

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

PRESENT

SHRI. H.C. KISHORE CHANDRA, CHAIRMAN

Dated 8th December 2022

Complaint No. CMP/211018/0008446

COMPLAINANT....

Amitabh

Vishunpur Baladhari

District: Vaishali

Bihar-844102.

(In person)

V/S

RESPONDENT.....

**M/s Karsten Home Private
Limited**

No: 4, 80 feet Road

8th Block Opp: Indoor

Stadium, Koramangala

Bengaluru-560 095.

(Exparte)

Asst

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JUDGEMENT

1. The complainant Mr. **Amitabh** had filed a complaint against the project “**Palm Groves**” developed by respondent promoter of “**M/s Karsten Homes Private Limited**”. The promoter has developed a project in the limits of Chandapura-Anekal Main Road, Marasuru Village, Anekal, Bengaluru South, Bengaluru Urban for relief of interest on delay period.
2. This project has been registered in RERA bearing registration no. PRM/KA/RERA/1251/310/PR/171201/001362.
3. **Brief facts of the case:** The complainant had entered into agreement of sale and construction both dated **30th October 2018** with the respondent for the purchase of apartment bearing no. **405 in Block-C** in the project “**Palm Groves**” with the respondent. Out of the sale consideration of Rs.**32,91,750/-**, the complainant has paid an amount of Rs.**14,84,588/-** to the respondent. The respondent was required to hand over the possession of the apartment by **01.03.2020**. Further, as per the construction agreement, the builder shall pay Pre-EMI till possession but since March 2020 but the builder has not paid any Pre-EMI amount. Later, the complainant suggested them to provide him another flat in block-B, which is already completed or at least pay him Pre-EMI but the builder has declined his request for both. Having lost confidence with the respondent, the complainant sought relief of interest on delay period. Hence, this complaint.
4. After registration of the complaint, in pursuance of notice, the respondent remained absent but whereas his advocate Prabhu N. Savanur has filed objections on 28/10/2022. The written objections are as under:

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5. The respondent has denied all the allegations made against it by the complainant as false. It is contended that the complainant had approached the respondent and shown interest in purchasing an apartment in one of the respondent's project named "Palm Groves" and after understanding the scheme of development. Further, the complainant had booked an apartment bearing no. C-405 by submitting booking application on his own. Subsequently, the complainant has also entered into an agreement. It is contended that the complainant herein has agreed to withdraw the case against the respondent as he has confirmed with swapping the apartment from C-405 to B-913. The complainant has also acknowledged the same through email confirmation. Accordingly, the respondent has agreed to the request of the complainant for swapping the flat. Hence, the respondent prays this Authority to dismiss the complaint.
6. In support of his claim, the complainant has produced documents such as (1) Agreement of Sale and construction dated 22.11.2018(2) Memo of calculation .
7. In support of his defence, the respondent has not produced any documents.
8. Heard both the parties. This matter was heard on 08/08/2022, 29/08/2022, 12/09/2022, 19/09/2022, and on 14/10/2022.
9. 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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10. Our findings on the above points are as under:

11. 1. In the Affirmative

2. As per final order for the following:

FINDINGS

12. **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 required to be completed by the respondent within **01.03.2020** 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.*

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

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promise to hand over possession of apartment certainly entitles complainant herein for interest on delay period.

Having regard to all these aspects, I conclude that the complainant is entitled for interest on delay period. Accordingly, the point raised above is answered in the Affirmative.

13. 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/211018/0008446** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to pay interest on delay period on the amount Rs.14,84,588/- (Fourteen lakhs eighty four thousand five hundred eighty eight only) calculated at the rate of SBI MCLR + 2 per cent per annum from **01.03.2020** till the date of handing over possession of the flat within 60 days from the date of this order.
2. 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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