

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 17th October 2022

Present

Shri. H.C. Kishore Chandra, Chairman

Complaint No.1	CMP/200707/0004260
Complainant	Pavan Jangid Tarachand Jangid Flat No- B213, Dsr White Waters (Phase 1) Carmelaram Road, Gunjur Palya Bengaluru-560087 (represented by Mr. Chethan S Advocate)
Complaint No.2	CMP/200115/0005226
Complainant	Sujith Kumar Subhina Bhaskar No: 3, CM residency, 2 nd Cross, 3 rd Main Malleshapaya, new thippasandra Bengaluru-560 075 (represented by K.R. Manjunatha & S.K. Prabhakara Shetty, Advocates)
Respondent	CMRS Infrastructure Private Limited #589, 3 rd Floor, Above SBI AECS Layout Main Road Brookfield Bengalure-560 037. (Represented by Mr. Dhirendra N. Katti, advocate)

4/10/22

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JUDGEMENT

1. These two complaints are filed under section 31 of the RERA Act, against the project '**MULBERRY MIST**' developed by '**CMRS Infrastructure Private Limited**' situated at Varthur Village, Varthur Hobli, Bengaluru East Tauk, Bangalore Urban for the relief of possession with delay period interest.
2. This project has been registered under RERA bearing registration no. PRM/KA/RERA/1251/446/PR/ 171127/002464.
3. These two complaints are arising out of the same project and hence they are taken up together for disposal in order to avoid repetition and for the sake of convenience.
4. **The brief facts of the complaints are as under:-** The complainants Mr. Pavan Jangid and Jaya Jingad have booked a flat No. B-314 in the project "Mulberry Mist" presently known as "Grandeur Park" from CMRS Infrastructure Private Limited presently known as CVG Infrastructure Private Limited on 05/02/2017 and entered into construction agreement dated 27/03/2017 and agreement of sale dated 27/03/2017. The total sale consideration for purchase of the apartment in question has been fixed for Rs.45,03,300/-. The complainants took housing loan from LIC Housing Finance Limited of Rs.36,00,000/- and entered into tripartite agreement dated 25/05/2017. The respondent was obligated to hand over the possession of the flat within 18 months plus 6 months grace period. As was promised, the respondent is yet to hand over the possession of the flat. The complainant sought relief of possession of flat with interest for delay period. Hence, this complaint.

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In support of his claim, the complainant has produced documents such as (a) construction agreement dated 27/03/2017 (b) Agreement of sale dated 27/03/2017 (c) Tripartite agreement dated 25/05/2017(d) copy of Mulberry Mist booking form dated 05/02/2017.

5. CMP/200115/0005226: The complainants Mr. Sunith Kumar Achutan and Mrs. Subhina Bhaskar have booked a flat No.C-405, in the project "**Mulberry Mist**" situated at Varthur Village, Varthur Hobli, Bangalore East Taluk on 10.07.2017 of CMR Infrastructures Private Limited. The total sale consideration of the flat was Rs.40,35,000/-. They entered into sale agreement on 10.07.2017. The respondent agreed to deliver the possession of the said apartment with basic amenities by April 2018 and moreover respondent agreed to pay a liquidated damage of Rs.12,000 per month for delay. The complainant sought relief of possession of agreed flat with all amenities by February 2020 and to pay liquidated damages according to guidelines of RERA from May 2018.

In support of his claim, the complainant has produced documents such as (a) Agreement of sale (b) construction agreement (c) copy of receipts given by the respondent for payment (d) copy of compensation (e) copy of gmail conversation between complainant and respondent (g) copy of payments made.

6. After registration of the complaint, in pursuance to service of notice, the respondent for complainant in **CMP/200115/0005226** have appeared before this Authority through its counsels Sri. K.R.

