

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 12th December 2022

COMPLAINANT NO. CMP/180618/0000928

COMPLAINANT.....

Prashant Kumar

109/A, Ground Floor
23rd Cross, 18th "B" Main
Sector-3, HSR Layout
Bengaluru-560102

(represented by Mr. S.
Chidanand, & Ms. Leelavathi
R. Advocates)

V/s

RESPONDENTS.....

**1. SAIBYA STRUCTURES
PRIVATE LIMITED**

#384, Ground Floor
9th Main, Sector-7
HSR Layout
Bengaluru-560102

2. Vijay Shekar Reddy

No: 301, 8th Cross
Duo Heights Layout
Begur, **Bengaluru-560 068**

3. H. Ajay Shekar Reddy

No: 1107, C-3
L & T South City Apartments
Arikere Mico
Bengaluru-560 076.

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4. **H. Naveen Reddy**

No: 1107, C-3
L & T South City Apartments
Arikere Mico
Bengaluru-560 076.

5. **Anandamma, W/o**

Late H. Jayarama Reddy

No: 856, 5th "A" Cross
Vijaya Bank Colony
Bilekalli
Bengaluru-560 068.

(represented by **Mr.B.S.
Radhanandan, Advocate
for R1,R2**)

JUDGEMENT

1.The complainant Mr. Prashanth Kumar has filed this complaint in CMP No:0000928 under section-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project "**Saibya Sterling** developed by "**M/s Saibya Structures Private Limited**" in the limits of Sy.Nos. 120, old Sy.No. 44/P1, Hongasandra, Bangalore South Taluk for relief of interest on the delay period.

2. Respondent no.1 is the company-developer and respondents 2 to 5 are the landowners of the residentially converted land property bearing Sy.No. 120 old Sy.No. 44/P1 situated at Hongasandra, Bengaluru South Taluk.

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3. This project is registered under RERA vide registration bearing No. PRM/KA/RERA/1251/310/PR/171024/000648.


4. Earlier, this matter was heard by the Adjudicating Officer who has passed an order. As against this order, the complainant has preferred an 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. **Brief facts of the case:** As per the agreement of sale and construction dated 4th August 2016, possession of the flat no.B-102 was promised to be handed over on or before May 2017. It is contended that the possession has not been granted till date i.e. 18th June 2018. The complainant sought for the relief of interest on delay period. Hence this complaint.

6. After registration of the case, in pursuance of the notice, the respondents through their counsel have appeared before this Authority and filed objections on behalf of respondent no.1 and 2 as under:

7. **Objections filed by respondent no.1:** The respondent-1 has denied all the allegations made against by the complainant as false. It is contended that the property bearing Sy.No.120 measuring 1 acre situated a Hongasandra Village, Begur Hobli, Bangalore South Taluk belongs to the respondent no.3 H. Vijay Shekar Reddy along with other co-owners namely H. Jayarama Redy, H. Ajayshekar Reddy and H. Naveen Reddy. Further, the said co-owners of the land property had





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offered the said land property to M/s Saibya Structures who are land developers and the owners have given the said land for joint development to the said developer.

8. Further, after execution of the joint development agreement dated 30.07.2014, the plan was sanctioned by the BBMP on 8.5.2015. Subsequently, the said land owners and the developer have identified their respective apartments proportionate to their share under the joint development agreement. Accordingly, sharing of apartments dated 22.7.2015 was executed between the said landowners and developers.

9. Further, out of the said residential apartments allotted to the land owners, apartment no. B-102 in first floor of the project "Saibya Sterling" is one of the apartments allotted to the share of the said landowners. The complainant herein had booked a flat no. B-102 and entered into an sale agreement as well as construction agreement both dated 04.08.2016 between the land owners and the complainant. But the developer is neither a party to the said agreement of sale and construction nor any consideration was paid by the complainant to the developer.

10. It is contended that apartment no. B-102 which is the subject matter of this complaint was allotted to the share of respondent no.2 as per the family arrangement took place amongst the wife and children of later H. Jayarama Reddy as per the terms of the registered partition deed dated 27.11.2020.

