

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-4

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

Dated 2nd DAY OF AUGUST 2023

Complaint No. CMP/210315/0007788

COMPLAINANT:

**DEEPESH KHATRI &
SHIVANI CHOPRA
D-432, BRIGADE GOLDEN
TRIANGLE, KATTAMNALLUR
JUNCTION
Bengaluru Urban-560 049.**

(IN PERSON)

V/s

RESPONDENT....

**M/s LILY REALTY PRIVATE
LIMITED
NO; 19/1, DODDAMANE
BUILDING, 2ND FLOOR
VITTAL MALLYA ROAD
BENGALURU URBAN-560001**

**(By Sri. P.K. SHIKARA, TEJAS
SR & others, Advocates)**

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project '**PASHMINA WATERFRONT-PHASE-1**' developed by "**M/s LILY REALTY PRIVATE LIMITED**" for the relief of interest on delay period.

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2. The respondent has developed this project in the limits of Khatha No.149, Bhattarahalli Village, Bidarahalli Hobli, Old Madras Road, Bengaluru East, Bengaluru Urban.

3. This project has been registered in RERA vide registration no. PRM/KA/RERA/1251/446/PR/171014/000355.

4. **The brief facts of the complaint are as under:** The complainants had booked an apartment bearing **T2A04A in Tower T2A** in the project "**PASHMINA WATERFRONT PHASE-1**" of the respondent-promoter and thereafter entered into an agreement of sale and construction agreement both dated 11/10/2012 for a total sale consideration of Rs.72,38,200/- (Rs. Seventy two lakhs, thirty eight thousand and twenty only) excluding BESCOM, BWSSB, Club House, corpus fund, VAT & Service tax, registration and stamp duty charges, generator charges, khatha & betterment charges. The complainants have paid an amount of Rs.88,37,670/- (Rs. Eighty eight lakhs thirty seven thousand six hundred seventy only) to the respondent on various dates. The respondent was required to hand over the possession of the said apartment unit within 31/12/2014 with a grace period of 6 months i.e. by 30/6/2015. The respondent has executed sale deed in favour of the complainants on 30/9/2020 and handed over possession of the said apartment on the same day. It is contended that in June 2020, they received a communication from Pashmina Waterfront customer care to take handover of their unfinished apartment with rebate on incomplete work. Further, delay compensation was missing from latest account statement which was promised by the builder in the signed agreement. It is close to 9 years since they booked their apartment and even then

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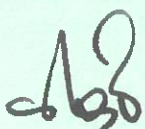
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they got it incomplete apartment without delay compensation from the builder and the amenities are not yet delivered. Hence, the complainant has approached this Authority for the relief of interest on delay period. Hence, this complaint.

5. After registration of the case, in pursuance of the notice, the respondent has appeared before this Authority through his counsel and filed statement of objections as under.

6. The respondent has denied all the allegations made against it by the complainants as false. It is contended that the complainant has been allotted an apartment bearing No: T2A04A in the project "PASHMINA WATERFRONT". The respondent has obtained building plan sanction in accordance with law and only thereafter commenced the development work and sale in the said project. Further one of the conditions laid down and specifically agreed to by the respondent in the construction agreement is that the construction and completion will be subject to a force majeure clause. The development work in the said project got hampered due to scarcity of raw materials such as sand, non-availability of labour, delay in getting approvals from the competent authorities, orders passed by National Green Tribunal.

7. At this juncture, it is relevant to note that in the years 2016 and 2017, there was large scarcity of sand due to government policies. After demonetization in the month of November 2016, there was largescale scarcity of liquidity. In view of the fact that labour contractors were making payments to the labourers by way of cash on a weekly basis. The scarcity of liquid cash also hampered the activity of the respondent. Besides, for various sanctions, in spite of multiple applications having

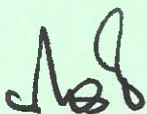


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been made by the respondent, the authorities took considerable time to accord necessary sanctions. It is pertinent to note that during excavation work being undertaken, significant hard rock strata was encountered which requires blasting and use of explosives. Due to interference of one K.R. Rajashekar Reddy, the neighbouring land owners, the development work came to be hindered and resulted in the developer filing a police complaint. It is submitted that a high tension electrical line was passing through the land on which the project is being developed. The respondent had by an order dated 20/9/2010 obtained permission from Karnataka Power Transmission Corporation Limited(KPTCL) for shifting the line. The said order came to be challenged in Writ Petition No: 30250/2013 by the Welfare Association of the adjoining residential layout by name RIFCO Shanti Niketan Layout Owners Welfare Association. Further, the project abuts a lake. By order dated 7/5/2015 and 4/5/2016, the National Green Tribunal issued general directions that the buffer zone in respect of lakes should be extended to 75 meters from the existing buffer zone of 30 meters. In view of the above, Bruhat Bengaluru Mahanagara Palike issued a circular to the effect that buildings that fell under the extended buffer zone could not be granted occupancy certificate. Therefore, in spite of having applied for the grant of OC, the grant of OC by the BBMP was significantly delayed. The order passed by National Green Tribunal was directly affecting the project of the developer. The aforesaid reasons for delay were all beyond the control of the developer and therefore on equitable grounds the developer must be exempted for the delay caused in handing over the possession of the apartment to the complainant. It contends that the complainant has baldly averred that the apartment is incomplete. To substantiate their claim, the complainants have not



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produced any proof whatsoever. The complainants have not been making payments towards the common area maintenance charges since 2019 and owes the respondent significant amounts in this regard. The occupation certificate was granted by the BBMP on 29/6/2019. The complainant has taken possession of the unit and a registered sale deed has also been executed in favour of the complainant on 30/9/2020. Hence, prayed to dismiss the complaint.