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Manjunatha & S.K. Prabhakara but has not contested the matter by filing objections and producing documents on its behalf. The respondent for complainant in **CMP/200707/0004260** counsel Mr. Dhirendra N. Katti has appeared before the Authority and filed written objections as under:

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

8. It is submitted by the respondent that the complaint is premature since the Hon'ble Authority has granted extension of time vide certificate of extension till 30.09.2021 and the complainants are very much aware of the extension of time granted by the Hon'ble Authority. As agreed under the construction agreement dated 27.03.2017, wherein he had agreed to pay 95% of the sale consideration. The total sale consideration for purchase of the said apartment has been fixed for Rs.45,03,000/- and hence the complainants supposed to pay Rs.42,77,85/- i.e. 95% of the total sale consideration.

9. It is contended that the complainant has entered into a sale agreement to purchase the flat in the project "**Mulberry Mist**". As per the agreed terms, the complainants have failed to pay 95% of the sale total sale consideration i.e. Rs.42,77,850/- out of Rs.45,03,000/- and have paid only Rs.31,50,300 and hence the complainants have failed to pay the balance sale consideration in terms of payment schedule.

10. It is pertinent to note that in view of the extension of the time for completion of the project, the possession of the apartment(s) in question

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is required to be given on or before 30.09.2021. However, in view of the nation-wide/state-wide lock down due to the outbreak of COVID 19, labourers were not available and other reasons beyond the control of the respondent, the project of the respondent got slowed down. Despite such unforeseen incidents, respondent being a responsible developer took immediate steps to complete its project and to hand over the possession to its purchasers. The respondent prays that the complaint filed by the complainants is prima facie not maintainable either in law or on facts and the same is liable to be dismissed in limine.

In support of his defence, the respondent has produced documents such as (a) Copy of demand notice/email communication (b) statement of account.

11. Heard both the parties. This matter was heard on 17/06/2022, 15/07/2022, 05/08/2022, 29/08/2022. Perused the written objections submitted by the respondent in complainant no.1.

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

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

13. Our findings on the above points are as under:

14. 1. In the Affirmative

2. As per final order for the following:

FINDINGS

15. **My findings on point no.1:** The grievance of the complainants is that the respondents have defaulted and not handed over the

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possession of their respective flats as per terms of agreement of sale and construction. The respondents were supposed to hand over the possession of their respective flats on the due dates as envisaged in the terms and conditions of the agreement of sale and construction.

Having accepted the substantial sale consideration and failure to keep up the promise to hand over possession of their respective flats certainly entitles the complainant for registration of their respective flats, possession and interest on delay period.

Having regard to all these aspects, I conclude that the complainants are entitled for registration of their respective flats, possession and interest on delay period. Accordingly, the point raised above is answered in the Affirmative.

16. My findings on point no.2: In view of the above discussion, I conclude that the complaints deserves to be allowed. 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 complaints bearing Nos: **CMP/200707/0004260** and **CMP/200115/0005226** are allowed and pass the following order.

1. In Complainant No. **CMP/200707/0004260** respondent is hereby directed to get register the Flat No. **B-314**, in favour of the complainants immediately after receipt of the balance amount if any from them. Further the respondent shall pay delay period interest to the complainants calculated at the rate of SBI MCLR + 2 per annum from **27/03/2019** till the date of handing over of possession of the apartment in favour of the complainant.


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2. In Complainant No. **CMP/200115/0005226** respondent is hereby directed to get register the Flat No. **C-405**, in favour of the complainant immediately after receipt of the balance amount if any from them. Further the respondent shall pay delay period interest to the complainants calculated at the rate of SBI MCLR + 2 per annum from **1.5.2018** till the date of handing over of possession of the apartment in favour of the complainant.
3. The respondent is directed to register, hand over possession and pay delay period interest to the complainants within 60 days from the date of this order failing which, the complainants are at liberty to enforce the said order in accordance with law.

No order as to costs.


(H.C. Kishore Chandra) 17/10/22
Chairman
K-RERA

