

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 FULL BENCH

PRESENT:

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

SMT. NEELMANI N RAJU, HON'BLE MEMBER

COMPLAINT NO.: CMP/201207/0007221

DATED THIS 24TH DAY OF JULY, 2023

COMPLAINANTS.....

1. B.A. MUKESH &

2. B.A. MUKTHA,

G1, Krishna Garden Apartment,
2nd Cross, M.M. Layout, Main Road,
Kavalbyrasandra, R T Nagar,
Bengaluru - 560032.

(Rep. By. Sri. Suhail Ahmed, Advocate)

V/S

RESPONDENT.....

**L & T CONSTRUCTION EQUIPMENT
LTD.,**

A private limited company registered
under the provisions of
The Companies Act, 1956
Having its registered office at:
Raintree Boulevard, L & T Campus,
Bellary Road, Next to GKVK,
Byatarayanapura,
Bengaluru - 560092.

**(Rep. By. Sri. Prashantha Kumar. S. T,
Advocate)**

1. This complaint is filed under Section 31 of the RERA Act against the project "LTCEL Raintree Boulevard CL1" developed by "L & T Construction

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Equipment Ltd.," situated at Raintree Boulevard, L&T Campus, Bellary Road, Byatarayanapura, Bengaluru Urban for the relief of refund with interest and compensation under Section 72 of the Act.

2. This project has been registered under RERA bearing Registration No. PRM/KA/RERA/1251/309/PR/171014/000245 valid till 31/12/2020.

Brief facts of the complaint are as under:

3. Both the complainants are the allottees of flat bearing No. RBT03F0502 in respondent's project. They had entered into an agreement of sale dated 17/04/2017 with respondent and date for delivery of possession was June 2019 or April 2020, whichever is later. But the respondent has failed to handover the possession as agreed. The complainants have made the entire payment towards sale consideration i.e., Rs.1,82,43,333/- (Rupees One Crore Eighty Two Lakh Forty Three Thousand Three Hundred and Thirty Three Only). Though the occupancy certificate is received on 21/08/2019, respondent has executed sale deed on 15/09/2020, till date the flat has not been handed over to the complainants due to extension of time for snag rectification by the respondent and unfair practices of respondent i.e., requiring signing of the possession letter consisting of unlawful clauses as a rigid requirement before handover. Even the respondent has modified the specifications and entire plan without consent of complainant and other allottees. Indoor and outdoor amenities and facilities are still incomplete. Hence, this complaint.
4. After registering the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and filed statement of objection as under:
5. It has denied all the allegations made against it by the complainants. It contends that it has obtained occupancy certificate on 21/09/2018. Initially, the complainants booked a flat in Tower 7 and later decided to

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purchase flat in Tower T03 with one car parking space. They entered into an agreement of sale and construction agreement dated 17/04/2017. The respondent had agreed to handover possession of the flat within 36 months from 17/04/2017 or by June 2019 whichever is later subject to payments made by the complainants. The respondent demanded for final payment 17/09/2019 and the payment was made by the complainants on 04/10/2019. Thereafter, the complainants got executed the sale deed on 15/09/2020 and visited the flat on 18/09/2020 and raised unnecessary issues and criticized the works of respondent. To maintain cordial relation, the respondent agreed to fulfil the demands of complainants at its own costs and requested the complainants to visit the flat on 17/10/2020 to take possession. But, they did not come forward to take possession and refused to sign the possession letter. The respondent is always ready and willing to handover possession of the flat to the complainants. Hence, it prayed to dismiss the complaint with cost.

6. The complainants have produced in all 16 documents in support of their claim such as copy of registration certificate, agreement of sale dated 17/04/2017, construction agreement dated 17/04/2017, possession demand letter and final invoice dated 17/09/2019, the flat inspection form dated 28/05/2020, email dated 29/05/2020 sent by the respondent, email response dated 02/06/2020, demand note by the respondent towards the said electrical charging point dated 05/09/2019, email dated 18/09/2019 issuing the demand note, sale deed dated 15/09/2020, trail of email between 16/09/2020 and 14/10/2020, possession letter, protest email dated 18/10/2020, 2 emails dated 04/11/2020, approved plan uploaded by the respondent on the website of RERA Authority.

7. The Respondent has produced in all 9 documents in support of its defence such as copy of occupancy certificate, trail email addressed by the respondent requesting the complainants to take possession, emails / letters of appreciation, one of the meter readings of a similar flat, service certificate

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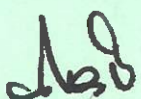
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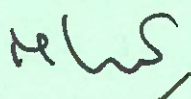
issued by BESCOM, email intimation regarding the gas connection, consent for operation dated 21/08/2019, order dated 16/10/2018 and photographs of the project.

