

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 9th November 2022**

**COMPLAINANT NO. CMP/181207/0001731**

**RECTIFICATION ORDER UNDER SECTION 39 OF RERA ACT**

**COMPLAINANT.....**

**Kalluri Sudhamathi**  
Tower C2, Apartment-001  
Unitech-The Residences  
Gurgaon, Haryana

(By Mr. M. Mohan (amended  
Kumar, Advocate) vide order  
dated  
7 /12/2022)

V/s

**RESPONDENT.....**

- Ashok Chowriappa**  
M/s Chowriappa  
Construction Private  
Limited, No.41  
6th Floor, Cristu  
Complex, Lavelle Road  
**Bengaluru-560 001.**
- Cherian A Paul**  
Villa #90, 10 Downing,  
Sai Baba Ashram Road  
Kannamangala  
Whitefield  
**Bengaluru-560 067**
- Saramma Cherian Paul**  
Villa #90, 10 Downing,  
Sai Baba Ashram Road  
Kannamangala  
Whitefield  
**Bengaluru-560 067**

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(represented by Mr. Noor  
Mohammed, Advocate for R1  
Mr. K.M.A. Peres, Advocate  
for R-2 and R-3)

### JUDGEMENT

1. This complaint is filed under section-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project "**Chowriappa Constellation**" developed by "**M/s Chowriappa Constructions Private Limited**" in the limits of BBMP Khatha bearing No.5, converted survey no. 34/1, Geddalahalli Village, Horamavu Ward, Bengaluru East Taluk, Bangalore for relief of interest on delay period, registration and possession of the apartment.

2. This project has been registered under RERA bearing registration no. PRM/KA/RERA/1251/303/PR/171031/001022.

2A.The complainant Mr/Mrs. Kalluri Sudhamathi has filed an application inviting the attention of the Authority to rectify certain factual mistakes that has crept in the Authority's judgement dated 9<sup>th</sup> November 2022.

- (a) The name of the advocate should be Mr. M. Mohan Kumar, Advocate
- (b) The tripartite agreement is between developer, allottee and LIC Housing Finance Limited should have been included.
- (c) The rate of interest in order point (1) should be included.

12/3/22

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The application has been verified and it is found necessary to rectify the order dated 9<sup>th</sup> November 2022.

- (i) This rectification is done within two years from the date of the original judgement i.e. of 9<sup>th</sup> November 2022.
- (ii) There is no information about any appeal pending on this order.
- (iii) No substantive part of the order is amended
- (iv) The Authority's judgement dated 9<sup>th</sup> November 2022 is declared Non Est and replaced by this order dated 07.12.2022.

3. **The brief facts of the case are as under:** The complainant has entered into an agreement of sale and construction both dated 25/05/2013 and Tripartite agreement dated 05/07/2013 between the developer, allottee and the LIC Housing Finance Limited(**amended vide order dated 07/12/2022**) towards the purchase of the flat bearing no. 602 in Tower No.2, 6<sup>th</sup> floor in the project "**Chowriappa Constellation**" of the respondent. The complainant has paid an amount of Rs. 56,21,045/- out of total sale consideration of Rs.59,06,000/-(Rupees Fifty nine lakhs six thousand only) to the respondent till date. As per the agreement, the project was to be completed and handed over within 26 months from the date of agreement by 04.06.2015. However, the project could not be completed and possession of the flat was not handed over to the allottee within the specified timeline. Further, the project was mortgaged with Anant Rathi, Mumbai without the knowledge of buyers, besides OC and other statutory approvals were pending. The complainant, alleging that the promoter has failed to keep

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up his promise in handing over possession of the apartment within the specified timeline and there is deliberate delay on the part of the promoter, filed a complaint with the RERA under section 31 of the Act praying for interest on delay period, registration and possession of the apartment.

4. Earlier, this matter was heard by the Adjudicating Officer who has passed an order. As against these orders, the complainant has preferred appeal before the K-REAT which has remanded back all the appeals setting aside the orders of the Adjudicating Officer for fresh consideration in view of judgement of Hon'ble Supreme Court in M/s. Newtech Promoters and Developers Pvt. Ltd., v/s. State of UP and others (2021).

5. Respondent-1 is the company whereas R2 & R3 are the land owners who have entered into joint development agreement.

6. After registration of the complaint, in pursuance of notice served, the respondents 1 has appeared before the Authority through his counsel Mr. Noor Mohammed and respondents no. 2 & 3 through their counsel Mr. K.M.A. Peres, Advocate and have filed their respective objections as under:

7. **Objections filed by respondent no.1:** The respondents have denied all the allegations made against it by the complainant as false. It is submitted that the complainant has entered into an agreement of sale and construction with respondent no.1 to purchase a residential apartment unit to be constructed on 6<sup>th</sup> floor of the said project.

