

PROCEEDINGS OF THE AUTHORITY

BEFORE BENCH 5

DATED 10TH APRIL, 2023

PRESIDED BY HON'BLE MEMBER G.R. REDDY

COMPLAINT NO: CMP/UR/210809/0008225

COMPLAINANTS : Ms.Mona Jaffer by her GPA holder
Jaffer Siddique
No.78, Robertson Road,
East Point Apartment, Flat No.101,
Frazer Town, Bengaluru : 560005

RESPONDENT / : M/s.Elegant Properties
PROMOTER No.1, Coles Road, Frazer Town,
Bangalore : 560 005

PROJECT NAME & : ELEGANT ALTIS
REGISTRATION NO. UN REGISTERED

J U D G E M E N T

This complaint is filed under Sec-18 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project ELEGANT ALTIS praying for a direction to delivery of the apartment and for other reliefs:

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. The complainants have entered into an agreement of sale on 10.04.2013. The project completion date as per agreement was 30.09.2015. The complainants have paid an amount of




Rs.52,17,028/- (Rupees Fifty two lakhs seventeen thousand twenty eight only) to the respondent. Since there was delay of more than seven years in handing over the apartment, the complainants have filed the above complaint before the Authority praying for the following reliefs:

- a) Direct the Respondents to complete the project
- b) Direct the Respondents to pay compensation.
- c) To grant permanent injunction restraining the respondent from assigning its development rights to any third party.
- d) Awarding Litigation expenses of RS.20,000/-

2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 30.09.2015. The promoter-respondent was required to complete the project and hand over possession of the apartment by 30.09.2015. In cases where in the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, such cases are admissible for relief in accordance with Section 18 of the Act.

3. During the course of hearing of the complaint, it was brought to the notice of the Authority that despite the fact that the project was not completed as on the date of the commencement of the Act, the Promoter of the project failed to register the project as an ongoing project under Sec-3 of the Act. The developer/promoter of the project and the land owners of the project were heard on 6.7.2022, 19.07.2022, 11.08.2022 and 01.09.2022 during which the promoters



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together have undertaken to comply with the requirement of the registration of the project by uploading the registration application and the requisite documents for completion of the registration process. However, the applications uploaded for registration of the project by the developer-promoter did not comply with all the requisite submission and uploading of the documents in accordance with the procedure laid down by the Authority. The deficiencies in the documents has been brought to the notice of the promoters of the project by sending emails and further conducting hearing by the Full Bench of the Authority on 08.09.2022, 22.09.2022 and on subsequent dates. During the hearing of the Full Bench of the Authority, the promoters of the project i.e., developer-promoter as well as land owners, have once again undertaken that they will comply with the application procedure and upload all the documents which are pre-condition for granting registration of the project. It is noted that there is a failure on the part of the promoter of the project in complying with the uploading of all the requisite documents even as on date. The Full Bench of the Authority has taken into consideration the failure on the part of the promoter of the project to register the project as an ongoing project, despite the fact that the project was incomplete as on the date of commencement of the Act and by the order dt.04.11.2022 has directed the promoter to comply with the requirement of registration under Sec-3 of the Act. In view of the direction of the Full Bench of



the Authority, this project is deemed to be a registered Project and accordingly falls within the ambit and jurisdiction of the Authority for adjudicating the complaints filed by the complainants against the promoter of the project.

4. On perusal of the documents filed and materials placed before the Authority, it is evident that complainant has paid an advance sale consideration amount and admittedly, there is a delay in handing over the apartment as per the agreement. During the hearing on 14.03.2023, the application filed by the complainant praying this Authority to modify the relief sought is taken on record and the Authority has permitted the complainant on 23.3.2023 to modify the relief sought and submitted the memo of calculation for delay period interest. The complainant has served the copy of the amendment application along with memo of calculation for delay period interest on the respondent and filed a memo for having served on the respondent. The memo of calculation of delay period interest submitted by the Complainant is taken on record and the same is permissible u/s 18 of the Act. The Promoter-Respondent has not submitted any memo of calculation nor filed any objection statement / written submissions.

Hence the Authority passes the following:

ORDER

1. 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 CMP/UR/210809/0008225 is hereby partly allowed.

2. Respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 30.09.2015 till the date of handing over possession along with occupancy certificate. The promoter shall pay the Delay Period Interest as arrived and calculated by the Complainant amounting to Rs.36,38,268/ (Thirty six lakhs thirty eight thousand two hundred sixty eight only) within 60 days from the date of this order. The Promoter is also liable to pay delay period interest every month for the subsequent period and up to the date of completion of the project.

3. Respondent-Promoter is directed to complete the construction of the project at the earliest with all amenities as per the agreement, obtain occupancy certificate and handover the apartment to the allottees at the earliest.

4. As regards the cost of litigation expenses to the extent of Rs.20,000/- claimed, the promoter is directed to pay an amount of Rs.20,000/- to the Allottee towards cost of litigation.


(G.R. REDDY)
MEMBER
FIFTH ADDITIONAL BENCH
K-RERA