8. This matter was heard on 05/03/2021, 08/07/2021, 03/08/2021, 06/01/2022, 15/02/2022, 16/02/2022 and 23/02/2022.
9. Heard both sides.
10. On the above averments, the following points would arise for our consideration.
 1. Whether the complainants are entitled for the relief claimed?
 2. What order?
11. Our findings to the above points are as under:-
 1. In the Affirmative
 2. As per final order for the following

FINDINGS

12. **Our answer to the point No.1:-** The complainants have approached this forum seeking for the relief of refund of amount paid to the respondent along with interest on the grounds that there are unlawful clauses in the possession letter set up by the respondent and that the respondent had modified the specifications and entire plan without the consent of complainants and other allottees. Even so many amenities are still incomplete.
13. Same is resisted by the respondent on the grounds that they have executed sale deed in favour of complainants in respect of said flat on 15/09/2020. The complainants visited the said flat on 18/09/2020 and raised unnecessary issues and criticized the works of respondent. In order to maintain cordial relation the respondent agreed and fulfilled the demands of







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complainants at his own costs and requested the complainants to visit the flat on 17/10/2020 to take possession. But, the complainants have refused to take possession and to sign the possession letter.

14. On perusal of the complaint averments and records placed before this Authority, it is clear that respondent has already executed sale deed on 15/09/2020. The dispute arose between the parties when the complainants refused to sign possession letter on the ground that terms contained therein or either unlawful or too rigid. The respondent is ready and willing to handover possession to the complainants upon signing the possession letter.

15. On a meticulous reading of the terms of the undated possession letter there are few terms which could be termed unlawful, unreasonable and too rigid such as clauses 18, 19, 20 and 21.

18. You expressly waive all claims as accrued if any under any law for the time being in force.

19. You have accepted the possession without any dispute or demur.

20. This letter is in addition to all the other terms and conditions as mentioned in the said agreement for sale.

21. You confirm and undertake that you shall adhere to all the aforesaid conditions.

16. Further, the complainants sent a mail dated 18/10/2020 to the respondent stating that respondent has presented the said possession letter for their signatures which has aforesaid unlawful clauses and hence, the complainants have not signed on the said possession letter.

17. The respondent sent a mail to the complainants on 27/10/2020 stating that the possession letters are part of the handover document and key handover shall happen post to signing of all the required documents and that nearly 475 handovers had been completed till date and possession letter being part

of the handover document the process cannot be deviated and once again they requested the complainant to visit the flat for snag checking and complete the handover formalities. Thereafter, the respondent sent an email dated 04/11/2020 at 12:01 PM to the complainants stating that their flat is ready for inspection and intimated them that possession certificate and car parking letter have to be signed by both the complainants and that signing of said documents is a prerequisite for handover of keys.

18. In response on the same day i.e., on 04/11/2020, the complainants through e-mail intimated the respondent that they have visited the said flat on 17/10/2020 to collect the keys and followed up with the respondent to get the keys vide e-mails dated 19/10/2020, 20/10/2020, 21/10/2020, 22/10/2020, 26/10/2020 and 04/11/2020. Also intimated that they will not give up any of their legal rights and refused to sign on such terms and conditions and called upon the respondents to handover the keys pertaining to their flats which the respondent was forcibly with holding.
19. From the materials available on record it is apparent that the sale deed in respect of said flat was executed by the respondent in favour of complainants on 15/09/2020 without handing over possession. Subsequently, when the respondent sent a possession letter to the complainants for their signatures in order to handover possession along with keys, the complainants have raised objection with regard to aforesaid clauses saying that they are not agreeable to such clauses which are against their interest. In this regard, mails were exchanged between the parties. Though the sale deed has been executed possession of the said flat was not handed over as the respondent insisted upon execution of the possession letter containing unlawful clauses which are certainly affecting on the interest of the complainants. Looking to the said clauses, certainly it takes away the legal rights of a person who cannot subsequently raise his voice for any issues.

