

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 6**

**Dated 26<sup>TH</sup> JUNE 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.:CMP/201227/0007336**

**COMPLAINANT.....**

**MR. ANAND DHARIYA  
43, SHIVAJI HOUSING SOCIETY  
INDU NIWAS  
PUNE - 411016  
DISTRICT: PUNE  
STATE: MAHARASHTRA**

**(BY MR.PRASAD K.R. RAO &  
MRS. INDIRA PRIYADARSHINI,  
ADVOCATES)**

**V/S**

**RESPONDENT.....**

**LILY REALTY PVT LTD  
No.19/1, Doddamane Building  
2<sup>nd</sup> Floor, Vittal Mallya Road  
Bangalore-560001.**

**(BY MR.ARVIND RAO, ADVOCATE  
& DUA ASSOCIATES)**

**J U D G E M E N T**

1. This complaint is filed under section 31 of the RERA Act against the project "**Pashmina Waterfront Phase-I**" developed by "**LILY REALTY PVT LTD**" situated at Katha No.149, Ward No.52, Bhattarahalli Village, Bidarahalli Hobli, Old Madras Road, Bengaluru East, Bengaluru Urban for the relief of refund with interest.

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2. This project has been registered under RERA bearing Registration No.PRM/KA/RERA/1251/446/PR/171014/000345 valid till 31/12/2018.

**Brief facts of the complaint are as under:-**

3. The complainant had booked an apartment for a total sale consideration of Rs.1,10,00,000/- (Rupees One Crore Ten Lakh only) and paid booking advance of Rs.5,00,000/- (Rupees Five Lakh only) in the project "Pashmina Waterfront Phase-I" under the LIVE LITE scheme offered by the respondent according to which the respondent is tied up with financial institutions for home loans and is supposed to pay PEMIs to the Bank on behalf of the complainant until the completion of the project. The allotment of apartment was confirmed by the respondent vide his letter dated 28/6/2012. The complainant has availed a sum of Rs.85,00,000/- (Rupees Eighty Five Lakh only) as home loan from ICICI Bank out of which Rs.65,55,051/- (Rupees Sixty Five Lakh Fifty Five Thousand and Fifty One only) has been disbursed to the respondent.
4. The complainant submits that even before entering into an agreement of sale and construction agreement, the respondent raised first demand note seeking a sum of Rs.16,85,016/- on 15/9/2012 which was paid by him on 28/9/2012 whereas the agreement of sale and construction agreement were executed on 04/10/2012. The supplemental agreement of sale and construction agreement was executed on 6/11/2012. According to the construction agreement, the respondent was supposed to handover the possession of the apartment to the complainant on 31/12/2014 with a grace period of six months i.e. latest by 30/06/2015. The complainant submits that despite substantial payment received by the respondent, they failed to handover possession of the apartment as agreed.
5. The complainant also submits that the respondent's engineer has given certificate during pre-delivery inspection about list of incomplete



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works in September 2019. Despite pursuing with the respondent, there is no response. The complainant submits that he has also cleared the housing loan in October 2019. Without completing pending works, the respondent is demanding balance payment with interest. The respondent is ignoring emails, phone calls from the complainant. Thus the complainant has approached this Authority and prays for direction to the respondent to refund the amount with interest. Hence, this complaint.

6. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and have contested the matter by filing statement of objections on its behalf as under:
7. The respondent denies each and every allegations made against them by the complainant is not maintainable in the eyes of law. The respondent submits that the complainant has been allotted an apartment in the project and after obtaining sanction plan from the competent authority have commenced development work and sale in the said project. The delay in completion of the project is attributed to force majeure events such as, non-availability of sand, steel, cement and such other vital building materials, demonetization, labour strike, delay in getting approvals/sanctions/permission from the government agencies and order passed by National Green Tribunal.
8. The respondent submits that the delay was due to obstruction caused by adjacent land owners with some villagers, the development work was hindered and resulted in the respondent filing a complaint with the police. Further, the respondent submits that the order to shift high tension electric line issued by KPTCL on 20/9/2010 was challenged in W.P.No.30250/2013 by the Welfare Association of the

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adjoining residential layout and the shifting work could be executed only after the disposal of the said Writ Petition by order dated 23/10/2017.

9. The respondent further submits that by orders dated 7/5/2015 and 4/5/2016 in O.A. No.222/2014, Hon'ble NGT directed that the buffer zone in respect of lakes should be extended to 75 metres from the existing buffer zone of 30 meters, upon which the BBMP issued a circular to the effect that the buildings falling under the extended buffer zone could not be granted Occupancy Certificate. The respondent submits that though they had applied for grant of O.C. could not get it for the reason mentioned supra.
10. The respondent further submits that they had filed a Civil Appeal before the Hon'ble Supreme Court in C.A.No.2246/2018 against the Hon'ble NGT Order which was set aside by the Hon'ble Supreme Court vide its order dated 5/3/2019 upon which the respondent obtained the occupancy certificate on 29/6/2019 from the competent authority.
11. Having regard to the above reasons, the respondent admits that they were not able to handover completed possession of the complainant's apartment as agreed. The respondent denies to pay any interest to the complainant as prayed in his complaint.
12. The respondent contends that the complainant has not made payments in accordance with the payment schedule and as such, it was not possible for the respondent to complete the unit and hence cannot be held liable for the delay. The respondent further contends that PEMI payment which they had undertaken to make is an obligation limited only until the date of intimation to the concerned

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customer that the unit is ready for interior fit-outs. The respondent contends that the unit is ready for possession barring minor works which is completed at the stage of handing over upon payment of the balance amount.

