

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 4th November 2022

COMPLAINANT NO. CMP/210618/0008010

COMPLAINANT.....

Madhu Pandey
Chamber 58
Bombay High Court
Near Hutatma Chowk
Maharashtra
Mumbai City-400032

(represented by Mr.Om
Shankar, brother of the
Complainant)

V/s

RESPONDENT.....

**M/s SJR Prime Corporation
Private Limited**
No.1, SJR Primus, 7th Floor
Koramangala
Bengaluru-560 095

(represented by Ms.Rekha
Gandhi, Advocate)

JUDGEMENT

1. This complaint is filed under section-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project "Plazza City" developed by " M/s SJR Prime Corporation Private Limited" in the limits of Sy.Nos. 33/1, 33/2, 33/3, Chikkanahalli, Doddakannahalli, Bengaluru East, Bengaluru urban

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praying for directions to the respondent to pay interest on delay period and completion of amenities as per agreement.

2. This project has been registered under RERA bearing registration no. PRM/KA/RERA/1251/446/PR/171208/001195.

3. **Brief facts of the complaint are as under:** It is submitted that, the complainant has entered into an agreement of sale dated 29th November 2013 in respect of residential premises bearing No.E 054 on the fifth floor of Kremlin Wings/Towers of "Plazza City by SJR Prime Corporation" in the project of the respondent. Out of sale consideration of Rs.80,70,043, the complainant has already paid an amount of Rs.79,92,542/-. The present complaint was filed in respect of failure to deliver possession of the said premises till date. The scheduled date of possession as per the said agreement was June 2016 with 6 months grace period i.e. by 31.12.2016. Thus, the respondent had promised and assured that the said premises would be duly completed and possession thereof would be delivered latest by December 2016. The complainant sought relief for interest on delay period, completion of amenities as per agreement and possession of the flat. Hence, this complaint.

4. After registration of the case, in pursuance of the notice served, the respondent through his counsel appeared before this Authority and filed objections as under:

5. The respondent has denied all the allegations made against it by the complainant as false. It is submitted that the respondent has entered into agreement of sale and construction agreement with the

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complainant both dated 29/11/2013 for construction of apartment. It is contended that the complainant has not disclosed the default and delays in payment of various instalments resulting in delay in construction. Further, the economic recession also set in and the respondent was forced to discontinue work for a few days.

6. It is submitted that the entire construction was completely halted for about 2 months owing to the non-availability of river sand which is inevitable material for the construction. The same has been informed to the complainant during the incident and the complainants are herein estopped from claiming that they did not have knowledge of the same. The respondent had to face several set backs due to delays in securing permissions and clearances from Government authorities to start construction activities. 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.

7. It is contended that the project was further delayed by an order of injunction court of the II Additional Senior Civil Judge, Bengaluru Rural District dated 03.12.2016 restraining the respondent from alienating, developing or encumbering the land on which the said project was being developed. The respondent had filed an appeal against the said order of injunction before the Hon'ble High Court of Karnataka by filing Miscellaneous First Appeal No.1408/2017 and the Hon'ble High Court of Karnataka vide its order dated 23.02.2017 was pleased to vacate the injunction granted by the II Additional Senior Civil Judge, Bengaluru.

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8. It is submitted that the delay claimed and stated by the complainants do not take into consideration of the fact that the delays are not entirely attributable to the respondent. Further, it will not be construed as delay in construction and the respondent will not be liable to pay any compensation, refund or interest on the same.

9. It is submitted that the amounts so collected and paid to the BWSSB also included payments towards and under the heads of water supply prorate charges, line cost, meter service deposits, additional cost incurred towards payment made to BWSSB towards laying of 200 mm Di water feed, respective sump tanks and excavation charges, material and other infrastructural charges etc.

10. It is submitted that the entire project has been provided with club house with a swimming pool facility. Further, the respondent has installed and provided Sewerage Treatment Plant(STP) with ultra-filtration system and with conventional system. In addition, costs & charges were also incurred for overhead tank work, organic waste converter, water treatment plant, rainwater harvesting system work, storm water drain and percolation pit work and operational cost etc.

11. It is contended that it is not necessary to mention that section-18 can apply prospectively and not retrospectively and therefore applying Section-18 to old project cannot arise at all. It is the case of the respondent that the parties have entered into an agreement prior to the Act coming into force and the structure of the transaction is completely different. There is no agreement as contemplated in the RERA as of date and that the agreement is only for undivided interest in land. The construction agreement is only for construction of building. It is further

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submitted that Section-18 only apply prospectively and not retrospectively.

