

**KARNATAKA REAL ESTATE REGULATORY AUTHORITY,
BENGALURU**

FIFTH ADDITIONAL BENCH

CORUM

**SHRI.D.VISHNUVARDHANA REDDY
HON'BLE MEMBER-1**

COMPLAINT NO.CMP/200826/0006439

DATED THIS 4th DAY OF NOVEMBER, 2022

COMPLAINANTS : Ms.Sara Abdulla
No.4, 2nd Cross, Wheeler Road
1st Floor, Cardiff Castle
Bangalore : 560 005

RESPONDENT / : M/s.Elegant Properties
PROMOTER No.1, Coles Road, Frazer Town,
Bangalore : 560 005

PROJECT NAME & : ELEGANT ALTIS
REGISTRATION NO.

J U D G E M E N T

This complaint is filed under Sec-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project ELEGANT ALTIS praying for a direction to pay delay period interest and for other reliefs:

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. The complainant has entered into an agreement of sale on 09.05.2013. The project completion date as per agreement was 09.05.2015. The complainant has paid an amount of Rs.35,16,103/- (Rupees thirty five lakhs sixteen thousand one hundred three only) to the respondent till date. Since there was delay of more than seven years in handing over

the apartment, the complainant has filed the above complaint before the Authority praying for the following reliefs:

- a) Direct the Respondents to complete the project
- b) Direct the Respondent to deliver the possession by executing the sale deed
- c) Direct the Respondents to pay monthly rent compensation
- d) Direct the Respondents to pay unliquidated damages for the delay caused.
- e) Direct the Respondents to pay the interest payable to financial institutions
- f) Direct the Respondents to pay Rs.5,00,000/- lakhs for mental agony and hardship.

2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 09.05.2015. The promoter-respondent was required to complete the project and hand over possession of the apartment by 09.05.2015. In cases where in the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, such cases are admissible for relief in accordance with Section 18 of the Act.

3. During the course of hearing of the complaint, it was brought to the notice of the Authority that despite the fact that the project was not completed as on the date of the commencement of the Act, the Promoter of the project failed to register the project as an ongoing project under Sec-3 of the Act. The developer/promoter of the project

and the land owners of the project were heard on 29.04.2022, 26.5.2022 and 6.7.2022 during which the promoters together have undertaken to comply with the requirement of the registration of the project by uploading the registration application and the requisite documents for completion of the registration process. However, the applications uploaded for registration of the project by the developer-promoter did not comply with all the requisite submission and uploading of the documents in accordance with the procedure laid down by the Authority. The deficiencies in the documents has been brought to the notice of the promoters of the project by sending emails and further conducting hearing by the Full Bench of the Authority on 08.09.2022 and 22.09.2022. During the hearing of the Full Bench of the Authority, the promoters of the project i.e., developer-promoter as well as land owners, have once again undertaken that they will comply with the application procedure and upload all the documents which are pre-condition for granting registration of the project. It is noted that there is a failure on the part of the promoter of the project in complying with the uploading of all the requisite documents even as on date. The Full Bench of the Authority has taken into consideration the failure on the part of the promoter of the project to register the project as an ongoing project, despite the fact that the project was incomplete as on the date of commencement of the Act and by the order dt.04.11.2022 has directed the promoter to comply with the requirement of registration under Sec-3

of the Act. In view of the direction of the Full Bench of the Authority, this project is deemed to be a registered Project and accordingly falls within the ambit and jurisdiction of the Authority for adjudicating the complaints filed by the complainants against the promoter of the project.

4. On perusal of the documents filed and materials placed before the Authority, it is evident that complainant has paid an advance sale consideration amount and admittedly, there is a delay in handing over the apartment as per the agreement. Hence the complainant is entitled to delay period interest u/s 18 of the Act and accordingly a memo of calculation submitted by the Complainant. The Promoter-Respondent has not submitted any memo of calculation.
5. As regards the relief in the form of cost of accommodation sought by the allottee, the delay period interest admissible u/s 18 of the Act is the appropriate relief available to the allottee. There is no provision under the Act for granting cost of accommodation as an additional relief to the allottee during the completion delay in the project.
6. As regards damages of Rs.5,00,000/-Lakhs claimed by the allottee on account of mental agony and pain, the complainant is at liberty to seek an appropriate relief by filing a complaint before the Adjudicating Officer who is empowered to adjudge the compensation under the provisions of the Act. Similarly as regards the compensation claimed for unfair trade practice, the complainant is at liberty to seek appropriate relief by filing a complaint before the Adjudicating Officer.

And accordingly the Authority orders the following:

ORDER

1. In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing CMP/200826/0006439 is hereby partly allowed.
2. Respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 09.05.2015 till the date of handing over possession along with occupancy certificate. The working submitted by the complainant is enclosed to this order as Annexure-A. The promoter shall pay the interest for the delay period as arrived at amounting to Rs.25,50,043/ (Twentyfive lakhs fifty thousand forty three only) within 60 days from the date of this order. The Promoter is also liable to pay delay period interest every month for the subsequent period and up to the date of completion of the project.
3. Respondent-Promoter is directed to complete the construction of the project at the earliest with all amenities, obtain occupancy certificate and handover the apartment to the allottees at the earliest.
4. As regards the relief in the form of cost of accommodation sought by the allottee, the delay period interest admissible u/s 18 of the Act is the appropriate relief available to the allottee. There is no provision under the Act for additionally granting cost of accommodation as an additional relief to the allottee during

the completion delay in the project. Therefore, this claim is not entertained.

5. As regards damages of Rs.5,00,000/- Lakhs claimed by the allottee on account of mental agony and pain, the complainant may seek an appropriate relief by filing a complaint before the Adjudicating Officer who is empowered to adjudge the compensation under the provisions of the Act.

6. Similarly the compensation claimed for unfair trade practice also the complainant is at liberty to seek appropriate relief by filing a complaint before the Adjudicating Officer.


(D.VISHNUVARDHANA REDDY)
MEMBER-1
FIFTH ADDITIONAL BENCH
K-RERA