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

Dated 18th OCTOBER 2022

COMPLAINT NO: CMP/201117/0007074

COMPLAINANT... **SATYANARAYANA C,**
aged about 39 years,
S/o. residing at G 48,
D Block ,SLS Signature Apartment,
Kaverappa Layout, Kadubeesanhalli,
Bangalore - 560 103

(Rep. by Sri. Srinivas V., Sri. M. D. Rajkumar and Sri. Sharan K. J., Advocates)

V/S

RESPONDENT... **HI LIFE VENTUES PVT LTD.,**
No.137/1 & 2, Gunjur Village,
Balagere Road, Varthur Hobli, BETQ,
Bengaluru – 560087.

(Rep. by its Director Sri. Druva Kumar Palijal, Sri. R. Santhosh Kumar, Advocate for R1 & 2)

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J U D G E M E N T

1. This Complaint is filed under Section 18(1) of the RERA Act, 2016, against the Respondent promoter seeking for refund of the entire amount paid by the Complainant to the Respondent promoter towards the purchase of the apartment unit bearing No. F 303 in the Project "**Hi Life Greens**". This is a registered project bearing registration No. PRM/KA/RERA/1251/446/PR/180504/001598

The brief facts of the complaint are as under:-

2. The Complainant has booked an apartment unit bearing No. F 303 on 3rd Floor, in F Block, with a covered car parking in the project known and called as "Hi Life Greens" to be developed by the Respondent promoter, in Sy. No. 137/1, 195/3, 195/4 & 195/5, having BBMP Khatha No. 1039, Sy. No. 137/1, Municipal No. 256, BBMP Khatha No. 1057, Sy. No. 195/3, Municipal No. 259, BBMP Khatha No. 1040, Sy. No. 195/4, Municipal No. 257, BBMP Khatha No. 1041, Sy. No. 195/5, Municipal No. 258, Vide residentially converted order No. ALN (EVH) SR/82/2014-15, dated 16/10/2014, issued by the Deputy Commissioner, Bangalore District, vide residentially converted order No. ALN (EVH) SR/270/2007-08, dated 14/10/2008, issued by Deputy Commissioner, Bangalore District, vide residentially converted order No. ALN (EVH) SR/170/2014-15, dated 20/12/2014, issued by the Deputy Commissioner, Bangalore District & vide residentially converted order No. ALN (EVH) SR/171/2014-15, dated 20/12/2014, issued by the Deputy Commissioner, Bangalore District, situated at Gunjur Village, Varthur Hobli, Bangalore East Taluk, in all measuring 4 Acres 30 Guntas.

3. The Complainant entered into a Sale Agreement dated 11/01/2019 and Construction Agreement dated 11/01/2019 for a total sale consideration of Rs. 46,40,608/-, towards the purchase of the apartment unit bearing No. F 303.

4. The Complainant has paid a sum of Rs. 35,89,512/- towards the part sale consideration in the following manner:

   A. An Amount of Rs. 1,80,000/- vide Cheque No. 6, drawn on HDFC Bank, Kasturba Road Branch, Bangalore
   B. An Amount of Rs. 21,74,000/- vide Online Transfer bearing.
   C. An Amount of Rs. 8,40,000/- by way of cash.

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D. As Amount of Rs. 3,95,512/- by way of loan availed in HDFC Bank.

5. The Respondent promoter has duly acknowledged the above payments made by the Complainant and has issued receipts towards the same.

6. The Respondent promoter had promised to hand over possession of the apartment unit in the project "Hi Life Greens" to the Complainant on or before 30th June 2021, which is inclusive of 6 months grace period. However has failed to deliver the same as per their Construction Agreement.

7. In the interregnum, the Respondent promoter has also created 'Charge/lien' over the property in which they are developing the Project "Hi Life Greens" to and have borrowed loan from M/s. Reliance Home Finance Limited, and as the Respondent has defaulted in payment of the said loan, M/s. Reliance Home Finance Limited has initiated proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by issuing Sale Cum Auction Notice dated 06/11/2021, which was published on 08/11/2021.

8. Aggrieved by the actions of the Respondent promoters in miserably failing to adhere to their promise, the Complainant has approached this Authority.

9. Hence, this complaint.

10. After registration of the complaint, several notices were issued but were returned as un-served. Accordingly, the Hon'ble Authority had ordered for issuance of notice by substituted service. In furtherance to the same, a paper publication of the summons was carried out on 26/07/2022 in the New Indian Express and Hosadiganta.

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11. Subsequent to service of notice through paper publication, the Respondent promoter's director Mr. Druva Kumar Puligal, had appeared before the Hon'ble Authority and filed the letter of authorisation along with his identity proofs. The copy of the Complaint, list of documents with documents and the memo of calculations was duly served on the Respondent promoter. The Respondent promoter's director sought time to file a detailed set of objections for the instant complaint filed before the Hon'ble Authority. Accordingly, time was granted up till 08/09/2022 to file statement of objections to the instant complaint.

