

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

**PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4**

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

**Dated 31<sup>st</sup> Day of May 2023**

**Complaint No. CMP/221117/0010356**

**COMPLAINANT:**

**BINOD KUMAR BARUA  
GREEN FONTANA no.23  
FLAT NO. 203, 2<sup>ND</sup> FLOOR  
RAMA TEMPLE ROAD  
BENGALURU URBAN-560047**

**(IN PERSON)**

V/s

**RESPONDENT**

**M/s GREEN CARS PRIVATE  
LIMITED  
NO; 86/E, 5<sup>TH</sup> CROSS, 36<sup>TH</sup>  
MAIN, DOLLARS SCHEME  
BTM 1<sup>ST</sup> STAGE  
BENGALURU URBAN-560068**

**(By Sri N. RAGHUBABU  
N.M.R. ASSOCIATES )**

**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA Act, against the project '**GREEN FONTANA**' developed by '**M/s GREEN CARS PRIVATE LIMITED**' for the relief of interest on delay period.
2. This project has been registered in RERA bearing registration no.PRM/KA/RERA/1251/310/PR/180420/001540.

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3. The respondent has developed this project in the limits of No: 23, 10<sup>th</sup> Cross, Anjaneya Swamy Extension Layout, Ejipura Main Road, Koramangala, Bengaluru South, Bengaluru Urban.

4. **The brief facts of the complaint are as under:** The complainant had booked an flat No. 203 in the project "GREEN FONTANA" of the respondent. Thereafter, he had entered into an agreement of sale and construction agreement both dated 31/8/2018. Out of sale consideration of Rs.66,00,000/- (Rs. Sixty six lakhs only), the complainant has paid an amount of Rs.1,00,000/- on 27/8/2018, Rs.1,00,000/- on 30/8/2018, Rs.1,50,000/- on 9/9/2018, Rs.2,00,000/- on 28/10/2018, Rs.3,50,000/- on 15/11/2018, Rs.4,00,000/- on 20/1/2019, Rs. 6,00,000/- on 4/8/2020, Rs.1,00,000/- on 8/8/2020 in all Rs.20,00,000/- and Rs.35,00,000/- transferred directly through HDFC Bank cheque dated 1.2.2019 in all totalling Rs.55,00,000/- (Rs. Fifty five lakhs only) to the respondent which has been duly acknowledged by him. Further, he has made payment of Rs.12,36,000/- on 26/5/2023 through non-refundable withdrawal cheque from the HDFC Bank Limited covered Employees Provident Fund Trust. Altogether he has made a total payment of Rs.67,36,000/-. The complainant has stated that the respondent has returned an amount of Rs.1,36,000/- in cash to him. Thus, the total amount paid by the complainant to the respondent is Rs.66,00,000/- (Rs. Sixty six lakhs only). The respondent was required to hand over the possession of the aforesaid apartment within 32 months from the date of sanction plan dated 4.3.2016 with a grace period of 3 months by 4.2.2019. The complainant has also borrowed loan from HDFC Bank Limited towards purchase of the said flat. It is



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contended that the project was delayed for more than 3 years. The complainant has occupied the said flat on 9/6/2021 without basic amenities. The builder has violated approved sanction plan. There are so many structural defects such as (1) Proper electric connection not taken from BESCOM (2) lift not provided (3) Poor quality of construction. Due to above issues, the complainant has approached this Authority with a direction to the respondent to rectify the issues and to give possession with all amenities besides transfer of khatha. The complainant has requested this Authority for spot inspection and direction to the respondent to pay interest on delay period. Hence, this complaint.

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

**Statement of objections filed by the respondent are as under:**

6. The respondent has denied all the allegations made against them by the complainant as false. It is contended that the agreement was entered into as per the choice of the complainant as he was needed loan from the bank. The S.R. value of the flat was Rs.54.00 lakhs whereas the sub-registrar would not have register the said flat for Rs.48.00 lakhs. The petitioner entered into an agreement towards purchase of the property. During May 2020(1<sup>st</sup> COVID 19 lockdown time) the complainant has taken a single key(normally three keys are there) of the Flat No: 203 on the ground that he needs to take measurement for interior design. The complainant has slowly done the interior works to the said flat and has taken advantage of the situation without



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permission shifted his family and started residing there till today. The complainant has not paid the balance amount nor get registered the flat in his name. He is also due of monthly maintenance and electricity charges.

