

**BEFORE ADJUDICATING OFFICER**

**PRESIDED BY SRI I.F. BIDARI**

**DATED 6<sup>TH</sup> DECEMBER 2022**

**Complaint No: CMP/220520/0009487**

**Complainants :**

1. Mr. L. Joseph Anand,
2. Mrs. D Latha,  
Flat No. 133, Soundarya Devi Apartment,  
Srirampuram, 2<sup>nd</sup> Main,  
Bengaluru Urban - 560021.  
(By: Sri. Anish Jose Antony, Advocate.)

**VS.**

**Respondent:**

M/s. VSPL Projects Pvt. Ltd.,  
22/5 A Main Road, Near Baptist Hospital,  
Hebbal,  
Bengaluru Urban-560024.

**Also at:** Vikram Projects Pvt. Ltd., # 194,  
Sankey Main road, Armane Nagar,  
Near Sterling Sankey Court,  
Sadashiva Nagar, Benagluru - 560080  
(Absent)

**J U D G M E N T**

Complainant No.1 Mr. L. Joseph Anand and Complainant No.2 Mrs. D Latha, have filed this complaint bearing No. CMP/220520/0009487, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent M/s. VSPL Projects Pvt. Ltd., (here-in-after referred as respondent), praying to grant interest U/s. 18 RERA Act, to the complainant for Rs. 71,80,023/- paid to the respondent. The complainants have filed detailed complaint also.



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

**Karnataka Real Estate Regulatory Authority, Bengaluru**

ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,  
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2. The brief facts of the complaint are as under:

The respondent has developed and constructed the residential flats building in the project "VSPL Crescent" (here-in-after referred as project) comprised in immovable converted lands, Item Nos. 1 to 3 situated at Pipeline Road (previously BWSSB Road), now under BBMP ward No. 38, (previously under Bengaluru City Corporation division No 1.), Yeshwanthapura Bengaluru, described as Schedule "A" property in the copy of registered sale deed dated: 17.02.2022. The complainant Nos.1 & 2 have purchased a flat bearing No. 107, in 1<sup>st</sup> floor of the project along with undivided interest in schedule "A" property, for consideration amount mentioned in the aforesaid sale deed dated: 17.02.2022, from the respondent. The complainants had entered in to agreement for sale dated: 14.06.2018 with the respondent. The completion date of the project was 31.12.2020 agreed between the parties. The respondent failed to complete the project by 31.12.2020. The respondent persuaded the complainants to execute the sale deed dated: 17.02.2021 with promise that he will complete the construction including common amenities within a period of 15 days but in vain. The complainant had filed complaint No. CMP/210719/0008143 before the Hon'ble Karnataka Real Estate Regulatory Authority (here-in-after referred as K-RERA). The K-RERA Authority disposed off the complaint No. CMP/210719/0008143, holding that *"Issues pertaining to incomplete aspects of construction and any claims thereof which are in the nature of compensation have to be adjudicated by the Adjudicating Officer"*. The respondent till date has not completed entire construction works and handed over the project. The respondent is illegally constructing the partition walls in setback areas of the building deviating from the approved plans putting the life of residents in peril. These main grounds among others urged in the complaint prayer to grant the relief as prayed. The learned





Advocate for the complainant on 07.11.2022 has filed a memo stating that complainants, limiting prayer in this complaint to the powers U/Sec.71 of RERA Act, hence prayed to grant compensation U/Sec.71 of the RERA Act.

3. There-after receipt of the complaint from the complainants, notice was issued to the respondent. The respondent remained absent in-spite of the service of the notice.

4. I have heard Sri. A.J.A. learned Advocate for the complainants. The argument of respondent, taken as nil. Perused the records and materials.

5. The points that would arise for my consideration are:

Point No.1: Whether the complainants are entitled for compensation? If so, to what extent?

Point No.2: What order?

6. My findings on the above points are as under:

Point No. 1: Yes, to the extent as shown in the final order.

Point No. 2: As per final order, for the following:-

### **REASONS**

7. Point No.1: Sri. A.J.A. learned Advocate for the complainants drawn the attention of the Adjudicating Officer (here-in-after referred as AO) to the copy of order dated: 07.04.2022 passed by the Hon'ble K-RERA Authority in a complaint No. CMP/210719/0008143 (here-in-after referred as Complaint No. 8143). The copy of the said order complaint No. 8143 disclose that complainant No.1 herein had filed said complaint against the respondent in-respect of flat No. 107 in the project and wherein among others the Hon'ble K-RERA Authority observed that "*Issues pertaining to incomplete aspects of construction*





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and any claims thereof which are in the nature of compensation have to be adjudicated by the Adjudicating Officer". Thus the complainants have filed instant complaint and by virtue of memo, restricted their prayer for compensation to be adjudicated by the AO U/S. 71 of RERA Act. In view of the judgment dated: 11.11.2021 passed by the Hon'ble Supreme Court of India, in Civil Appeal Nos. 6745-6749 of 2021, in the case of M/s Newtech Promoters and Developers Pvt. Ltd., Vs State of UP & ORS.ETC., With Civil Appeal Nos. 6750/21, 6751/21, 6752/21, 6753/21, 6754/21, 6755/21, 6756/21 and 6757/21, the Adjudicating Officer is only empowered to adjudicate the compensation and interest thereon U/Secs.12, 14, 18 & 19 RERA Act, as contemplated U/Sec. 71 taking into account the factors enumerated U/Sec.72 of the RERA Act. The relevant portion in Para No. 86 which reads as under:

*"From the scheme of the Act of which a detailed reference has been made and taking note of power of Adjudication delineated with the regulatory Authority and adjudicating officer , what finally culls, out is that although the Act indicate the distinct expressions like "refund", "interest", "penalty", "compensation", a conjoint reading of Section 18 and 19 clearly manifests that when it come to refund of amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon it is regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudicating compensation and interest thereon under Sections 12,14,18 and 19 the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Section 12,14, 18 and 19 other than compensation as envisaged, if the extended to the adjudicating officer as prayed that, in our view, may intended to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of Act 2016".*



Thus in this complaint the prayer of the complainants for compensation in-respect of their flat No. 107 in the project, is only liable to be considered.