12. The Respondent promoter failed to file any statement of objections, hence, objections by the Respondent was treated as not filed. Further, Arguments were advanced by the counsel appearing on behalf of the Complainant and by the director appearing on behalf of the Respondent promoter.

13. The Complainant's counsel pointed the Hon'ble Authority to Clause 4 of the Construction Agreement which clearly stated that the official hand over of the possession of the apartment unit was on or before 30th of June 2021 inclusive of the grace period.

14. In support of their claim, the Complainants have produced the following documents.

    A. Sale Agreement dated 11/01/2019
    B. Construction Agreement dated 11/01/2019
    C. Payment Receipts
    D. Loan Sanction Letter
    E. Loan Account Statement
    F. Cost Break Up

15. Though the Respondent promoter's was given sufficient time has failed to file any statement of objections to the complaint and the memo of

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calculations filed by the Complainant. However, he appeared and sought additional time to complete and hand over the possession of the apartment and in support of the Respondent's arguments, the Respondent has relied on the below mentioned document:

A. Architects certificates
B. Photographs

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

I. Whether the complainant is entitled for the relief of refund with interest as claimed?
II. What order?

17. Our answer to the above points are as under:-

1. In the Affirmative
2. As per the final order

REASONS

18. **Our answer to point No. 1:-** It is Pertinent to note that the complainant has entered into sale agreement dated 11/01/2019, And construction agreement dated 11/01/2019, towards the purchase of an apartment unit bearing No. F 303 on 3rd Floor, in F Block, with a covered car parking in the project known and called as "Hi Life Greens" developed by the Respondent promoter, in Sy. No. 137/1, 195/3, 195/4 & 195/5, having BBMP Khatha No. 1039, Sy. No. 137/1, Municipal No. 256, BBMP Khatha No. 1057, Sy. No. 195/3, Municipal No. 259, BBMP Khatha No. 1040, Sy. No. 195/4, Municipal No. 257, BBMP Khatha No. 1041, Sy. No. 195/5, Municipal No. 258, Vide residentially converted order No. ALN (EVH) SR/82/2014-15, dated 16/10/2014, issued by the Deputy Commissioner, Bangalore District,

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19. As per Clause 1 of the Sale Agreement dated 11/01/2019 and Clause 1 of the Construction Agreement, the Complainant has made a total payment of Rs. 35,89,512/- towards part of the sale consideration.

20. As per Clause 4 of the Construction Agreement dated 11/01/2019, the Respondent promoter had promised to hand over the possession of the apartment unit to the Complainants on or before 30th June 2021 inclusive of 6 months grace period. The Respondent promoter has failed to deliver official possession of the apartment unit to the Complainants even as on date.

21. It has also been brought to the notice of this Hon'ble Authority that M/s. Reliance Home Finance Ltd had issued a possession notice under SARFAESI Act, against the Respondent promoter's project "Hi Life Greens", and had further issued a Sale Auction notice dated 06/12/2021, which published on 08/12/2021 against the Respondent promoter as well as the Complainant .

22. It has been further admitted by the Respondent promoter that the construction of the entire project is incomplete as on date which is evident from the Architect certificates issued to the Respondent promoter, which has been placed before this Hon'ble Authority for consideration. Though the respondent promoter argued that he would hand over the possession of the

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apartment subject to granting of additional time. However, since the complaint is seeking for refund with interest granting any additional time either to complete the project or hand over the possession will not serve the purpose.

23. It is notable to mention that whatever the terms of the contract may be, the provisions of RERA gets primacy over the clause in the contract. In this connection, the Hon'ble Supreme Court, vide order dated 11/11/2021 in Civil Appeal Nos. 6745, 6749 of 2021 (arising out of SLP (Civil) No(s) 3711, 3715 of 2021, M/s. Newtech Promoters and Developers Private Limited V/s. State of UP and others ***(2021 SCC OnLine SC 1044)***, has stated as hereunder:

> *"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, 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:*

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Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

24. Accordingly, the point raised above is answered in the Affirmative.

25. **Our answer to Point No. 2:-** In view of the above discussion, we proceed to pass the following order:

ORDER

In exercise of the powers conferred under Section 18(1) read with Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/201117/0007074 is hereby allowed with directions to the Promoter:

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1. To refund the amount paid of Rs. 35,89,512/- (Rupees Thirty Five Lakhs Eighty Nine Thousand Five Hundred and Twelve Only) by the complainant along with interest at the highest rate of SBI-MCLR + 2% from date the amounts were paid till date of entire realization.
2. To pay costs of the litigation to the tune of Rs.5000/- (Rupees five thousand only)
3. The respondent shall refund the amount within 60 days from the date of this order.
4. Failing which, the complainant is at liberty to enforce this order in accordance with law.

(Neelamani N Raju)
Member-2
K-RERA

(D. Vishnuvardhana Reddy)
Member-1
K-RERA

(H.C. Kishore Chandra)
Chairman
K-RERA

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