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8. It is submitted that the respondent no.1 had always kept the complainant appraised of the factual circumstances like shortage of sand, non availability of skilled and unskilled labour and increase in the cost of materials which were most important factors leading to the delay in completion of the project.

9. It is submitted that the complaint being aware of the factual situation and being satisfied with explanations of the respondent no.1 has kept silent on the issue of delay. Further, the respondent no.1 has made every effort to ensure completion of construction despite several set backs at the cost originally agreed to between the parties.

10. It is submitted that the complainant has changed track just when the project was about to be completed by claiming damages for delay in order to avoid payment of the balance consideration.

11. It is further submitted that the complainant having sought to enforce the remedy for such breach approached the arbitrator as the terms of the construction agreement as the complainant has sought for compensation as per the construction agreement and not the Act.

12. It is submitted that during the meeting held on 15/09/2018, the buyers including the complainant have agree to take possession of the completed project without seeking for any compensation from the respondent no.1 on certain conditions like the respondent no.1 maintaining the common areas of the apartment in lieu of any compensation to be paid to the purchasers. Hence, it is evident that the



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complainant has given a go by to seeking any form of compensation from respondent no.1. In view of the same, the complainant is estopped from presenting the present complaint and hence prays to dismiss the complaint.

13. **Objections filed by respondents nos. 2 & 3:** The respondents have denied all the allegations made against it by the complainant as false. It is submitted that respondent nos. 2 & 3 have not derived any benefit monetary or otherwise from the complainant. Further, no legal demand legal notice was issued by complainant to respondent no. 2 & 3 or they have described or arranged as parties in the original complaint. Hence, respondent no.2 & 3 do not plead guilty and contest the complaint being malafide in nature and are neither proper or necessary parties.

14. It is submitted that from the bare reading of the complaint or the prayer statement RERA Act 2016 cannot be invoked against respondent nos. 2 & 3 as there is no privity of contract or financial benefit for respondent no.2 & 3 with the complainant, neither the complainant has suffered any damage or loss by the acts of respondent nos. 2 & 3.

15. Further, respondent no.2 & 3 have not violated or contravene the provisions of RERA Act, 2016 and the complainant is not an aggrieved person in respect of respondent no.2 & 3 as no offence is committed by the respondents. The respondent nos. 2 & 3 have not sold or constructed the apartment No.602 to complainant and hence prayed to drop the proceedings against respondent nos. 2 & 3.

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16. In support of his claim, the complainant has produced documents such as (1) copy of sale agreement dated 25/05/2013 (2) copy of construction agreement dated 25/05/2013 (3) Copy of the email sent to Chowriappa Construction about visit to flat to see the completion status as directed by RERA on 23.08.2022 (4) copy of interest calculation memo served to Chowriappa Constructions Private Limited vide mail dated 4<sup>th</sup> September 2022 (5) All the receipts(16 nos) for the payment made to Chowriappa Construction Private Limited(Builder), (6) Account Statement (7) Interest calculation memo as per RERA link. (8) Explanation furnished by the complainant dated 13/02/2019 (9) Memo dated 24.04.2019 filed by the complainant. (10) application under rule 30 of the RERA filed by the complainant dated 27.02.2019.

17. In support of his defence, the respondents have produced documents such as email communication dated 22/06/2015, 22/12/2018, 31/05/2017, 05/06/2018, 26/10/2018, 9/11/2018, 22/12/2018.

18. Heard both the parties. This matter was heard on 23/08/2022, 12/10/2022.

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?

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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 project was to be completed and handed over within 26 months from the date of agreement by 04.06.2015 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 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 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:



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**CMP/181207/0001731** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to pay interest on delay period on the amount of Rs.**56,21,045/-** calculated at the rate of **9% per annum** from 31.03.2015 till 30.04.2017(**amended vide order dated 07/12/2022**) and further at the rate of SBI MCLR + 2 from 01.05.2017 till the date of handing over the possession of the apartment.
2. The respondent is hereby directed to register the Flat No. **602 in the project "Chowriappa Constellation"** to the complainant immediately upon receiving the balance amount, if any. The net balance amount, if any, shall be after deduction of delay period interest. After registration of sale deed, the respondent shall hand over the possession of the same to the complainant.
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. The complainants are at liberty to enforce the said order in accordance with law if the respondent fail to comply with the order.

No order as to costs.

(Neelmani N. Raju)

Member  
K-RERA

(H.C. Kishore Chandra)

Chairman  
K-RERA

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