

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
PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE
CHAIRMAN

Dated 17TH February 2023

Complaint No. CMP/210929/0008398

COMPLAINANT:

**VISHWANATH &
SUDHA VISHWANATH**
D-004, Inner Spaces
Meadow in the Sun
Kasavanahalli Main Road
Owners Court West
Bengaluru Urban-560 035.

(IN PERSON)

V/s

RESPONDENT....

INNER SPACES
102, Leafy Blocks Owners Court
West, Kasavanahalli Main Road
BENGALURU RURAL-560 035

(By Sri. Vishnu Vardan Reddy,
Authorized Representative)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project '**MEADOW IN THE SUN**' developed by '**INNER SPACES**' for the relief of interest on delay period.

2. The respondent has developed this project in the limits of #36/2 & 44, Haralur village, Varthur hobli, Bengaluru East, Bengaluru Urban.

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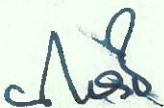
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3. This project has been registered in RERA vide registration no. PRM/KA/RERA/1251/446/PR/180131/000544.

4. **The brief facts of the complaint are as under:** The complainants had purchased an apartment bearing **D-004** and entered into an agreement to sale and construction agreement both dated 30/10/2018 in the project "**MEADOW IN THE SUN**" of the respondent. Out of the total sale consideration of Rs. **1,84,00,813/-** (One crore eighty four lakhs eight hundred thirteen only), the complainants have paid the entire sale consideration to the respondent on various dates. The respondent was required to hand over the possession of the aforesaid apartment on or before 30/6/2019 with a grace period of six months i.e. by 30/12/2019. All obligations as per agreements have been completed by the complainants and the respondent-promoter has not complied with the agreement. The respondent has committed to hand over the possession to the complainant on 30/12/2019. He has received the flat but amenities were incomplete. Thereafter, absolute sale deed was executed by the respondent in favour of the complainant on 10/12/2021. Occupancy certificate obtained by the respondent from the BBMP on 21/3/2022. Since there was a delay of more than 1 year and 6 months in handing over the apartment as per the agreed date on 30.12.2019, the complainants have filed the above complaint before the Authority praying for the following reliefs:

a) direct the respondent to pay compensation for delayed handover at the rate as per committed in the construction agreement clause no.10.



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5. On a perusal of the land purchase sale and construction agreement, it is seen that the completion date is agreed as 30/6/2019 with a grace period of 6 months i.e. by 30.12.2019. The respondent-promoter was required to complete the project and hand over the possession of the apartment by 30.12.2019. In cases where in the respondent-promoter has failed to complete or unable to hand over the possession of the apartment to the allottees, this complaint is admissible for relief in accordance with Section 18 of the Act.

6. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its authorized representative and filed statement of objections:

Statement of objections filed by the respondent are as under:

It is submitted that the complainant had taken the possession on June 2021. The complainants had also defaulted on maximum payments. Further, the respondent contends that due to Covid and few other technical concerns, the project was delayed and that he was not in a position to honour any delay penalties. Occupancy certificate has already obtained by the respondent and completed all the amenities. The allottee's have taken over the maintenance of the Meadow in the Sun since 15th January 2022 and he has no dispute on this matter.

7. Further, the complainants have filed response to the builder's statement filed on 22.9.2022 as under; It is submitted that two payments have been delayed is inaccurate. The builder has claimed that there has been a delay in the payment of Rs.27,60,122/-. As per



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the demand note for this payment was on 22nd March 2020. The house was nowhere near completion but even otherwise he has made payment on 27/5/2020. The builder has claimed that there has been a delay in the final payment of Rs.9,20,041/-. As per the demand note and construction agreement, this tranche was pertaining to the stage "on possession". When the demand note was raised on 5th March 2021, the property was neither complete nor was ready for possession and hence it was an invalid demand note. Further, the builder has claimed that maximum payments have been delayed by him. This is completely inaccurate. The builder himself claimed a delay in payment of only 2 payments out of 9 payments. As per RERA guidelines, the delay compensation has been sought only on the payments made till promised delivery dated 30.12.2019 and accordingly memo of calculations was submitted. The builder has claimed that OC has been obtained and all amenities have been completed. The builder has obtained the OC only in March 2022. The rectification work has been initiated by the builder after repeated request by the residents only on 10.9.2022.

