

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

**PROCEEDINGS OF THE AUTHORITY**

**Dated 27<sup>th</sup> December 2022**

**CMP/190520/0003069**

**Complainant:...**

**ASHOK KUMAR PATI**

**Ashok Kumar Patil**

# 805, Floriana Estates  
Sarjapur Road  
Koramangala 3<sup>rd</sup> Block  
Bengaluru-560 037

**(In Person )**

V/s

**Respondent:.....**

**M/s Prestige Estates  
Projects Limited**

Falcon House, No:1  
Main Guard Cross Road  
Bengaluru-560 001.

**(Rep. by Mr. Mohammed  
Sadiq B.A. Advocate)**

**JUDGEMENT**

1. The complainant **Ashok Kumar Patil** has filed this complaint under section 31 of RERA against the project "**Prestige Royale Gardens Phase-2**" developed by "**M/s Prestige Estates Projects Limited**" and sought relief of refund with interest under section 18 of the RERA Act.

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2. The respondent has developed this project in the limits of Avalahalli Village, Yelahanka Hobli, Bengaluru North Taluk, Bengaluru District.
3. This project has been registered under RERA vide registration bearing No. PRM/KA/RERA/1251/309/PR/170916/000446.
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. **The gist of the complaint is as under:-** The complainant is a joint agreement holder along with wife for a residential apartment bearing No: 6026-LO, situated on floor/level-2 of Tower/block-6 in the project "**Prestige Royale Gardens**". The complainant has paid substantial amount due to the promoter and only a paltry amount is payable on possession. An amount of Rs. **67,79,150/-** was paid till 25<sup>th</sup> April 2017. As per the agreement of sale, the promoter ought to have completed the construction and deliver the possession of the said apartment to the allottee before 30.4.2017 with grace period of 6 months. The promoter has not complied with complainant's requests to pay compensation as per agreements. The respondent has sent an occupancy certificate to the complainant in July, 2018 which does not include Tower 6, in which the complainant's apartment is existing as per agreement. The promoter desires to handover apartment as per email in March 2019, but is not responding when asked to identify tower number as per sanctioned plan. The respondent is not providing details of ST and VAT paid two years ago

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on almost entire cost collected by him and is insisting upon the complainant for more tax amount. The apartment was chosen by the complainant as per the brochure was in tower-6, whereas the building is shown as tower- 5 in BDA site plan. It is contended that the misrepresentation of tower numbers means the complainant cannot obtain clear title as per agreement and BDA sanctioned plan, even after 2 years after delivery date. The complainant has borrowed home loan and is paying interest since 2015. Having lost confidence with the respondent, the complainant desires to exit from the project. The complainant sought relief of refund with interest.

6. Further, the complainant has submitted written complaint on 26<sup>th</sup> July 2022 as under:
7. The complainant has booked an apartment dated 12.10.2014 by paying an amount of Rs.4.00 lakhs and the balance booking amount (20% of cost) was paid by two cheques dated 25.10.2014. Thus, the total booking amount paid was Rs.12,57,688/-, which was acknowledged by the respondent.
8. The agreement of sale and construction was entered into by the complainant both dated 25.11.2014.
9. It is contended that the agreement for sale refers to plan dated 18.06.2013 as the project "**Prestige Royal Gardens**". The schedule "C" apartment is described as "residential apartment bearing No.6026-LO" situated in floor/level-2 of tower/ block-6 in Prestige Royal Gardens being developed on schedule "A" property.

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10. It is contended that loan was sanctioned by the Bank of Baroda on 02.01.2015 for purchase of the apartment as per the agreements for which the complainant, respondent have signed a tripartite agreement with Bank of Baroda. Further, the respondent demanded back-dated instalments amounting to Rs.19,21,292 and this was disbursed by the bank on 08.01.2015. All the instalments (except last one payable "on possession") as well as ST/VAT demanded by respondent amounting to total of Rs.67,79,150/- were paid by the complainant on 25.04.2017.
11. It is contended that respondent has intimated by email dated 24.03.2019 that the apartment was ready for handover but explained in email dated 12.4.2019 that it was in Tower-5 of the BDA plan and that Tower-5 in the OC was "to be read as" Tower-6. Further, the respondent has given explanation that tower numbers in their marketing plan were different from the numbers in BDA plan.
12. It is contended that the complainant has discussed with the Bank of Baroda, who conveyed that possession of the flat & registration of sale deed had to be as per AOS and the BDA plan or otherwise the complainant should have to repay the loan amount and close the account.
13. It is contended that the respondent was unable to give possession of the apartment as per the AOS due to lack of OC and also citing wrong numbering of towers in his "marketing plan".
14. Further, the complainant has filed online complainant in May 2019 seeking return of all amounts paid to respondent with compensation as per RERA Act/Rules and also seeking compensation for the losses i.e.