13. The respondent finally submits that the complainant himself is not coming forward to pay the balance dues since 2019 due to which the respondent has to bear the maintenance charges. Hence, prays this Authority to dismiss the complaint.
14. The complainant submits that the scheduled payment was not delayed by him, but the respondent, as he had delayed submission of required documents to their banker on time. The complainant further submits that the issue of NGT was resolved in March 2019 and that the respondent could have completed the complainant's unit and handed over possession in September 2019. The complainant also submits that as directed in the interim order, produced a DD for Rs.13,39,918/-. The respondent completely failed to adhere to the Authority's interim order and did not bother to complete the pending works but chose to appeal to Hon'ble KREAT to set aside the order of the Authority. The complainant submits that the respondent is not keen to handover possession of the unit and is using legal process to cause delay.
15. The complainant prays the Authority to direct the respondent to refund the entire amount with interest.
16. In support of his claim, the complainant has produced documents such as copies of Sale Agreement, Construction Agreement, supplementary agreement of sale and construction agreement, photographs showing pending works in the unit, Payment Receipts, Statement of Account from Kotak Mahindra Bank, email

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correspondence with the respondent and memo of calculation for delay period interest as on 12/11/2022. Subsequently on amendment of relief sought to refund with interest, the complainant has submitted memo of calculation for refund with interest as on 15/6/2023.

17. In support of their defence, the respondent has produced documents such as copies of applications filed and subsequent sanctions from BBMP, Police complaint and FIR, Order dated 20/9/2010 by KPTCL, Order of the Hon'ble NGT, Judgement dated 5/3/2019, Occupancy Certificate dated 26/9/2019, C.A. certificate and Statement of Account and photographs of the unit. The respondent has not filed its memo of calculation.
18. This case was heard on 10/8/2022, 27/9/2022, 13/10/2022, 02/11/2022, 17/11/2022, 25/11/2022, 20/12/2022, 21/12/2022, 17/01/2023, 15/02/2023, 11/04/2023, 30/05/2023 and 07/06/2023. Heard arguments of both sides.
19. **On the above averments, the following points would arise for my consideration:-**
  1. Whether the complainant is entitled for the relief claimed?
  2. What order?
20. **My answer to the above points are as under:-**
  1. In the Affirmative.
  2. As per final order for the following -

**REASONS**

21. **My answer to Point No.1:-** From the materials placed on record, it is undisputed that inspite of entering into an agreement for sale and construction agreement to handover the possession of the apartment



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to the complainant, the builder has not handed over the possession of the flat till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 4/10/2012.

22. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s The State of Uttar Pradesh it is held that:

*"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf."*

23. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at Para No.23 between M/s Imperia Structures Ltd v/s Anil Patni and another by the Hon'ble Supreme Court it is held that:

*"In terms of section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himanshu Giri came*

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*under the later category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment."*

24. During the process of the hearing -
25. On 13/10/2022 the Authority directed the respondent to file submission regarding completion of work and occupancy certificate.
26. On 2/11/2022 the respondent submitted photographs regarding completion of the complainant's unit and sought for time to submit occupancy certificate. The respondent was directed to call over the complainant and start the process of handing over unit to the complainant.
27. The complainant submitted that on 16/11/2022 visited the flat for pre-inspection, but was not allowed by the respondent and produced documents before the Authority to this effect.
28. On 17/11/2022 the respondent counsel submitted that they are ready to allow complainant to do inspection on 17<sup>th</sup> November itself. The Authority directed that the inspection will happen accordingly and that both the parties should appear before the Authority on 25/11/2022 for apprising the action taken regarding handing over the possession to complainant after settling the matter of payment from both parties, failing which show-cause notice will be issued to the respondent for non-compliance of the Authority's directions. Accordingly, the complainant's counsel appeared before the Authority and submitted report of site inspection.
29. On 20/12/2022, the Authority noted that the respondent is continuously stalling and not obeying court instructions. The Authority directed the respondent to complete the pending works in the flat and handover possession to the complainant immediately. The Authority also directed Assistant Executive Engineer, KRERA to conduct a joint inspection on the site of complainant's flat on 21<sup>st</sup>

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December 2022 to determine incompleteness of the flat vis-a-vis what was promised in the brochure and submit a report to the Authority the same day. The complainant submitted a Memo to the Authority praying amendment in relief sought from refund with interest to delay period interest. The Authority accepted the same.

