

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/210926/0008379

COMPLAINANT:

PRADEEP KUMAR DODLE
H-004, Meadow in The Sun
Owners Court Layout West
Kasavanahalli
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.

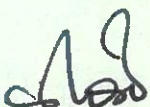
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3. This project has been registered in RERA vide registration no. PRM/KA/RERA/1251/446/PR/180131/000544.

4. **The brief facts of the complaint are as under:** The complainant had purchased an apartment bearing **H-004** and entered into an land purchase agreement and construction agreement both dated 22.01.2018 in the project "**MEADOW IN THE SUN**" of the respondent. Out of the total sale consideration of Rs.1,78,96,000/- (One crore seventy eight lights ninety six thousand only) the complainant has paid an amount of Rs.1,78,40,172/- (Rs. One crore seventy eight lakhs forty thousand one hundred seventy only) to the respondent till the date of complaint. The respondent has refunded an amount of Rs.55,828/- to the complainant because of non-delivery of internal door and short delivery of carpet area out of the total sale consideration. The respondent was required to hand over the possession of the aforesaid apartment on or before 31/12/2018 with a grace period of six months i.e. by 30/6/2019. The project has been announced as complete by the builder on 3/9/2021 but lot of amenities were pending. He has faced lot of financial burden due to this delay by the builder. All obligations as per agreements have been completed by the complainant and the respondent-promoter has not complied with the agreement. The respondent has handed over the possession to the complainant on 05/03/2021. Thereafter, absolute sale deed was executed by the respondent in favour of the complainant on 25/6/2021. Occupancy certificate obtained by the respondent from the BBMP on 21/3/2022. Since there was a delay of more than 1 year and 8 months in handing over the apartment as per the agreed date on 30.6.2019, the



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complainant has filed the above complaint before the Authority praying for the following reliefs:

a) direct the respondent to pay interest on delay period.

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. The respondent-promoter was required to complete the project and hand over the possession of the apartment by 30.6.2019. In cases where in the respondent-promoter has failed to complete or unable to hand over the possession of the apartment to the allottee, 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 05/03/2021. The complainant 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.

7. Further, the complainant has filed response to the builder's statement filed on 12.9.2022 as under; It is submitted that on the claim of the builder that two payments have been delayed is inaccurate. The



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builder has claimed that there has been a delay in the payment of Rs.6,84,400/-. As per the demand note for this payment was 15th December 2019. In addition to this, the builder has issued another demand note on 27th December 2019 and for this the complainant has made payment as per due date. Further, the builder has claimed that there has been a delay in the final payment of Rs.8,38,972/-. It is contended that as per the demand note and construction agreement, this tranche was pertaining to the stage "on possession" and when the demand note was raised on 21.4.2021, the property was neither complete nor was ready for possession. Hence it was an invalid demand note. Upon demanding completion, Inner Spaces team have finished the balance work and has released a completion letter only on 15th June 2021 along with a final demand note dated 15th June 2021 with a due date of 22nd June 2021. The standard procedure is that the final tranche be released only on registration of the property. The registration has been done on 25th June 2021 and a cheque has been handed over to the respondent on the same day.

8. The complainant in support of his claim, has produced documents such as (1) copy of absolute sale deed dated 25.6.2021 (2) copy of land purchase sale agreement dated 22.01.2018 (3) copy of construction agreement dated 22.1.2018. (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 22.01.2018 (2) copy of construction agreement dated 22.1.2028. (4) email conversation with the complainant (5) copy of completion letter dated 15.6.2021

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(6)copy of demand note to complainant dated 15.6.2021(7) copy of handing over of door keys of flat no. H-004 on 5.3.2021.

10. Heard both the parties. The respondent has filed pleading dated 14.10.2021. 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 complainant is 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 22.01.2018. The respondent was required to hand over the possession of the aforesaid apartment on or before 31/12/2018 with a grace period of six months i.e. by 30/6/2019 as envisaged in the land purchase sale agreement and constructions both dated 22/1/2018.

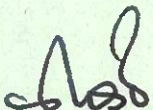
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15. The respondent contends that there is no wilful delay or default by the respondent in handing over the possession of the apartment to the complainant and continues to remain committed to delivering the possession to its customers. One of the contentions raised by the 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 25/6/2021. The respondent has handed over the possession to the complainant on 5/3/2021 after a delay of more than 1 year and 8 months as per the agreed date on 30.6.2019. 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 complainant had paid substantial sale consideration and admittedly there is a delay of more



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than one year and eight months 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.

17. The complainant has furnished memo of calculation dated 14.2.2023 for the period from 30.6.2019 to 5.3.2021. The details are as below:

Payment details

Sl.No.	Type	Amount	Date
1.	Total payment till possession	1,43,16,800	30.6.2019
2.	Subsequent payment 1	20,00,000	24.12.2019
3.	Subsequent payment 2	6,84,400	10.01.2020
4.	Subsequent payment 3	8,38,972	01.07.2021
5.	Total principal amount	1,78,40,172	
6.	Total delayed interest as on 5/3/2021	26,72,482	

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 30/6/2019 but failed to hand over possession of the said apartment. The respondent vide letter dated 14/10/2021 resisted on the ground that the complainant has already taken possession on 5/3/2021. The said customer missed their invoice due dates on several occasions and that in spite of receiving full consideration, he has handed over possession. Hence after taking possession, customer had left with any ground to seek compensation to delayed possession. The exemption claimed by the respondent is not acceptable as per the reasons mentioned above.

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Considering all the above aspects, the point raised above is answered in the Affirmative.

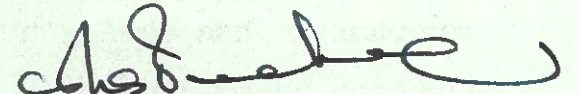
18. My findings on point no.2: In view of the above findings, I conclude that the complaint deserves to be allowed. Hence, I proceed to pass the following order:

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/210926/0008379** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to pay a sum of Rs. **26,72,482/-** (Rs. Twenty six lakhs seventy two thousand four hundred eighty two only) towards interest on delay period to the complainant, calculated at the rate of SBI MCLR + 2 %. from **30.6.2019** till **5.3.2021 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 complainant is 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