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20. This Authority has passed an interim order on 19/04/2022 in the Cmp. No.8191 in respect of very same project directing the respondent herein to withdraw the undertakings taken from the allottees in the form of disputed possession letters and after withdrawal of disputed possession letters the respondent herein was further directed to issue fresh possession letters to the said allottees which are not inconsistent with or violative of the provisions of Act and Rules. Such possession letters shall be in accordance with the procedure applicable to handing over possession as provided in the notified agreement for sale Rule 8 (A) of RERA Rules. During the said proceedings this Authority has noticed that the respondent herein has obtained such disputed possession letters under duress, the clauses of the disputed possession letters which are violative of provisions of the Act and Rules. Hence, this Authority has already noticed and held that such possession letters are not in accordance with law.
21. In general to have their own cozy house is everyone's dream. To fulfil that dream one would take risk of investing all his lifetime savings and raise loans in terms of lakhs or crores which would take rest of his life in repaying the same. That being so, the developer who promises to fulfil the dream of owning the house shall conduct himself in equally responsible and transparent manner. If he resorts to use the hard earned money of allottees in a reckless manner, it would not only shatter the dreams of allottees, but also makes him to run from pillar to post by incurring heavy investment as well as legal expenses. Herein this case, the respondent has insistence of execution of possession letter for handover of keys after registration of sale deed is not only high handed but also illegal, more so because the complainants have already paid the entire sale consideration to the respondent.. Having regard to this irresponsible conduct on behalf of respondent, this Authority has no option but to order for refund of entire amount along with interest, so that the allottees money is not wasted.

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22. 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 under the latter 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."

23. It is necessary to also discuss the decision of the judgement of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction civil appeal No's.6745 – 6749 of 2021 arising out of SLP (civil) No's. 3711-3715 of 2021 between M/s. Newtech Promoters and Developers Private Limited V/s. State of UP & others where, it is held as under:

"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

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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."

24. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with the sale agreement.
25. Further, as per construction agreement dated 17/04/2017 there is a clause 14 which reads as under:-

The developer agrees to complete construction of the tower in Phase I in which the purchaser has been allotted the apartment and deliver possession of the apartment to the purchaser, within 36 (Thirty Six) months from the date of execution of this agreement or by June 2019 (Possession date) whichever is later, provided that the purchaser has made all payments in respect of the consideration and all other charges on time, to the developer, and as per the demands raised by the developer, from time to time inclusive of all statutory taxes, levies, duties or any other charges payable under this Agreement, the Agreement for sale and any other agreement entered into between the parties and to complete the registration of the sale deed, in terms hereof.

26. It is pertinent to note that the complainants have paid the entire sale consideration and borne the stamp duty and registration charges and hence

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it would be just and appropriate to issue direction to the respondent to refund the entire sale consideration from the date of respective payments along with interest till the date of realisation along with refund of entire charges borne towards registration of said sale deed. Having regard to the aspect that, the said sale deed is required to be cancelled on account of the breach of terms and conditions by the respondent, it is just and proper that the respondent is directed to refund the amount along with interest and bear the expenses of cancellation of said sale deed.

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

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	25.11.2015	5,00,000	522	30.04.2017	64,356.16
2	15.02.2016	10,00,000	440	30.04.2017	1,08,493.15
3	15.02.2016	2,691	440	30.04.2017	291.96
4	22.02.2016	5,051	433	30.04.2017	539.28
5	22.02.2016	10,129	433	30.04.2017	1,081.44
6	19.03.2016	15,02,691	407	30.04.2017	1,50,804.31
7	28.09.2016	15,178	214	30.04.2017	800.90
8	06.10.2016	3,50,202	206	30.04.2017	17,788.34
9	07.10.2016	10,00,000	205	30.04.2017	50,547.95
10	18.11.2016	12,143	163	30.04.2017	488.05
11	18.01.2017	13,50,202	102	30.04.2017	33,958.51
12	06.03.2017	12,143	55	30.04.2017	164.68
13		57,60,430		Total	4,29,314.73

Interest Calculation From 01/05/2017 (After RERA)

S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @ 10.2%
1	01.05.2017	5,00,000	522	30.04.2017	64,356.16
2	01.05.2017	10,00,000	440	30.04.2017	1,08,493.15
3	01.05.2017	2,691	440	30.04.2017	291.96
4	01.05.2017	5,051	433	30.04.2017	539.28
5	01.05.2017	10,129	433	30.04.2017	1,081.44

