

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, HON'BLE CHAIRMAN**

**COMPLAINT NO.: CMP/200922/0006639**

**DATED THIS 16<sup>TH</sup> DAY OF JANUARY, 2023**

**COMPLAINANT.....**

**ADISHESHA R C,**  
#33, Janani, 3<sup>rd</sup> Cross,  
1<sup>st</sup> A Main, Vinayaka Layout,  
Bhoopsandra,  
Bengaluru - 560094.

(Rep. By Sri. Mahesh L Patil, Adv.,)

**V/S**

**RESPONDENT.....**

**PRESTIGE ESTATES PROJECTS LTD.,**  
The Falcon House,  
No. 1, Main Guard Cross Road,  
Bengaluru - 560001.

(Rep. By Sri. Mohumad Sadiq B.A, Adv.,)

**PROJECT NAME &  
REGISTRATION NO.**

**PRESTIGE ROYALE GARDENS PHASE-I  
PRM/KA/RERA/1251/309/  
PR/170916/000445**

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

1. This complaint is filed under section 31 of the RERA Act against the project "Prestige Royale Gardens Phase-I" developed by "Prestige Estates Projects Ltd.," for the relief of interest on delay period, loss of rent and compensation for mental stress.

*Asst*

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**Brief facts of the complaint are as under:-**

2. The complainant had booked an apartment bearing No.2098 in the project of respondent by entering into an agreement for sale and construction agreement on 05/10/2013 for a total sale consideration of Rs.54,63,840/- (Rupees Fifty Four Lakhs Sixty Three Thousand Eight Hundred and Forty Only). As per the construction agreement dated 05/10/2013 the respondent was supposed to handover the possession to the complainant before 30/04/2017 with a grace period of an additional six months i.e., on or before 30/10/2017. But, the respondent has handed over the possession on 14/12/2019, therefore causing the delay of 2 years, 1 month and 14 days. Hence, this complaint.
3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and filed objections as under:-
4. The respondent has denied all the allegations made against it by the complainant as false. He contends that, he has handed over possession of the apartment bearing No. 2098 on 14/12/2019 to the complainant. In fact, the complainant had given full and final settlement letter dated 14/12/2019 to the respondent confirming that he does not have any claims whatsoever against the respondent. The complainant is no longer an allottee of the respondent as he has executed agreement of assignment dated 04/03/2020 assigning all his rights title and interest of the said apartment in favour of one Mahesh L Patil. While assigning his rights the complainant had earned profit of Rs.1,36,160/- as assignment charges over and above his investment. While so assigning all his rights title and interest in



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favour of Mahesh L Patil the complainant has not retained any right to claim any compensation against this respondent in the assigned agreement. After completion of the work the respondent applied for occupancy certificate and obtained the same on 04/07/2018.

5. Upon receiving the occupancy certificate the respondent sent an e-mail dated 09/07/2018 calling upon the complainant to pay the balance amount and to take possession of the flat. In this regard, the respondent sent several follow up emails dated 05/12/2018, 23/01/2019, 27/03/2019, 28/08/2019 and 18/09/2019 calling upon the complainant to pay the balance and to take possession but the complainant has not responded. The complainant made final payment of Rs.3,53,672/- (Rupees Three Lakhs Fifty Three Thousand Six Hundred and Seventy Two Only) on 19/10/2019. Further, on 14/11/2019, the complainant had furnished TDS payment receipt dated 09/10/2019 to the respondent, informing to handover over possession of the said flat on 14/12/2019. The complainant has failed to perform his obligation of settling outstanding dues to the respondent. The complainant has failed to take possession of the said flat within 2 months from the date of occupancy certificate and to take registration of the said flat.
6. As per agreement the complainant is liable to pay interest of Rs.2,56,069/- as on 14/11/2019 to the respondent towards delayed payments of instalments and to pay monthly holding charges of Rs.6,000/- + GST per month towards security electricity, CAM charges and maintenance of flat from 01/09/2018 till 14/12/2019. The complainant is liable to pay a sum of Rs.99,120/- towards holding charges as on 31/11/2019 and also liable to pay future interest on Rs.3,55,189/- till the complainant settles the aforesaid outstanding

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due amount. 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 Supreme Court ruling on the mining of river bed sand, and increase in cost of river bed sand 10 time the usual rates. Further, due to heavy rain in the year 2015, 2016 and 2017 caused delay in completing the project. The respondent submits that further and due to demonetization there was cash crunch and the contractors would not pay the daily wages for labourers whose payments were most of the time made by cash. Further most of the daily wages labourers moved to their native place halting the construction activity for more than 3 to 4 months. This complaint is filed after 10 months of taking possession of the said flat. Hence, prays to dismiss the complaint with costs.