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interest paid to the bank from February 2015 onwards. Hence this complainant.

15. After registration of the case, in pursuance of notice served, the respondent through its counsel appeared before this Authority and filed objections as under:
16. The respondent has denied all the allegations made against it by the complainant as false. It is contended that the construction of complainant's apartment bearing No.6026 in the project "**Prestige Royale Gardens**" was completed besides the development of the entire project was also completed. Further, the respondent had obtained the occupancy certificate on 04.07.2018.
17. It is contended that the respondent vide email dated 09.07.2018 had intimated the complainant for settling the outstanding dues and to take possession of the apartment. Further, in spite of calling upon the complainant to pay the balance amount and to take possession of the apartment, the complainant has neither come forward to pay the balance amount nor to take possession of the apartment. It is contended that the complainant not settling the balance amount is in violation of terms and conditions stipulated as per section 19(6) of the RERA Act of taking possession within 2 months from the date of occupancy certificate and registration of conveyance deed of the apartment.
18. It is contended that the respondent had obtained detailed building constructions from BDA on 18.06.2013. The copy of the said sanctioned plan has also been made available to the complainant.





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19. Further, the respondent for the purpose of ease of identification and marketing has numbered the said towers as follows:

As per sanctioned plan	As per marketing plan
Tower-5 Basement & Stilt floors for car parks & 16 upper floors comprising of 128 residential apartment units	Tower 6 - Basement & Stilt floors for car parks & 16 upper floors comprising of 128 residential apartment units

20. It is contended that the complainant is liable to pay a sum of Rs.6,16,906/- to the respondent towards the delayed payments of instalments as on 08.07.2019. Further as on 17.07.2019, the complainant is liable to pay an outstanding amount of Rs.11,29,411/- and interest thereupon to the respondent till he settles the outstanding dues to the respondent. Further, the complainant is liable to pay the monthly holding charges of Rs.10,000/- + GST per month towards security, electricity, CAM charges, upkeep and maintenance of the flat from 09/07/2018 till the time of taking possession of the flat.

21. It is contended that the marginal delay of 8 months in completing the project and obtaining occupancy certificate is due to Force Majeure factors such as shortage in supply of river bed sand due to stringent conditions imposed by State Government and Hon'ble Supreme Court's ruling on the mining of river bed sand. Further, there were heavy rains in the year 2015, 2016 and 2017 causing delay, due to demonetization there was cash crunch & the contractors would not able to pay the daily wages for labourers whose payments were made by cash in completing the project. Most of the daily wages labourers moved to their native place halting the construction activity for more than 3 to 4 months. Hence the complainant prays this Hon'ble Authority to dismiss the complaint.



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22. Heard both the parties. Hearings were held on 26/07/2022 and on 20/9/2022 before the Authority. The complainant made written submission on 26.06.2019 and the respondent submitted objections on 24.07.2019.

23. In support of his claim, the complainant has submitted documents such as (1) Agreement of sale and construction both dated 25.11.2014 (2) Tripartite agreement between allottee, respondent and Bank of Baroda (3) Booking confirmation letter dated 5.11.2014 (4) Client payment schedule (5) Letter of sanction to the borrower dated 02/01/2015 (6) Demand of Interest on amounts paid for flat PRG 6026 on 22.12.2017, 28<sup>th</sup> August 2018 (7) Interest certificates/statements issued by Bank of Baroda (8) Letter from Bank of Baroda regarding observations of Auditors (9) List of payments to respondent and calculation of compensation (10) List of monthly interest payments to Bank (11) Summary of total amount claimed from respondent

24. In support of his defence, the respondent has produced documents such as (1) Copy of the Occupancy certificate dated 04.07.2018 (2) Copy of the email-dated 09/07/2018 for having received the OC (3) Copy of the BDA approved Development Plan (4) Copy of the marketing plan/brochure (5) copy of the emails dated 29.06.2019 and 12.04.2019 regarding clarification to the complainant (6) Copy of BDAQ sanctioned plan (8) copy of the construction agreement and agreement to sell (9) copy of the interest calculation statement (10) copy of the statement of account (11) copy of the 6 photographs (12) copy of the emails with regard to rejoinder to all the previous mails.