11. It is contended that as per mutually agreed terms, a sum of Rs.55,00,000/- was fixed as total sale consideration for sale of the said





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apartment to the complainant. Further, the complainant requested the land owners to show a reduced sale consideration in the sale agreement so as to enable him for certain benefits in the form of reduced rate of interest could be claimed by the complainant while taking loan from the Bank if the property is below Rs.50,00,000/-. Accordingly, sale agreement was executed by the respondent no.2 in favour of the complainant on 04.8.2016 and construction agreement dated 04.08.2016 reducing the sale consideration as Rs.49,39,782/-. The complainant however, has paid an amount of Rs.5,40,000/- by way of cash to the landowners to this effect. It is contended that the terms contained in the sale agreement that was executed on 13.04.2016 was the real transaction between the respondent no.2 and the landowners.

12. As per the agreed terms and conditions, the landowners were required to deliver the apartment by the end of May 2017 along with grace period of 3 months i.e. by the end of November 2017. Further, the complainant took his own time to approach the Bank to obtain loan, since he had no resources to purchase the apartment in spite of handing over all the documents title. The delay in making the payment and the said reason could be attributed only to the conduct of the complainant.

13. It is contended that the complainant wanted some alteration, removal of the wall and re-construction of walls. Further the complainant asked the landowners to intimate the developer to stop the construction due to the said alterations and virtually for more than 6 months the developer has stopped the construction of the internal walls of the apartment. It contends that in the month of December 2016, the

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complainant has again given instructions to modify/alter the walls. Hence, the alteration was done as per the instructions of the complainant and for the said delay is to be attributed on the part of the complainant.

14. It is contended that the landowners had also issued legal notice on 20.09.2019 to the complainant in which they clearly stated to him that all the alterations were completed and that the apartment is completed and ready for occupation and asked the complainant to pay the balance amount and fix a date of registration and intimate them.

15. It is contended that in fact the developer has completed the construction in all aspects and possession was also taken by the complainant to carry out interior work. But strangely without the consent of the builder or the landowners, the internal walls in the kitchen were unscientifically demolished. Besides, the complainant took his own time in finalizing the tiles which made the respondent-builder to stop the work once again while carrying out the flooring work. When the developer demanded for additional cost for the alteration works carried out, and when the landowner asked them to fix a date for registration of the apartment, since they had completed the apartment in all aspects, as a counter blast the complainant has approached this Hon'ble forum.

16. It is contended that there is no brevity of contract between the developer and the purchaser, but the developer has completed the construction of the apartment in the month of February 2018. The landowners handed over the keys for doing the interior work to the complainant. The complainant completed the house warming ceremony

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on 11.5.2018 which shows that there was no delay by either the landowners or the developer.

17. As regards obtaining occupancy certificate from BBMP, the respondent-developer has submitted application of OC to BBMP on 27.09.2018. Finally the BBMP has issued occupancy certificate on 09.03.2020 after a delay of more than 16 months from the date of application. Further, as per the construction agreement, it was agreed upon that the time taken for getting the occupancy certificate would not be included in the time agreed for delivery and registration of the apartment. The entire fault is on the part of the complainant with respect to the said apartment.

18. **Objections filed by respondent no.2:** The objections filed by the respondent no.2 is replica of objections filed by the respondent no.1.

19. In support of his claim, the complainant has produced documents such as (1) RERA registration certificate of the project (2) copy of sale agreement (3) copy of construction agreement (4) copy of tripartite agreement with Punjab National Bank (5) Bank statement for payments made (6) copy of stamp paper provided by the developer for possession on or before 1st May 2018. (7) copy of recent e-mail communications to the developer (8) copy of recent Whatsapp communication of the other owners of the apartments in the project to provide a reference to the recent developments and state of the affairs. (8) Interlocutory application under order 1 Rule 10(2) of CPC impleading respondents in the instant case (9) written complaint dated 18/10/2022.

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20. In support of his defence, the respondents have produced documents such as (1) Joint development agreement dated 30.7.2014 (2) Agreement of apartments dated 22.07.2014. (3) Sale agreement dated 04.08.2016 (4) Construction agreement dated 04.08.2016 (5) Partition deed dated 27.11.2020 (6) sale agreement dated 13.4.2016 (7) Cheque No. 125031 for Rs.5,40,000/- (8) Notice dated 06.02.2017 (9) email dated 20.9.2017, 09.12.2017 (10) bill dated 26.10.2017 and 31.10.2017 (11) email dated 8.05.2018 (12) Photographs and CD (13) Notice dated 20.09.2019 (14) Occupancy certificate dated 09.03.2020 (15) Notice dated 31.03.2022 (16) Reply dated 12.04.2022. (17) written arguments filed by respondent no.1. dated 31.10.2022.