8. The complainants in support of their claim, have produced documents such as (1) copy of absolute sale deed dated 10/12/2021 (2) copy of sale agreement dated 30/10/2018 (3) copy of construction agreement dated 30/10/2018 (4) email conversation with the respondent

9. The respondent in support of its defence, has produced documents such as (1) copy of land purchase sale agreement dated 30/10/2018 (2) copy of construction agreement dated 30/10/2018. (4) email

128

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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conversation with the complainant (5) copy of demand note to complainant dated 16/3/2020 5/3/2021.

10. Heard both the parties. This matter was heard on 19/8/2022, 12/9/2022, 30/9/2022 and finally on 28/10/2022.

11. 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?

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

13. 1. In the Affirmative

2. As per final order for the following:

FINDINGS

14. **My findings on point no.1:** The grievance of the complainants are that the respondent has defaulted and not handed over the possession of his apartment as per terms of land purchase sale agreement and constructions both dated 30/10/2018. The respondent was required to hand over the possession of the aforesaid apartment on or before 30/6/2019 with a grace period of six months i.e. by 30/12/2019 as envisaged in the land purchase sale agreement and constructions both dated 30/10/2018.

15. The respondent contends that there is no wilful delay or default by the respondent in handing over the possession of the apartment to the complainant and continues to remain committed to delivering the possession to its customers. One of the contentions raised by the



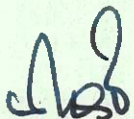
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respondent for delay in completing the project is on account of Covid-19. As stated earlier, the delivery and completion of the project is June, 2019 and the actual Covid-19 pandemic started during the year 2020 and the respondent cannot plead before this Authority Covid-19 pandemic as the reason for delay in completing the project. The respondent has obtained occupancy certificate on 21/3/2022. The respondent has executed the registered absolute sale deed on 10/12/2021. The respondent has handed over the possession to the complainant on 30.6.2021 after a delay of more than 1 year and 6 months as per the agreed date on 30.12.2019. The respondent has sought to explain the delay by referring to above issues which are nothing but routine requirements of compliances and construction related issues which are required to be handled by the promoter of any project who has undertaken to develop the real estate project. None of the reasons submitted by the respondent has any force and legal validity to justify the delay in completion of the project and provide any exception from the application of Section 18 of the Act. Therefore, as per Section 18 of the Act, the promoter is liable to pay the interest on delay period.

16. On a perusal of the documents filed and oral submissions made before the Authority, it is evident that the complainants had paid substantial sale consideration and admittedly there is a delay of more than one year and six months in handing over the apartment as per the agreement. Hence, the complainants are entitled for interest on delay period under section 18 of the Act.



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17. The complainants have furnished memo of calculation dated 15.2.2023 for the period from 31.12.2019 to 30.6.2021. The details are as below:

Payment details

Sl.No.	Type	Amount	Date
1.	Total payment till possession	1,47,20,650	31.12.2019
2.	Subsequent payment 1	27,60,122	27.5.2020
3.	Subsequent payment 2	6,00,000	10.8.2021
4.	Subsequent payment 3	1,36,033	12.10.2021
5.	Subsequent payment 4	1,84,008	09.12.2021
6.	Total principle amount	1,84,00,813	
7.	Total delayed interest as on 30/6/2021	23,81,887	

From the information furnished by the complainant in the memo of calculation for interest on delayed period, it is apparent that the promoter has to deliver the apartment on or before 30/12/2019 but failed to hand over possession of the said apartment. The respondent The respondent has not resisted the claim of the complainant and has not submitted any objections to memo of calculation. The exemption claimed by the respondent is not acceptable as per the reasons mentioned above. Considering all the above aspects, the point raised above is answered in the Affirmative.

18. My findings on point no.2: In view of the above findings, I conclude that the complaint deserves to be allowed. Hence, I proceed to pass the following order:

Ans

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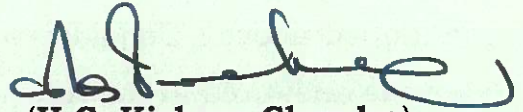
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ORDER

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/210929/0008398** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to pay a sum of Rs. **23,81,887/-** (Rs. Twenty three lakhs eighty one thousand eight hundred eighty seven only) towards interest on delay period to the complainant calculated at the rate of SBI MCLR + 2 % from **31.12.2019** till **30.6.2021** i.e. the date of handing over the possession of the apartment **within 60 days from the date of this order**. The net balance amount, if any, shall be after deduction of delay period interest.
2. The complainants are at liberty to enforce the said order in accordance with law if the respondent fail to comply with the order.

No order as to costs.



(H.C. Kishore Chandra)

Chairman
K-RERA