9. The complainants in support of their claim, have produced documents such as (1) Memo of calculation (2) allotment letter (3) payment receipt at booking (4) demand note & payment receipt of 1st instalment (5) demand note and payment receipts of 2nd, 3rd, 4th, 5th, 6th to 18 instalment (6) final demand note and payment receipt (7) agreement to sell and construction both dated 11/10/2012.

10. The respondent in support of its defence, has produced documents such as DC order, BDA work order, BBMP old sanction, Commencement certificate, Katha, tax paid receipt, fire, BESCOM, BWSSB, BSNL, AAI, SEIAA, KSPCB AND HAL letter.

11. Heard both the parties. This matter was heard on 12/8/2022, 26/8/2022, 16/9/2022, 10/10/2022, 28/10/2022, 18/11/2022, 9/12/2022, 11/01/2023, 6/2/2023, 6/3/2023 and on 17/4/2022.

12. On the above averments, the following points would arise for the consideration of the Authority.

1. Whether the complainants are entitled to the relief claimed?

2. What order?



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13. Findings on the above points are as under:

14. 1. In the Affirmative

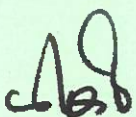
2. As per final order for the following:

FINDINGS

15. Findings on point no.1: The grievance of the complainants is that the respondent has defaulted and not handed over the possession of their apartment within the stipulated timeline as per construction agreement dated 11/10/2012. The respondent was required to hand over the possession of the aforesaid apartment within 31/12/2014 with a grace period of six months i.e. by 30/6/2015. But the respondent has executed sale deed on 30/9/2020 and given possession to the complainants on the same date. Hence, there is a delay of almost 5 years 3 months. Therefore, the complainants have approached this Authority for the relief of interest on delayed period.

16. The same is resisted by the respondent on the ground that after completion of the entire project work, he has obtained occupancy certificate on 29/6/2019. He has executed the sale deed of the said apartment in favour of the complainants on 30/9/2020 and given possession on the same date. As per the terms of the construction agreement, a particular date was stipulated for completion and delivery of possession subject to a grace period. The said date of delivery was subject to various other conditions as laid down in the construction agreement.

17. On going through the materials placed on record, it is apparent that the complainants have entered into agreement of sale and construction



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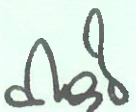
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agreement both dated 11/10/2012 and paid the entire sale consideration of Rs.88,37,670/-(Rs. Eighty eight lakhs thirty seven thousand six hundred seventy only) which included charges relating to BESCOM, BWSSB, Club House, corpus fund, VAT and Service Tax, registration and stamp duty charges, generator charges, katha & betterment charges. The respondent was supposed to complete the work and handover the possession of the said apartment in favour of the complainant within 30/6/2015. But the respondent has not completed the work as agreed within the stipulated timeline and executed the sale deed of the said apartment in favour of the complainants on 30/9/2020 and handed over possession on the same day. From this it is apparent that the respondent has not completed the construction work as agreed. It is obvious that the complainants have paid the entire sale consideration.

18. In the statement of objections, the respondent has sought to explain the delay by referring to several issues which are nothing but routine requirements of compliances and construction related issues which are required to be handed by the promoter of any project who has undertaken to develop the real estate project. None of the reasons submitted by the respondent 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.

19. At this juncture, my attention was drawn to Para-25 of the decision 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 Versus State of UP & others, it is held as under:

"Para-25: The unqualified right of the allottee to seek refund under section 18(1) (a) and Section 19(4) of the Act is not dependent on any



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contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

20. On a perusal of the documents filed and oral submissions made before the Authority, it is evident that the complainant had paid substantial sale consideration and admittedly there is a delay of more than 5 year and 3 months in handing over the apartment as per the agreement. Hence, the complainant is entitled for interest on delay period under section 18 of the Act.

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

Payment details

Sl.No.	Type	Amount	Date
1.	Total payment till possession	88,37,670	30/6/2015
2.	Total delayed interest as on 30/9/2020	45,53,217	

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22. From the information furnished by the complainant in the memo of calculation for interest on delayed period, it is apparent that the promoter has to deliver the apartment on or before 30/6/2015 but failed to hand over possession of the said apartment. The respondent has executed sale deed in favour of the complainants on 30/9/2020 and given possession of the said apartment on the same day. The respondent in his statement of objections at para-21 contended that as per Clause 6.1. of the construction agreement, the mutually agreed date for completion of construction was 31/12/2014. Therefore, delay compensation, if any is payable, ought to be only from the year 2014 provided the delay in completion was for the reasons attributable to this respondent. The exemption claimed by the respondent is not acceptable as per the reasons mentioned above. Considering all the above aspects, the point raised above is answered in the Affirmative.

23. **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/210315/0007788** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to pay a sum of **Rs.45,53,217/-** (Rs. Forty five lakhs fifty three thousand two hundred and seventeen only towards interest on delay period to the complainants, calculated at the rate of 9% from 30/6/2015 to 30/4/2017. Further, at the rate of SBI MCLR + 2 %. from 1/5/2017 till 30/9/2020 i.e. the date of handing over possession of the apartment **within 60 days from the date of this order.** The net balance amount, if any, shall be after deduction of delay period interest.


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2. The complainants are at liberty to enforce the said order in accordance with law if the respondent fail to comply with the order.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
K-RERA

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