25. On the above averments, the following points would arise for our consideration.

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1. Whether the complainant is entitled to the relief claimed?
  2. What order?
26. Our findings on the above points are as under:
1. Partially allowed.
  2. As per the final order for the following
27. **Our answer on point no.1:** The grievance of the complainant is that the respondent has failed to hand over possession of the apartment within agreed timeline. As per the terms of agreement of sale between the parties, the possession of the apartment had to be handed over on or before 30.4.2017 with a grace period of 6 months i.e by 30.10.2017. Further, the complainant states that he was to be given apartment in tower-6 whereas he has been offered in tower-number 5.
- It is pertinent to note that as per the BDA approved development plan, there are 9 towers consisting of 1696 residential apartment units in the Prestige Royale Gardens. While tower Nos.1,2,4,5 and 9 are independent standalone towers, whereas nos. 3,6,7 and 8 have two inter-connected towers each. Thus, the total number of towers in Prestige Royale Gardens is 13.
- Further, since the BDA has considered each contiguous building as one tower, the development plan has the numbering till 9. For the purpose of ease of identification and marketing has renumbered the said towers.
- It is pertinent to note that as per the development plan, tower nos. 1 & 9 are located in the front abutting the Doddaballapur Main Road. However, for the sake of clarity, the respondent has commenced the numbering of



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towers beginning from tower no. 1 taking it clockwise and ending with tower 14. Further, the number of each apartment is combination of tower number, floor number and unit number. In the present case, it is to be read as 6<sup>th</sup> tower, level-2, unit no.6 and the apartment number is 6025. This 6<sup>th</sup> tower is coming under Sy.no. 19/1A, 19/1B and 19/2 and is the 5<sup>th</sup> tower as per the BDA approved plan.

It is apparent from the available records that the respondent had shown to the complainant both the marketing plan/brochure and the BDA plan which clearly establishes the fact that the tower no.6 mentioned in the brochure is the tower no.5 as per the BDA sanctioned plan and the respondent has obtained the Occupancy certificate for complainant's apartment no.6026.

It is pertinent to note that, in the draft sale deed prepared by the respondent, wherein it was clearly indicated that tower numbers as per the BDA sanctioned plan and the tower numbers given in the marketing plan/brochure. Further, in the registered sale deed there is specific mention with regard to the tower numbers given in the BDA approved plan and tower numbers given in the marketing plan, thereby leaving no confusion/title disputes pertaining to the tower numbers.

It is pertinent to note that the complainant had failed to pay the instalment amounts in time on the specified dates mentioned in the construction agreement.

It is apparent from the records that though the respondent vide email dated 09.07.2018 had intimated the complaint to take possession of the flat after making balance amount, but the complainant did not heed to his request. It is to be noted here that the respondent makes it clear that the construction of tower 6 i.e. tower no.5 as per sanctioned plan, was completed before July 2018 itself and the occupancy certificate was obtained on 04.07.2018. The complainant had

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failed to perform his duty as per Section 19(10) & (11) of the RERA Act of taking possession within 2 months from the date of occupancy certificate and registration of conveyance deed of the apartment.

The apartment was to be delivered on 30.10.2017. Possession was offered to the complainant on 9.7.2018. The complainant is entitled to interest on delay period from 30.10.2017 to 9.7.2018. Accordingly, this point is answered in partly affirmative.

28. **Our answer on point no.2:** In view of the above discussion, the complaint is partially 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: **CMP/ 190520/0003069** is hereby partially allowed as under:

- 1) The respondent is hereby directed to pay interest on delay period on the amount of Rs. **67,79,150/-** calculated at the rate of SBI MCLR + 2 per cent from **30.10.2017** to **9.7.2018** within 60 days from the date of this order.
- 2) Similarly, the respondent-promoter is entitled for interest on the delayed payment of instalments and balance amount calculated at the rate of SBI MCLR + 2 per cent from the complainant as per section 19(7) of the RERA Act.
- 3) The promoter shall register the apartment to the complainant on receipt of balance amount, if any, after setting off against the delay period interest.


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- 4) The complainant is at liberty to enforce the said order in accordance with law, if the respondent fails to comply with the order.

No order as to costs.

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

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

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