

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 9th January 2023

Complaint No. CMP/200814/0006357

COMPLAINANT....

Asha Lobo
410, Adisha, 2C Cross
OMBR Layout
Banaswadi
Bengaluru-560 043.

**(By Mr. Ajith Lobo,
Authorized Representative)**

V/S

RESPONDENT.....

**M/s Kolte Patil Developers
Limited**
The Estate No.121, 10th floor
Dickenson Road
Bengaluru-560 042.

**(By Mr/Mrs. Manasa B.Rao,
P.S. Gurumurthy,
Gowthama..... others
Advocates)**

Asb

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JUDGEMENT

1. The aforesaid complainant has filed this complaint under sect 31 of RERA Act against the project "RAAGA" developed by "KOLTE PATIL DEVELOPERS LIMITED" and sought for the relief of interest on delay period.
2. The promoter has developed a project in the limits of property bearing Sy.no. 33, Kannur Village, Bidarahalli Hobli, Bengaluru East Taluk, Bengaluru.
3. This project has been registered in RERA bearing registration no. PRM/KA/RERA/1251/446/PR/171014/000856.
4. **Brief facts of the case:** The complainant, had entered into an agreement of sale and construction both dated **6th July 2016** with the respondent for the purchase of flat bearing no. **H-101 on the first floor in H-block/wing residential complex "RAAGA"**. Out of the sale consideration of **Rs.61,24,000/(Sixty one lakhs twenty four thousand only)** the complainant has paid an amount of **Rs.46,63,458/-(Rs. Forty six lakhs sixty three thousand four hundred fifty eight only)**. The respondent/promoter was required to hand over the possession of the apartment by **Janaury 2018 with a grace period of 6 months i.e. by July 2018**. The complainant was coaxed into a scheme and made to apply for loan with Punjab National Bank and that the respondent has assured her that all Pre EMIs would be refunded till possession. It is contended that post-

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sale, the respondent has delayed in reimbursing her Pre-EMIs every month and her mails to the respondent on most occasions remained unanswered. Construction progress was not on par with payments. Further, the respondent continued collecting money from the complainant disproportionate to the time required for handover. The respondent has unilaterally changed the possession date without any communication and also refused reimbursing the promised Pre-EMIs to her. The complainant has sought for the relief of interest on delay period. Hence, this complaint.

5. After registration of the complaint, in pursuance of notice, the respondent has appeared before the Authority through its counsel and filed statement of objections as under:
6. The respondent has denied all the allegations made against it by the complainant as false. The respondent had entered into a construction agreement with the complainant for construction of apartment and agreement to sell with the complainant for sale of the apartment both dated 6th July 2016. Further, in terms of the construction agreement, the date of handing over of possession is January 2018, however, respondent was given 6 months grace period i.e. till July 2018. This is evident from the clause-13 of the construction agreement dated 6th July 2016. It is contended that the respondent has faced several hurdles which were beyond its control, despite the same the project was completed and OC was obtained on 3.9.2020. Further, it is urged that there is no delay and in any event in the absence of willful delay,

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there is no question of any claim that can be made against the respondent. It is submitted that, clause 14 of the construction agreement enumerates the same. Further, these delays were not in control of the respondent due to demonetization, labour strikes, heavy rainfall, goods and service tax etc. It is pertinent to note that the complainant has delayed in paying the outstanding/unpaid payments. The complainant cannot unjustly seek delay compensation for delays solely attributable to them. The apartment unit was ready for registration by September 2020. The respondent as a gesture of goodwill offered to pay a total sum of Rs.5,00,000/- to the complainant as compensation. The respondent has sent several emails to the complainant to come forward to make the balance payment and to register the sale deed, however, the complainant has failed to do so. Further, the allegation regarding refund of the Pre-EMI component for the purchase of the apartment unit is false. Hence, the respondent prays to dismiss the complaint.

7. In support of her claim, the complainant has produced documents such as (1) agreement of sale and construction both dated 6.7.2016 (2) Pre-EMI scheme (3) cost sheet (4) statement of account from Kolte Patil (5) memo of calculation.
8. In support of his defence, the respondent has produced documents such as (1) Agreement of Sale and construction both dated 6.7.2016 (2) memo regarding balance payment
9. Heard both the parties. This matter was heard on 25/07/2022, 2/9/2022, 12/9/2022, 23/09/2022, 17/10/2022, 14/11/2022 and finally on 21/11/2022.

Ans

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10. 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?

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

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 her flat as per terms of agreement of sale and construction. The project was required to be completed by the respondent within **January 2018 with a grace period of 6 months i.e. by July, 2018** as was envisaged in the terms and conditions of the agreement of sale and construction.

13. On perusal of the agreement of sale and construction, it is seen that the completion date is agreed as January 2018 with a grace period of 6 months i.e. by **July 2018**. The respondent-promoter was required to complete the project and hand over the possession of the apartment by **July 2018**. In cases wherein the respondent-promoter has failed to complete or unable to hand over the possession of the apartment to the allottee, the complainants are admissible for relief in accordance with Section 18 of the RERA Act.

Abh

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14. Therefore, as per Section 18 of the Act, the respondent-promoter is liable to pay the interest on delay period.
15. On a perusal of the documents filed and oral submissions made before the Authority, it is evident that the complainant has paid substantial sale consideration and admittedly there is a delay in handing over the apartment as per the agreement. Hence, the complainant is entitled for interest on delay period under section 18 of the Act. The complainant has furnished memo of calculation for the period from 1.1.2018 till 9/8/2022. The complainant has claimed interest on delay period from 1.1.2018. In fact the complainant is entitled for interest on delay period from **1.7.2018** as per the agreement of sale dated 06.07.2016.
16. From the materials available on record, it is apparent that the respondent had sent email dated **17.8.2021**, and also notices dated 28.10.2021 and 21.01.2022 asking the complainant to come forward to pay the balance sale consideration and to get execute the sale deed and to take possession of her apartment. But, the complainant has failed to comply with the same. Therefore, the complainant is entitled for the interest on delay period till 17th August 2021.
17. 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. Further, during the proceedings held on 21.11.2022 and vide letter dated 02.01.2023, the complainant had requested for possession of the said apartment. Hence, the respondent has to register the sale deed in favour of the



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complainant in respect of the said apartment and then to handover possession of the same to the complainant. Having accepted the said amount and failure to keep up promise to hand over possession of apartment certainly entitles complainant herein for registration, possession and interest on delay period.

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

19. **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/200814/0006357** is hereby allowed as under:

- 1) The respondent is hereby directed to pay interest on delay period on the amount of Rs. **46,63,458/-** (Rs. Forty six lakhs sixty three thousand four hundred fifty eight only) from **1.7.2018** **calculated** at the rate of SBI MCLR + 2 per cent till **17.8.2021**.
- 2) The respondent is hereby directed to register the apartment bearing No. **H-101 in the project "RAAGA"** 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.



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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 interest on delay period to the complainant within 60 days from the date of this order.
- 4) The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with this order.

No order as to costs.



(H.C. Kishore Chandra)

Chairman

K-RERA