7. The respondent has issued notice to the complainant to vacate the premises. Though the complainant received the said notice, no reply was offered so far and furthermore, the respondent has prepared the plaint to file the suit for possession. The possession is not handed over by the respondent to the complainant and the possession if any is an unauthorized one. The full payment in respect of the flat is not made by the complainant and the agreement itself is time barred and he cannot claim legal possession over the flat in question. The respondent has not secured the occupancy certificate till today. Till such time the occupancy certificate is obtained the complainant cannot claim the lapses if any as ruled by the Hon'ble Supreme Court of India.

8. The respondent has filed further written submission on 22/3/2023. The details are as under:

9. It is contended that dummy sale agreement is obtained by the complainant from the respondent for the purpose of obtaining loan. The complainant refused to sign the original sale agreement and to register the same as per law. Based on dummy agreement, the complainant has approached this Authority and stated that, the total sale consideration is fixed at Rs.48.00 lakhs and further contended that he has paid more than what the sale consideration is fixed in the original agreement. The property involved in sale of the property the book value of the property itself is more than Rs.78.00 lakhs.



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Karnataka Real Estate Regulatory Authority,

# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,  
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10. As per the receipts for having paid the amount by the complainant to the respondent which comes to Rs.22.00 lakhs and apart from the dummy sale agreement, the complainant has also obtained proforma invoice which shows cost of construction is Rs.16,92,000/- and cost of undivided share land for 22 Sqft is of Rs.31,08,000/- in all total it comes to Rs.48.00 lakhs. The respondent has secured NOC from his banker NKGSB Bank . The NOC shows the total sale consideration fixed is Rs.48.00 lakhs. On verifying the aforesaid documents, which clearly shows that, the dummy documents has been obtained by the complainant for the purpose of obtaining loan.

11. For the admitted payment of amount the respondent has issued receipts for Rs.6.00 lakhs, Rs.1.00 lakh and Rs.35.00 lakh in all the respondent has received payment from the complainant is Rs.42.00 lakhs. The complainant without payment of balance amount trying to obtain sale deed from the respondent.

12. The respondent has sent the actual proforma with details of receipt off payment and other details in which the respondent has repaid the amount to the complainant. The proforma shows initially the respondent received Rs.56,36,000/- and out of which the respondent paid back Rs.4,36,000/- and after deducting Rs.4,36,000/- the total amount received by the respondent is of Rs.52.00 lakhs only and balance payable by the complainant is of Rs.14.00 lakhs. The total cost of the flat is of Rs.78.00 lakhs less interiors of Rs.12.00 lakhs. Then it comes to Rs.66.00 lakhs and the respondent has received Rs.52.00 lakhs and the balance amount payable by the complainant is of Rs.14.00 lakhs. Besides, the complainant has obtained personal debts from the respondent to the tune of Rs.2,51,000/- apart from the

6/8

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maintenance and BESCOM bills utilized by the complainant. Till date the complainant is due of Rs.5,15,785/- towards debt due to the respondent which includes monthly maintenance and BESCOM charges. Hence, prayed to dismiss the complaint.

13. The complainant in support of his claim, has produced documents such as (1) Parking area photos (2) Police NCR copy (3) NOC of mortgage copy (5) copies of payment receipts made to the respondent (6) Proforma invoice (7) memo of calculation for interest on delay period.

14. The respondent in support of its defence, has produced documents such as (1) copy of agreement of sale and construction dated both dated 31.8.2018 (2) dummy receipts raised for bank purpose (3) Proforma invoice (4) NOC to mortgage dated 14/11/2018 (5) NOC for sanctioning loan against flat no. 203 from NKGSB Bank

15. Heard arguments of both the parties. This matter was heard on 25/1/2023, 10/2/2023, 17/2/2023, 9/3/2023

16. 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?

