) 28/9/22  
Chairman  
K-RERA



# STATE OF NEW YORK

IN SENATE

JANUARY 1, 1900

## REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE

ON APRIL 1, 1899

RELATIVE TO THE

LANDS BELONGING TO THE STATE

AND TO THE

LANDS BELONGING TO THE PEOPLE

ALBANY:

THE UNIVERSITY OF THE STATE OF NEW YORK PRESS

1900

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1899