



# ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Emp. No: 8521

ಪುಟ ಸಂಖ್ಯೆ .....

ವಿಷಯ Mr. Soloni Brahmachari & Another

Pashmina Waterfront Phase-1

ಕಂಡಿಕೆ ಸಂಖ್ಯೆ	ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು
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**CMP- 8521**

**05.07.2023**

As per the request of the complainants and Mr. M. Raju authorised signatory of the respondent, the above case is referred before the Lok Adalat to be held on 08.07.2023.

The complainants and Mr. M. Raju authorised signatory of the respondent are present, in the pre Lok-Adalat sitting held on 05.07.2023. The authorised person of the authorised signatory of the respondent has filed authorization. The dispute in the above case is settled as per the joint memo dated: 05.07.2023 filed during the pre Lok Adalat sitting. The settlement entered between the parties is voluntary and legal one and as per which the complainants and the respondent have no further claims against each other whatsoever in the above case. The dispute in this case is settled between the parties in the pre-Lok Adalat sitting held on 05.07.2023 in terms of the joint memo dated: 05.07.2023. The matter referred to conciliators to pass award.

*Saloni*  
(SALONI BRAHMACHARI)

*Ankan*  
(ANKAN BRAHMACHARI)

*5/7/23*  
Judicial Conciliator.

*5/7/23*  
Advocate Conciliator.

For LILY REALTY PVT. LTD.

*Rajin. M*

Authorized Signatory



**Complaint No. CMP/211108/0008521**

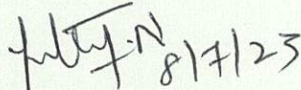
**08.07.2023**

**Before the Lok-Adalat**

The above case is taken up before the Lok-Adalat. The joint memo dated: 05.07.2023 has been filed by both the parties is hereby accepted. The dispute in the above case between the parties is settled before the pre Lok-Adalat sitting held on 05.07.2023, as per joint memo dated: 05.07.2023. The said joint memo filed by the parties shall be part and parcel of award/order.

The above case stands disposed off accordingly as settled in the Lok-Adalat.

  
Judicial Conciliator.

  
Advocate Conciliator.



**KARNATAKA STATE LEGAL SERVICES AUTHORITY**  
**BEFORE THE LOK ADALAT**  
**IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT**  
**BENGALURU**

**DATED: 08<sup>TH</sup> DAY OF JULY 2023**

**: CONCILIATORS PRESENT:**

Sri. I. F. Bidari

..... Judicial Conciliator

AND

Smt. Preethi N

..... Advocate Conciliator

**COMPLAINT NO: CMP/211108/0008521**

**Between**

1. Mrs. Saloni Brahmachari &
2. Mr. Ankan Brahmachari

..... Complainants

AND

M/s. Lily Reality Pvt. Ltd.,

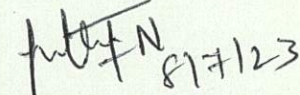
.....Respondent

**Award**

The dispute between the parties in the above case having been referred for determination to the Lok Adalat and the parties having compromised/settled the dispute in this case, as per the joint memo dated:05.07.2023 filed during the pre Lok Adalat sitting, same is accepted. The settlement entered between the parties is voluntary and legal one.

The above case stands disposed off as settled in the Lok Adalat as per the joint memo dated:05.07.2023 and said joint memo is ordered to be treated as part and parcel of the award.

  
Judicial conciliator

  
Advocate conciliator



**BEFORE THE HON'BLE KARNATAKA REAL ESTATE REGULATORY  
AUTHORITY**

**LOK ADALAT**

**CMP / 211108 / 0008521**

**BETWEEN:**

- 1).Mrs. Saloni Bhramachari
- 2).Mr. Ankan Bhramachari

...

**Complainants**

**AND**

M/s Lily Realty Pvt. Ltd.

...

**Respondent**

**JOINT MEMO**

*5/5/22*  
The Respondent has developed a project under the name "Pashmina Waterfront". Notably, the competent authority has issued Occupation Certificate in respect of the said project. The said project was delayed due to events not under the control of the Respondent (Force Majeure events).

It is pertinent to note that the National Green Tribunal ("NGT") came out with new guidelines only for Bangalore in May of 2015. The said order unfortunately was applied retrospectively which changed the lake buffer requirements from 30 mtrs. to 75mtrs. for projects abutting lakes. In May 2015 the Respondent was almost ready with completion of the project. This NGT order was challenged by CREDAI in the Supreme Court of India and Pashmina Waterfront was the case study represented by CREDAI to the Supreme Court. The Supreme Court of India quashed the order of NGT in March 2019. In June 2019 merely 4 months after the quashing of the NGT order the project got OC, which goes to show the readiness of the project and how close it was to completion in May 2015. A retrospective order of NGT that delayed the project for 4 years. The Construction

*Saloni*  
*Ankan*

For LILY REALTY PVT. LTD.