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6	01.05.2017	15,02,691	407	30.04.2017	1,50,804.31
7	01.05.2017	15,178	214	30.04.2017	800.90
8	01.05.2017	3,50,202	206	30.04.2017	17,788.34
9	01.05.2017	10,00,000	205	30.04.2017	50,547.95
10	01.05.2017	12,143	163	30.04.2017	488.05
11	01.05.2017	13,50,202	102	30.04.2017	33,958.51
12	01.05.2017	12,143	55	30.04.2017	164.68
13	29.07.2017	2,71,060	1670	23.02.2022	1,26,499.63
14	29.07.2017	10,00,000	1670	23.02.2022	4,66,684.94
15	14.09.2017	3,33,767	1623	23.02.2022	1,51,380.25
16	15.09.2017	10,00,000	1622	23.02.2022	4,53,271.22
17	11.11.2017	5,00,000	1565	23.02.2022	2,18,671.22
18	13.11.2017	4,00,000	1563	23.02.2022	1,74,713.42
19	13.11.2017	5,00,000	1563	23.02.2022	2,18,391.79
20	14.11.2017	2,04,407	1562	23.02.2022	89,224.50
21	26.12.2017	12,710	1520	23.02.2022	5,398.80
22	26.12.2017	12,015	1520	23.02.2022	5,103.58
23	28.12.2017	11,265	1518	23.02.2022	4,778.71
24	05.01.2018	10,00,000	1510	23.02.2022	4,21,972.60
25	06.01.2018	6,95,047	1509	23.02.2022	2,93,096.57
26	22.02.2018	11,265	1462	23.02.2022	4,602.42
27	06.03.2018	10,00,000	1450	23.02.2022	4,05,205.48
28	07.03.2018	4,40,808	1449	23.02.2022	1,78,494.63
29	24.05.2018	11,265	1371	23.02.2022	4,315.96
30	01.06.2018	2,50,408	1363	23.02.2022	95,378.70
31	02.06.2018	30,000	1362	23.02.2022	11,418.41
32	02.06.2018	9,70,000	1362	23.02.2022	3,69,195.29
33	01.09.2018	5,00,000	1271	23.02.2022	1,77,591.80
34	01.09.2018	5,00,000	1271	23.02.2022	1,77,591.80
35	03.09.2018	2,50,408	1269	23.02.2022	88,800.85
36	20.09.2018	11,265	1252	23.02.2022	3,941.33
37	27.10.2018	11,265	1215	23.02.2022	3,824.85
38	03.12.2018	5,00,000	1178	23.02.2022	1,64,597.26
39	04.12.2018	4,72,966	1177	23.02.2022	1,55,565.64
40	25.12.2018	8,261	1156	23.02.2022	2,668.69
41	03.10.2019	6,62,278	874	23.02.2022	1,61,755.50
42	04.10.2019	10,00,000	873	23.02.2022	2,43,961.64
43	10.10.2019	12,685	867	23.02.2022	3,073

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S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @ 10.2%
		TOTAL SALE CONSIDERATION		1,83,43,575	77,11,867.99
		TOWARDS STAMP DUTY AND REGISTRATION CHARGES			
44	15.09.2020	9,45,070	525	23.02.2022	1,38,917.51
		TOTAL COST (100% sale consideration + registration charges)		1,92,88,645	78,50,785.50

**TOTAL PRINCIPAL WITH INTEREST DUE TO THE COMPLAINANTS AS
ON 23.02.2022**

Sl. No.	Particulars	Amount (in Rs.)
1	Total Sale consideration paid by the complainants	1,83,43,575
2	Towards stamp duty and registration costs	9,45,070
3	Towards interest calculated @ 9% for the payments made till 30.04.2017	4,29,314.73
4	Towards interest calculated @ 10.2% for the payments made from 01.05.2017	77,11,867.99
5	Towards interest calculated on the stamp duty and registration charges	1,38,917.51
	Total	2,75,68,745.23

28. Having regard to all these facts, this Authority concludes that the complainants are entitled for the relief claimed.

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

30. **Our finding on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we 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/201207/0007221 is hereby allowed

(Signature)

(Signature)


(Signature)

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1. The respondent is hereby directed to pay the amount of Rs.2,75,68,745/- (Rupees Two Crore Seventy Five Lakh Sixty Eight Thousand Seven Hundred and Forty Five Only) towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 25/11/2015 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 23/02/2022.
 2. The interest due from 24/02/2022 up to the date of final payment shall be calculated likewise and paid to the complainants.
 3. The respondent shall at its own costs get the deed of cancellation of the sale deed executed and registered. The complainants shall co-operate with the respondent for cancellation of the sale deed.
 4. The complainants are at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.
- No order as to costs.


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


(NEELMANI N RAJU)
Member
K-RERA

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