30. On 21/12/2022, the Authority went through the report submitted by the Inspection Team and noticed various works are pending. The Authority passed following "**Interim Order**" regarding possession without prejudice to delay period interest which the respondent is liable to pay to the complainant:

*"The respondent is directed to complete the unit in all respects as identified in the inspection report and hand-over on 16<sup>th</sup> January 2023. Prior to that, the respondent and complainant will have joint inspection of the property on 13<sup>th</sup> January to ensure that the work is completed. The possession will be given on 16<sup>th</sup> January and at the same time, the complainant will handover draft of Rs.13,39,918/- as pending dues to the respondent.*

*The matter regarding delay period interest will continue without prejudice to above transaction."*

31. On 17/01/2023, the respondent submitted that they have filed an appeal in Karnataka Real Estate Appellate Tribunal against the order dated 21/12/2022 of the Authority and the same is pending adjudication.

32. On 20/05/2023, the complainant submitted copy of KREAT order dated 29/03/2023 which is reproduced below:

- (i) The appeal is allowed;
- (ii) The impugned interim order dated 21/12/2022 passed by the 2<sup>nd</sup> Respondent-Authority in CMP/201227/0007336, is hereby set aside and the matter is remanded to the

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*Authority for consideration of the main complaint itself in accordance with law, after affording opportunity to both the parties, as expeditiously as possible;*

(iii) *All contentions of both the parties are kept open to be urged before the Authority;*

(iv) *In view of disposal of the Appeal, all pending I.As if any, stand rejected, as they do not survive for consideration.*

(v) *The Registry shall comply with the provisions of Section 44(4) of the Act.*

33. On 30/5/2023, the Authority gave final opportunity to the respondent to file their statement of objections as per orders of KREAT.
34. On 7/6/2023, the complainant prayed for amendment of relief sought from delay period interest to refund of amount with interest.
35. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid an amount of Rs.98,99,705/- to the respondent.
36. The Authority has gone through the written submission, statement of objections filed by the respondent in detail. The contention of the respondent that the complainant himself is not coming forward to pay balance dues since September 2019 due to which he has to bear maintenance charges and that the delay in payment schedule by the complainant is the cause for delay cannot be accepted. The Authority has noticed that it was due to non-submission of certain required documents by the respondent to the banker caused delay in disbursement of the payment.
37. The Authority has also noticed that directions given to the respondent to complete pending works of the unit and handover possession of the unit to the complainant, they did not adhere to the Authority's direction and went on wasting time and making false assurances that they will complete the pending works despite the fact that the complainant was ready with a DD for Rs.13,39,918/- to handover at

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the time of possession. The Authority expressed its unhappiness at the way the respondent dodging the complainant in not handing over the possession of the apartment even after the lapse of nearly 8 years, which goes to show that the respondent took the complainant for a ride and denying him in having his own house.

38. The Authority also observed that the respondent is intentionally not ready to handover the possession of the completed apartment to the complainant as agreed. Aggrieved by such an act on the part of the respondent, the complainant has prayed the Authority for exit and refund of the entire amount with interest. The Authority accepted the same.
39. Moreover, the complainant has also cleared the housing loan on 19/10/2019 and has submitted documentary proof in the form of letter issued by ICICI Bank to this effect.
40. The complainant has submitted his memo of calculation as on 15/6/2023 for an amount of Rs.1,93,01,425/- (Rupees One Crore Ninety Three Lakh One Thousand Four Hundred and Twenty Five only) towards refund with interest. A thorough verification of the documentary proof submitted by the complainant reveals that his claim is genuine. Despite several opportunities were given, the respondent has not filed their memo of calculation.
41. Having accepted the said amount and failing to keep up promise to handover possession of completed apartment to the complainant, certainly entitles the complainant herein for refund with interest.
42. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under –



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Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30-06-2012	5,00,000	1765	30-04-2017	2,17,602
2	27-09-2012	16,85,016	1676	30-04-2017	6,96,350
3	30-03-2013	65,55,051	1492	30-04-2017	24,11,540
4	30-01-2017	10,95,732	90	30-04-2017	24,316
5		98,35,799		TOTAL INTEREST ( I1 )	33,49,808

Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	98,35,799	2236	15-06-2023	8.15	10.15 as on 01-05-2017	61,15,818
2	TOTAL AMOUNT	98,35,799				TOTAL INTEREST ( I2 )	61,15,818

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST (B = I1 + I2) AS ON 15-06-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
98,35,799	94,65,626	0	1,93,01,425

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

*MHS*



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44. **My answer to point No.2:-** In view of the above discussion, I proceed to pass the following -

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/201227/0007336** is hereby allowed.

Respondent is directed to pay a sum of **Rs.1,93,01,425/-** (**Rupees One Crore Ninety Three Lakh One Thousand Four Hundred and Twenty Five only**) towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 30/06/2012 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 15/06/2023. The interest due from 16/06/2023 up to the date of final payment will be calculated likewise and paid to the complainant.

The complainant is 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.

  
(Neelmani N Raju)  
Member, KREERA

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