*Rajin-M*  
Authorized Signatory



Agreement executed with the Complainants has a clause which deals with delays caused due to force majeure events (Clause 6.2).

The Complainants herein have availed financial assistance from Bank/NBFCs. The Respondent has paid pre-EMI on the said loan availed by such Complainants till August 2019 i.e. start of covid pandemic. Also, the Complainants and the Respondent have entered into a Supplementary Construction Agreement. Since pre-EMI (interest) is paid by Respondent on the loan availed by the Complainants, Clause 8 of the Supplementary Construction Agreement stipulates that in the event of delay by the Respondent in completing sale of the Unit, there shall be no liability of the Respondent to pay any damage or interest. Clause 8 expressly stipulates that this is an essential condition of the scheme of payment of Pre-EMI by the Respondent.

Considering the Clause 6.2 of the Construction Agreement (force majeure events) and Clause 8 of the Supplementary Construction Agreement (payment of pre-EMI), the delay in handing over possession of the Unit is not attributable to the Respondent as it was a result of force majeure events.

However, in good faith, the Respondent has amicably settled with the Complainants. The Complainants and Respondent most respectfully submit as follows:

1. The Complainants has filed the instant complaint against the Respondent herein in relation to Unit bearing No. T0119A in the project bearing the name "*Pashmina Waterfront*" ("**Unit**") seeking a direction to the builder to either cure the deficiencies in the apartment or waive off the remaining payment so that the Complainants can get the work done themselves.

*Saloni*  
*Ankur*

For LILY REALTY PVT. LTD.

*Rajiv M*  
Authorized Signatory



2. After due deliberation, during the pendency of the instant complaint before the Hon'ble Real Estate Regulatory Authority, Bengaluru, the Complainants and the Respondent have agreed to amicably settle their disputes at Lok Adalat.
3. In furtherance of the above, the Complainants and Respondent request for the instant complaint to be disposed off as settled on the following terms:
  - a. The Complainants hereby agrees to waive off any interest the Complainants may be entitled to claim towards delay in delivery of possession by the Respondent. The Respondent also agrees to waive off any interest the Respondent may be entitled to claim towards delay in payments to be made by the Complainants in accordance with the agreed Payment Schedule in the Construction Agreement and Agreement to Sell; (Including but not limited to common area maintenance charges).
  - b. The Complainants has inspected the Unit and agrees to take handover of the Unit. The Complainants will not have any claim against the Respondent in regard to the Unit;
  - c. The Complainants hereby agrees to make payment of Rs.13,67,423/- (Rupees Thirteen lakhs sixty-seven thousand four hundred twenty three only) to the Respondent towards the balance payable for the Unit;
  - d. After receiving the said consideration amount from the Complainants, The Respondent shall execute the sale deed within 15 working days from the date of realization of the payment.
  - e. After the Complainants clears the due payable by the Complainants as mentioned in point "c." above, the Respondent will execute a Sale Deed in favour of the Complainants for Unit bearing No. T0119A.

*Salvi*  
*Arun*

For LILY REALTY PVT. LTD.

*Rajin. M*

Authorized Signatory



4. The Complainants and the Respondent hereby agree that any and all claims of either party in relation to the subject matter of the proceedings herein stand satisfied and no claims remain. If there is any claim by either of the parties to this complaint against the other before any other forum or Court relation to the subject matter, they have agreed that the same will also be disposed of as settled by the parties by filing appropriate memo in such cases.
5. The parties further request that the instant settlement be recorded in the National Lok Adalat to be held on 05/07/2023.

The instant memo may be taken on record in the interest of justice, equity and good conscience.

**Place: Bengaluru**

**Date: 05.07.2023**

*Salai*  
*Anka*

**Complainants**

**For LILY REALTY PVT. LTD.**

*Rajin. M*

**Respondent**  
**Authorized Signatory**

**PROCEEDINGS OF THE AUTHORITY**  
**PRESIDED BY HON'BLE MEMBER G.R. REDDY**  
**BEFORE BENCH 5**  
**COMPLAINT NO: CMP/210106/0007345**

**DATED THIS 17th DAY OF APRIL, 2023**

COMPLAINANTS : Mr.Kandathil Mathai Verghese &  
Ms.Dhanya Mary Cherian  
Flat NO.481, Jalvayu Towers  
Sadanandanagar, Indiranagar Post  
Bangalore : 560 038  
  
By Mr.G.Suryanarayanan, Advocate

RESPONDENT / : M/s.Zuari Infraworld India Limited  
PROMOTER Adventz Centre, 1<sup>st</sup> Floor No.28  
Cubbon Road, Bengaluru 560001  
  
By Mr.R.Ravishankar, Advocate

PROJECT NAME & : ZUARI GARDEN CITY-KAVERI APARTMENTS  
REGISTRATION NO. PRM/KA/RERA/1267/374/PR/171019/  
000810

**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 **ZUARI GARDEN CITY-KAVERI APARTMENTS** praying for a direction to Refund the amount paid with Interest.





**BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-**

1. As per the details furnished by the Complainants in the memo of calculation for refund with interest, the complainant has entered into an agreement of sale on 13-06-2014. The project completion date as per agreement was 12-12-2016. The complainants have paid an amount of Rs.58,38,781/- (Rupees Fifty eight lakhs thirty eight thousand seven hundred eighty one only) to the respondents till date of complaint. Since there was delay of more than four years in handing over the apartment, the complainants have filed the above complaint before the Authority praying for the following reliefs:

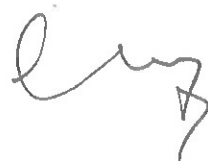
i) Refund of the amount paid together with interest.

2. As per the agreement submitted by the Complainants, it is seen that the completion date is agreed as 30.08.2019. The promoter-respondent was required to complete the project and hand over possession of the apartment by 12.12.2016. Since the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for relief in accordance with Section 18 of the Act.

3. After registration of the complaint, notice was issued to both complainants and respondents to appear before the authority. In pursuance of the notice, the complainants have appeared through their counsel and submitted their memo of calculation for refund with interest. The Complainants have submitted copy of the agreement for sale, construction agreement, statement of account for having



paid the amount in support of its claim. The respondent has appeared before the Authority through its counsel and filed statement of objections along with various documents including occupancy certificate dated 19.05.2022. The Respondent has pleaded in its statement of objection that the project could not be completed due to various reasons such as ban on supply of construction materials affecting the construction activities. The Respondent has also pleaded Covid-19 pandemic situation termed as a Force Majeure event and automatic extension was given to all projects including the present project. It is pertinent to note that the completion date of the project as per construction agreement is 30 months from the execution date of the construction agreement i.e., on or before 12.12.2016 with a grace period of 6 months ending on 11.06.2017. Occupancy certificate was obtained by the Respondent during May 2022 which clearly establish that the project is not completed within the time stipulated in the construction agreement i.e., 12.12.2016. The grace period of 6 months will be considered in favour of the Respondent for calculation of interest etc., only when the project is completed on or before 11.06.2017. The Project is completed and obtained occupancy certificate during May 2022 and hence for all practical purpose the completion date will be taken as 12.12.2016 excluding the grace period of 6 months provided in the construction agreement. Further, the Respondent in its statement of objection pleaded Covid-19 as Force Majeure event for which the respondent not be penalised. The said contention of the Respondent will not be applicable to the present case as the completion date of the project is 2016 which is much before the Covid-19 pandemic. None of the





reason submitted by the Respondent in its objection statement 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 and preventing the complainants from claiming refund with interest.

4. During the course of hearing both complainants and the Respondent have filed documents and citations in support of their contentions.

5. From the information furnished by the Complainant in its memo of calculation for refund with interest, it is apparent that the promoter has to deliver the apartment on or before 12.12.2016, but failed to handover possession of the apartment. As per Section 18 of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act. Therefore, as per Section 18 of the Act, the promoter is liable to return the amount received along with interest.

6. From the averments made in the complaint it is evident that complainants have paid the advance sale consideration amount and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the Complainants. The Promoter-Respondent has not submitted any memo of calculation. On the other hand the Respondent has filed objections to the memo of



calculation filed by the complainants contending that the calculation is completely erroneous, one-sided, self serving and inflated 61% of the principal amount. The complainants have produced Document No.4 annexed to claim statement wherein the 'Customer Statement of Account' issued by the Respondent clearly establish that the Complainants have paid a sum of Rs.58,38,781/- as on June 2017. The Complainants have claimed refund along with interest for the said amount and the said money was with the Respondent for a period of more than six years. The Respondent will have the option of claiming the interest on the delayed payment from the Complainants only when the Respondent had completed the project within the period agreed between the parties and the complainants' wishes to take the apartment. In the present case the apartment is not completed within the period agreed and hence the Complainants have the option under the Act to exit from the project.

7. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

**Memo of Calculation for Refund with Interest submitted by the Complainants as on 26.02.2023**

<b>Principle amount (A) Rs.</b>	<b>Interest (B) As on 26.02.2023 Rs.</b>	<b>Refund from Promoter (C) Rs.</b>	<b>Total Balance Amount (A+B) Rs.</b>
<b>58,38,781</b>	<b>36,01,815</b>	—	<b>94,40,596</b>


And accordingly 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 No.CMP/210106/0007345 is hereby allowed.
2. Respondent is directed to refund a sum of **Rs. 94,40,596/- (Rupees Ninetyfour lakhs forty thousand five hundred ninety six only )** towards refund with interest to the complainants within 60 days from the date of this order as per the memo of calculation of Complainants, calculated from 01/05/2017 till 26.02.2023. The interest due from 27.02.2023 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

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