8. Sri. A.J.A. learned Advocate for the complainants during argument submits almost similar grounds urged in the complaint and in the memo filed on 07.11.2022 and prayed to grant the compensation as prayed in memo. The learned Advocate drawn the attention of the AO to the documents and photo copies produced in the case.
9. The complainants have produced copy of the forum-C registration certificate of the respondent project with K-RERA. The complainants have produced copy of agreement for sale dated: 14.06.2018 and copy of absolute sale deed dated: 17.02.2021 entered between the parties. The copy of order dated: 07.04.2022 passed by the Hon'ble K-RERA Authority in complaint No. 8143 discloses that respondent had obtained Occupancy Certificate (here-in-after-referred as OC) of the project on 02.07.2021. The complainants have produced copy of handover check list of flat No. 107 dated: 05.03.2021 and the copies of photos showing relevant portions of the flat and project building. The materials on record evidences that complainants have taken possession of flat No. 107 in the project on or before 07.02.2022.
10. The records disclose that complainants have filed this complaint after 1 year from the date of sale deed dated: 17.02.2021, on the ground that the respondent illegally constructing partition walls in the setback areas of the building deviating from approved plans and entire construction work in the flat No. 107 has not been completed, hence praying for compensation. As per the provisions contemplated in





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subsection (3) of Section 14 and proviso to clause (a) of subsection (4) of Section 11 of RERA Act, the responsibility of the respondent will continue up-to 5 years from the date of conveyance deed. The relevant portion of the said, subsection (3) of Section 14 and proviso to clause (a) of subsection (4) of Section 11 of RERA Act, reads as under:

*"Section 14. (3) In case any structural defect or any other defect in workmanship, quality or provision or services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defect without further charges, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottee shall be entitled to receive appropriate compensation in the manner as provided under this Act."*

*"Section 11.(4)(a) be responsible ----- may be;*

*"Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be to the allottees are executed."*

(under line is supplied by me)

Therefore in view of the aforesaid provisions of subsection (3) of Section 14 and proviso to clause (a) of subsection (4) of Section 11 of RERA Act, the instant complaint of the complainants for compensation on alleged grounds mentioned in the complaint are liable to be considered.





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11. Admittedly the complainants have not produced any materials or the evidence or the reports of the architects to show that the respondent illegally constructing partition walls in the setback areas of the building deviating from approved plan. This apart the residents of other flats in the project have not filed any complaints against the respondent in this regard and complaints have not placed any materials in this regard. Therefore there is no substance in the said contention of the respondent.
12. The copy of flat handover check list of flat No. 107 discloses that at the time of preparing said check list, the fixing of ventilator with exhaust fan was pending, floor mounted EWC, flush valves, health faucet with angle cock, shower with hot & cool wall mixer, polished black granite WB counter, wash basins, wash basin tap, angle cocks, bottle traps, floor drain traps( Gratings ) kitchen sink, dadoing works in kitchen, granite counter kitchen are being shown as "will be done after interiors". The wall paint, door painting & door polishing, Grill painting are being shown as "1<sup>st</sup> coat completed, 2<sup>nd</sup> coat will be done after interiors. Except these items in the flat No. 107 shown as incomplete on the date of preparing handover check list on 05.03.2021, complainants have not produced any other materials to show that the construction work of the flat in the project is incomplete. The copies of the photos produced discussed above of the flat discloses about such works pending in the flat of the complainants. The version of the complainants remained unchallenged as such there is no hesitation to hold that respondent till date has not attended the said incomplete work in the flat No. 107 mentioned in the handover check list dated: 05.03.2021, despite oral request of the complainants. This fact shows that the complainants are suffering from mental pain and agony because of incomplete amenities in their

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flat. Under the circumstances it is just and proper to direct the respondent to pay compensation of Rs.5,00,000/- to the complainants in lieu of for not completing some of the amenities shown in the copy of the flat handover check list dated: 05.03.2021 and Rs.1,00,000/- towards mental pain and agony with 9% P.A., interest thereon from 18.02.2021 till payment of said amount. Thus I hold point No.1, accordingly for consideration.

13. As per the provisions contemplated U/sec. 71(2) RERA Act, the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. This complaint has been filed on 20.05.2022, thereafter notices issued directing the parties to appear for hearing. The parties given the reasonable opportunities to contest the case, as such, the judgment is being passed on merits, with some delay.

14. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

**ORDER**

(i) The complaint filed by the complainants bearing No.: CMP/220520/0009487 is partly allowed against the respondent.

(ii) The respondent is hereby direct to pay compensation of Rs.5,00,000/- (Rupees Five lakhs only) to the complainants in lieu of for not completing some of the amenities shown in the copy of the flat handover check list dated: 05.03.2021 and Rs.1,00,000/- towards mental pain and agony with 9% P.A.,





interest thereon from 18.02.2021 till payment of said amount.

(iii)The respondent shall have to pay an amount of Rs.5,000/- (Rupees five thousand only) to the complainants towards cost of litigation.

(iv)The complainants may file memo of calculation as per this order after 60 days in case respondent failed to comply with the order and to enforce this order.

(v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 06.12.2022)

  
**I.F. BIDARI**

Adjudicating Officer-1  
K-RERA