Heard both the parties. This matter was heard on 19/07/2022, 10/08/2022, 6/09/2022, 21/09/2022 and on 18/10/2022.

21. 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?

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

23. 1. In the Negative

2. As per final order for the following:

FINDINGS

24. **Our findings on point no.1:** The grievance of the complainant is that the respondents have defaulted and not handed over the possession of his flat as per terms of agreement of sale and





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construction. The project was to be completed and handed over within 26 months from the date of agreement by May 2017 with grace period of 6 months i.e. by November 2017 as was envisaged in the terms and conditions of the agreement of sale and construction.

It is pertinent to note that the complainant had delayed in payment of the instalments as per the terms of agreement of sale and construction. Further, the complainant wanted some major alterations including relaying of the tiles by removing the already laid tiles. Hence the landowners requested the developer to stop final finishing of the apartment. The landowners were not ready for the said alterations as it would cause unnecessary delay but at the repeated requests of the complainant, the landowners requested the developer to do the same and also took the responsibility of paying the cost of such alteration work.

It is apparent from the records that the complainant on 20.9.2017 has sent a mail to the respondent by intimating that he would be sending the tiles to be laid directly. But the complainant did not show any interest or urgency later. Hence, on 9.10.2017 respondent has sent email to the complainant in delaying the alteration work. Further, the complainant had sent the materials only during the month of November 2017. It is evident from the fact that the complainant has taken up the possession of the apartment on 20/09/2018 to carry out interior work. The alteration works started in March 2018 and went on till May 2018.

It is evident from the available records that the complainant had also failed to pay the dues and obtain the sale deed. Therefore, the

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agreement was also terminated by the landowner and he is no more can be called an allottee within the meaning of RERA Act.

Therefore, complainant has no locus-standi to maintain this complaint before RERA because the agreement is terminated and a civil dispute arose between the purchaser and the landowner and therefore, the complainant has to agitate his rights before the civil court.

It is pertinent to note that the landowner terminated the sale agreement and in spite of termination of the agreement the purchaser did not approach the civil court for the relief of specific performance. Occupancy certificate was obtained long back on 9.3.2020 and the copy of which was served on the complainant long back by the landowners and even before the court. But the transaction was not completed between the land owner and the purchaser.

To sum up, in sequence, the facts in brief is that the complainant had filed the complaint before RERA on 18.06.2018. The complainant entered into sale and construction agreements both dated 04.08.2016.

The complainant through email dated 20.09.2017 addressed to the landowner stated that he had decided to put the bathroom tiles at his own expense. The complainant has sent tiles on 31.10.2017. As per terms of agreement the respondent-promoter is required to hand over the possession of the flat by November 2017. It is pertinent to note that the respondent-2 has sent a possession letter dated 22.02.2018 stating that he would handover the possession of the apartment on or before 1st May 2018. The alteration work started in March 2018 and went on till May 2018. The complainant took the keys from the landowner on 20.9.2018 to carry out interiors. The respondents-promoter applied for

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Occupancy certificate on 27.09.2018 and the Occupancy certificate was issued by the BBMP on 09.03.2020.

However, the respondents were required to hand over the apartment to the complainant in November 2017. As per agreements wherein it was handed over to the complainant in the month of September 2018. Hence there is a delay of 11 months in handing over the possession as agreed. At the same time, there is a delay on the part of the complainant in making the payments as agreed. Further, it is apparent from the legal notice dated 31.03.2022 issued by the respondent no.2 to the complainant by informing the complainant that he has failed to pay the balance sale consideration and take possession of the apartment in spite of repeated requests and reminders.

Considering all these aspects, the complainant is not entitled for the relief of delay period of interest . Moreover, respondent-2 has sent possession letter dated 22.2.2018 calling upon the complainant to take possession of the apartment on or before 1.5.2018. Accordingly, the point raised above is answered in the Negative.

25. Our findings on point no.2: In view of the above discussion, the complaint deserves to be dismissed. Hence, we proceed to pass the following order:

Ad

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ORDER

In exercise of the powers conferred under section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/ 180618/0000928** is hereby dismissed.

No order as to costs.


(**Neelmani N. Raju**)
Member-2
K-RERA


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

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