17. Findings on the above points are as under:

1. In the Affirmative

2. As per final order.



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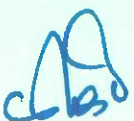
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**FINDINGS**

18. **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 agreement of sale and construction agreement both dated 31/8/2018 within the stipulated timeline. The respondent was required to hand over the possession of the aforesaid apartment within 32 months from the date of sanction plan dated 4.3.2016 with a grace period of 3 months by 4.2.2019 as envisaged in the agreement of sale and construction agreement both dated 31/8/2018.

19. Same is resisted by the respondent on the grounds that the complainant has not secured the sale deed and the agreement is also time barred since the petitioner is the defaulter of payment. The complainant shifted the premises without there being any sale deed or without the completion of the building and at his own risk only he has shifted the premises. The full payment in respect of the flat is not made by the petitioner and the agreement itself is time barred and he cannot claim legal possession over the flat. The respondent has caused the legal notice calling upon the complainant to vacate the premises since he had forcefully occupied the premises illegally.

20. On going through the agreement of sale furnished by both the parties, surprisingly this document is not signed by the complainant but it has been signed by the respondent. In the statement of objections, the respondent has taken the contention that the agreement of sale was executed between the parties as the complainant was intending to avail loan from the bank. By this, it can be gathered that the execution of agreement of sale between the parties is not in dispute though it is not signed by the complainant. Further,



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# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,  
3rd Cross, Mission Road, Bengaluru

in the copy of agreement of sale furnished by the complainant, he had signed from 3<sup>rd</sup> page onwards. Undisputedly, the complainant is in possession of the said apartment since 9/6/2021. In this regard, the contention of the respondent is that during COVID 19 period the complainant has taken the key of the said flat from the respondent for doing interiors and after completion of interiors he has shifted to the said flat without the consent of respondent. Once, the possession is delivered and taken over by the complainant, he can claim interest on delay period only from 4/2/2019 to 9/6/2021.

21. The complainant claims that he has paid entire sale consideration of Rs.66,00,000/- to the respondent as per the memo of calculation submitted by him on 29.5.2023. According to respondent, the complainant has paid sale consideration of Rs.52.00 lakhs and balance of Rs.14.00 lakhs is to be paid by him. For this, in support of his claim the complainant has produced payment receipts for Rs.66,00,000/- which is genuine. As per agreement of sale dated 31/8/2018 the entire sale consideration is Rs.66,00,000/-.

22. Therefore, it is incumbent upon the respondent to pay interest on delay period as under:

Sl.No.	Type	Amount	Date
1.	Total payment till possession	66,00,000	4/2/2019
2.	delayed interest as on 9/6/2021	14,77,371	

23. One more claim of the complainant is that the respondent has not provided all the amenities such as proper electric connection, poor quality of construction and lift facilities whereas the respondent contends that he has already provided all the amenities as agreed. However, the respondent has



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not obtained occupancy certificate. The respondent is liable to provide all the amenities whatever it is agreed in the agreement of sale dated 31/8/2018.

Accordingly, the point raised above is answered in the Affirmative.

**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/221117/0010356** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to register the sale deed in respect of apartment bearing no 203 in the project "GREEN FONTANA" of the respondent upon receiving the balance amount if any, from the complainant.
2. Further, the respondent is hereby directed to pay a sum of Rs.14,77,371/- (Rs. Fourteen lakhs seventy seven thousand three hundred seventy one only) towards interest on delay period to the complainant calculated at the rate of SBI MCLR + 2 % from 4/2/2019 to 9/6/2021.
3. The respondent is directed to provide all the amenities as agreed in the agreement of sale dated 31/8/2018.
4. The respondent is hereby directed to register the flat no.203 in favour of the complainant, pay interest on delay period to the complainant within 60 days from the date of this order.

  
(H.C. KISHORE CHANDRA)  
CHAIRMAN  
K-RERA

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U.S. DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20530