

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 21st November 2022

Present

SHRI. H.C. KISHORE CHANDRA, CHAIRMAN

Complaint No. CMP/210210/0007605

RECTIFICATION ORDER UNDER SECTION 39 OF RERA ACT

COMPLAINANT....

Abraham Panicker
D-506, Purva Panorama
Kalena Agrahara
Bannerghatta Road
Bengaluru-560 076

(In person)

V/S

RESPONDENT.....

**M/s Jain Housing &
Construction Limited**
98/99, Habibullah Road
T-Nagar
Tamil Nadu-600017.
(represented by Mr. Girish Jain
Authorized Signatory)

JUDGEMENT

1. The complainant Mr. **Abraham Panicker** had filed a complaint against the project " Jains Aashraya" developed by respondent promoter of "**M/s Jain**

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Housing & Construction Limited". The promoter has developed a project in the limits of Basavanapura Village, Begur Hobli, Bannerughatta Main Road, Bengaluru South Taluk for relief of interest on delay period.

2. This project has been registered in RERA bearing registration no. PRM/KA/RERA/1251/310/PR/180507/001672.

2A. The complainant Mr. Abraham Panicker had filed an application dated 29.11.2022 inviting attention of the Authority to rectify the factual mistake that has crept in the Authority's judgement dated 21st November 2022.

(a) The principal amount is Rs. **59,93,494** instead of Rs. **48,83,810/-**.

The application has been verified and it is found necessary to rectify the order dated 21st November 2022.

- (i) This rectification is done within two years from the date of the original judgement i.e. of 21st 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 21st November 2022 is declared Non Est and replaced by this order dated 08.12.2022.

3. **Brief facts of the case:** The complainant has entered into a sale agreement and construction both dated 18.12.2015 for a residential apartment bearing no. H-9 in 9th floor and measuring an extent of 1205 square feet of built up area and 276.00 square feet of common area and one covered car parking space in the project "Jains Aashraya" with the respondent. The complainant

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has paid the amount of Rs. **59,93,494/- (amended vide order dated 08.12.2022)** till date to the respondent. As per agreement dated 18.12.2015, the respondent required to hand over the possession of the flat to the complainant within 36 months with a 6 month grace period i.e. 18th June 2019. The present complaint was filed in respect of failure to deliver possession of the said premises till date. The complainant sought relief of interest on delay period. Hence, this complaint.

4. After registration of the complaint, in pursuance of notice, the respondent has appeared before the Authority through his Authorized Signatory and has filed written objections as under:

5. The respondents have denied all the allegations made against it by the complainant as false. It is contended that there was some delay in completing the construction on account of valid reasons beyond the control of the respondent. Further, there was delay in payment of the installments by the complainants and other agreement holders and the complainant has not paid the balance amount as on date. It is further contended that there was steady increase in cost of labour cost of material, problem of securing the workers. Besides, there were problems on account of Covid-19 and subsequent developments. The delay in marketing and sale of the apartments has also added to the delay and the financing of the project.

6. It is contended that the respondent has already completed the construction. The apartment was ready for occupation Despite repeated requests the complainant has not paid the balance amount and get the sale deed registered.



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7. It is contended that the complainant has no right to seek refund of the amount or the interest as there is no such agreement to pay interest by the respondent. Further, the respondent has for right to cancel the agreement in the event of default of payment of instalments or breach of any of the conditions of the agreement and the purchasers are only entitled for the refund of the advance amount after adjusting the loss or damage caused to the vendor. Hence, the respondent prays this Hon'ble Authority to dismiss the complaint.

8. In support of his claim, the complainant has produced documents such as (1) Agreement of sale and construction both dated 18.12.2015 (2) Memo of calculation.

9. In support of his defence, the respondent has not produced any documents.

10. Heard both the parties. This matter was heard on 10/06/2022, 25/07/2022, 05/08/2022, 19/08/2022, 06/09/2022, 10/10/2022, 14/11/2022.

11. 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?

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

13. 1. In the Affirmative

2. As per final order for the following:

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FINDINGS

14. My 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 within 36 months with a 6 month grace period i.e. 18th June 2019 as was envisaged in the terms and conditions of the agreement of sale and construction.

The judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

*"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1).....
... The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.*

Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

Handwritten signature

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During the proceedings on 14.11.2022, this Authority has sent a notice to the Inspector General of Registration and Commissioner of Stamps and jurisdictional Sub-Registrar asking them not to register any apartments in respect of project of the respondent. This Authority has also issued direction to the respondent not to alienate any units.

From the averments of the complaint and copy of the agreement between the parties, it is obvious that the complainant has already paid the substantial sale consideration. Having accepted the said amount and failure to keep up promise to hand over possession of apartment certainly entitles complainant herein for registration of his flat, possession and interest on delay period.

Having regard to all these aspects, I 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.

15. My findings on point no.2: In view of the above discussion, I conclude that the complaint deserves to be allowed. Hence, I proceed to pass the following order:

ORDER

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 No: **CMP/210210/0007605** 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.59,93,494/- (**amended vide order dated 08.12.2022**) calculated at the rate of SBI MCLR + 2 per cent per

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annum from **18.12.2018** till the date of handing over the possession of the apartment.

2. The respondent is hereby directed to register the Flat No. **H-9 in the project "Jains Aashraya"** 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 complainant is 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.


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

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