12. It is submitted that the Bangalore Development Authority on 30.05.2019 has issued an Occupancy Certificate for the entire project and the same has been ready for occupation. The respondent has executed various agreements of sale and registered sale deeds in favour of the prospective purchasers and the purchasers of the apartments are in occupation of their respective flats.

13. It is submitted that the respondent has informed the complainants through various phone calls and mails with regard to the status and completion of their respective apartments and calling for registration but the complainant has failed to come forward to register his apartment. Further an e-mail dated 15/07/2019 was sent by the executive of the respondent stating that the company will arrange alternate accommodation whenever the complainant comes to Bengaluru.

14. It is submitted that the construction of the apartment was completed in all respects and the entire project is constructed as per the required standards and specifications in accordance with the construction agreement. Further, all the snags were rectified and the apartment is ready for immediate possession.

15. It is submitted that the calculations provided by the complainant were mere speculations are irrelevant and are without any reasonable basis. Hence, the respondent prays before this Authority to dismiss the complaint in the interest of justice and equity.

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16. In support of his claim, the complainant has produced documents such as (1) Agreement to sell (2) statement of accounts generated by the respondent along with acknowledgements(old) (3) statement of accounts generated by the respondent along with acknowledgements/payment (4) email addressed by the respondent promising alternate accommodation (5) email addressed by the respondent offering house for registration (6) Notice sent by the complainant along with third party inspection report dated 07.09.2020 (7) Email dated 13.09.2021 addressed by the Respondent stating non readiness of club (8) List of all complainants filed against the respondent (9) Email dated 24.05.2013 by the respondent (10) Memo of calculation.

17. In support of his defence, the respondent has produced documents such as (1) Agreement to sell and construction both dated 29/11/2013 (2) list of force majeure events with plots (3) copy of injunction order dated 03.12.2016 granted by the court of the II Addl. Senior Civil Judge, Bengaluru Rural District (4) copy of order of the Hon'ble High Court of Karnataka dated 23.02.2017 (5) Copy of the occupancy certificate dated 30.05.2019 issued by the BDA (6) copy of the first registered sale deed dated 25/10/2018 with respect to project Piazza City (7) copy of mails sent to customers on the readiness of apartment for occupation (8) Photographs of the completed apartment and the amenities along with the club house and its amenities (9) copy of the permanent power connection letter dated 12/03/2020 (10) copy of the completion certificate issued by Architect (11) copy of Board Resolution passed by the respondent company (12) RPAD receipts witnessing the copy of the objections being served to the complainant & courier receipts.(13) Memo dated `9/09/2022.

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18. Heard both the parties. This matter was heard on 27/07/2021, 27/10/2021, 26/11/2021, 04/02/2022, 08/03/2022, 18/05/2022, 06/07/2022 & on 19/07/2022

19. On the above averments, the following points would arise for the consideration of the Authority.

1. Whether the complainant is entitled to the relief claimed?
2. What order?

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

21. 1. In the Affirmative

2. As per final order for the following:

FINDINGS

22. **Our findings on point no.1.** The grievance of the complainant is that the respondent has defaulted and not handed over the possession of his flat as per terms of agreement of sale and construction. The respondent was required to hand over the possession of his respective flat on the due date i.e. by 31st December 2016 inclusive of 6 months grace period as was envisaged in the terms and conditions of the agreement of sale and construction.

Since the respondent has accepted the substantial sale consideration and failed to keep up the promise to hand over possession of the flat the complainant is entitled for registration of his respective flat, possession and interest on delay period.

Having regard to all these aspects, we conclude that the complainant is entitled for registration of his flat, possession and interest on delay

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

23. Our findings on point no.2: In view of the above discussion, we conclude that the complaint deserves to be allowed. Hence, we 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 complaint bearing No: **CMP/210618/0008010** is hereby allowed and the following order is passed.

1. In Complaint No. **CMP/210618/0008010**, the respondent is hereby directed to register the Flat No. **E-054 in the project "Plazza City"**, in favour of the complainant immediately after receipt of the balance amount if any from him. Further the respondent shall pay delay period interest to the complainant calculated at the rate of 9% per annum from 1st January 2017 till 30th April 2017. Further at the rate of SBI MCLR + 2 per annum from **01/05/2017** till the date of handing over of possession of the apartment to the complainant.
2. Further, respondent shall complete any pending work in respect of flat no. **E-054** of the complainant.

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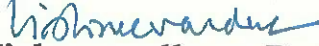
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3. The respondent is directed to register and hand over possession and pay delay period interest to the complainant within 60 days from the date of this order failing which, the complainants are at liberty to enforce the said order in accordance with law

No order as to costs.


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


(Neelmani N Raju)
Member-2
K-RERA


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

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