7. In support of his claim, the complainant has produced in all 4 documents such as copies of sale agreement, possession letter, construction agreement and payment receipts.
8. On the other hand, the respondent has produced in all 11 documents, such as copies of Income tax returns of the complainant for the year 2020-2021, email sent to the flat owners of prestige royal gardens allotting parking lots dated 04/01/2020, Agreement to sell, construction agreement, occupancy certificate, possession letter, statement of accounts, full and final settlement letter, assignment agreement, interest calculation statement and feedback form.
9. Hearings were conducted on 25/07/2022, 12/08/2022 and 29/08/2022.





10. Both the parties have submitted written arguments.
11. **On the above averments, the following points would arise for my consideration:-**
1. Whether the complainant is entitled for the relief claimed?
  2. What order?
12. **My answer to the above points is as under:-**
1. In the Negative.
  2. As per final order for the following

**REASONS**

13. **My findings on point No. 1:-** Grievance of the complainant is that there is a delay of 2 years 1 month and 14 days in handing over possession of his apartment by the respondent.
14. Same is resisted by the respondent on the ground that the complainant had given a letter dated 14/12/2019 to the respondent stating that he doesn't have any claims whatsoever against the respondent and that the complainant is no longer an allottee of the respondent as he had executed agreement of Assignment dated 04/03/2020 assigning all his rights, title and interest of the said apartment in favour of one Mahesh L Patil and while assigning so, the complainant had earned profit of Rs.1,36,160/- as assignment charges.
15. It is not in dispute that as per the terms of agreement, the respondent was supposed to handover the possession on or before 30/10/2017 whereas possession has been handed over on 14/12/2019. However, as to the cause for delay there is dispute between the parties. According to the complainant, the delay is attributable to the



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respondent. As against this, contention of the respondent is that whatever the delay in completion of the project was due to certain force majeure events like restrictions imposed by the State Government, the decision of the Hon'ble Apex Court by which mining of river bed sand was not possible resulting in acute shortage in supply of the sand so also there was phenomenal increase in the cost of sand upto 10 times. However, inspite of all these hurdles he could complete the project and obtain the occupancy certificate by 04/07/2018. However, it is the complainant who caused delay in depositing the balance amount inspite of many follow up emails after raising demand for the payment of balance on 09/07/2018 itself.

16. That apart, the complainant had given a letter on 14/12/2019 to the respondent clearly stating that "we hereby reiterate that there are no outstanding claims / demands from our end towards the unit No. 2039, in prestige Royale Gardens". These facts are also apparent from the documents furnished by the respondent. Therefore, the claim of the respondent is that it is a complainant who is liable to pay interest on delayed payment. Furthermore the respondent also had taken contention that, as of now the complainant has assigned his apartment in favour of one Mahesh L Patil and thereby given up his entire rights over the apartment. Specific contention of the respondent is that by assigning the apartment as such the complainant has gained profit of Rs. 1,36,160/-.

17. All these contentions of the respondent are supported by cogent documentary evidence. These being the facts, the complainant cannot claim the relief of interest on a delayed payment.



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18. Even otherwise, taking into consideration that this complaint is filed by the complainant on 22/09/2020 i.e., after execution of assignment agreement dated 04/03/2020 by the complainant in favour of Mahesh L Patil on this count also this complaint cannot be entertained as he was no more an allottee.
19. Therefore, looking to the overall materials placed on record, this Authority is of the considered view that, the complainant is not entitled for the relief claimed. Accordingly, the point raised above is answered in the Negative.
20. **My 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**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/200922/0006639 is hereby dismissed as not maintainable.

No order as to costs.

  
(H.C. KISHORE CHANDRA)

CHAIRMAN  
K-RERA

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