

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 31st DAY OF AUGUST 2023

Complaint No. CMP/UR/200620/0006058

COMPLAINANT:

VINAY LOKARE

**#109, A UNITEDS CROSSANDRA
HORAMAVU, NEAR AGARA LAKE
BENGALURU URBAN-560043**

(IN PERSON)

V/s

RESPONDENTS....

1. JAYACHANDRA REDDY

BUILDER & PROMOTER

M/s AKSHAYA BUILDERS

DEVELOPERS PROMOTERS

28, BEML ROAD

HAL 3RD STAGE

BENGALURU URBAN-560075

**(BY SRI. S. KASINAGALINGAM
ADVOCATE)**

2. ARYA LOHITH REDDY

BUILDER AND PROMOTER

M/s AKSHAYA BUILDERS,

DEVELOPERS PROMOTERS

28, BEML ROAD

HAL 3RD STAGE

BENGALURU URBAN-560075

**(BY SRI. A.V. RAGHAVENDRA
ADVOCATE)**

3. THERASA XAVIER AND

JOSEPH SUDARSHAN

NO: 15, 8TH CROSS

VICTORIA LAYOUT

BENGALURU URBAN-560047

**(BY SRI. AKASH V.T.
ADVOCATE)**

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project **"UNITED CROSSANDRA"** developed by **"M/s AKSHAYA BUILDERS"** for the relief of direction to the respondent to complete the project and to provide Occupation certificate and other related documents.
2. The respondent has developed this project situated at Sy.No. 74/3 and Sy.No. 74/1 presently assigned new BBMP Khatha No.26, Horamavu Agara Village, K.R. Puram Hobli, presently Bengaluru East Taluk.
3. This project is not registered in RERA. The Authority has passed an interim order dated 22/11/2022 with a direction to the respondent to register the project as required under section 3 of the RERA Act within two weeks from the date of this order.
4. The complainant herein has already filed a complaint before the Consumer Forum in Consumer Complaint No. 480/2021 on 1/12/2021 for the relief of (1) direct the promoters to honour the commitments with completion of the project and handing over all the documents to the association as per Apartment Ownership Act 1972 by 28th February 2022 (b) In case of not honouring the commitment promoters to compensate Rs.85,00,000/- (which is computed at 9% P.A. bank interest rate for the property value of Rs.55,00,000/- when purchased in March 2016). After hearing, the said complaint came to allowed vide order dated 7/12/2021. These being the facts, the same complainant has approached this forum in respect of the same property by filing the

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present complaint for the relief of direction to the respondent for completion of the project. Further, during the proceedings held on 18/11/2022 he has filed an affidavit and sought for the amended relief of completion of amenities, OC and interest on delay period on the ground that there is an enormous delay in handing over possession of his flat from date as agreed in the AOS dated 3/12/2016. Though the same complainant has filed two different complaints before two forums in respect of the said property on same set of facts, he has sought for different relief before both the forums. Therefore, his prayer for the relief of interest on delay period can be considered.

4. The brief facts of the complaint are as under: The complainant has approached the respondents in January 2016 towards purchase of the "A" Block 109 flat in the project "UNITEDS CROSSANDRA" of the respondents for a sale consideration of Rs.54,65,376/- (Rs. Fifty four lakhs sixty five thousand three hundred seventy six only) and thereafter he has entered into an agreement of sale with the respondent on 3/2/2016. He has paid the entire sale consideration to the respondents on various dates which has been duly acknowledged by them. The respondent was required to hand over the possession of the said flat within 31/12/2015 with a grace period of 3 months i.e. by 31/3/2016. Thereafter, respondents no.3 have executed the sale deed in favour of the complainant on 28/3/2016. However, the builders did not complete the project as per stipulated timeline nor issued the OC/CC certificate for the said flat. The complainant has approached this forum for a direction to the respondents to project completion and hand over of CC/OC certificate and interest on delay period. Hence, this complaint.

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5. After registration of the complaint, in pursuance of the notice, the respondent-1 absented himself from appearance during the proceedings held on 29/7/2022, 12/9/2022, 30/9/2022, 21/10/2022, 9/12/2022, 23/12/2022, 13/2/2023, 13/3/2023, 31/3/2023 and on 21/4/2023 and did appear in between only on 16/1/2023 whereas respondent-2 did appear before this Authority on 18/11/2022 and filed an affidavit dated 18/11/2022 and also further hearings on 13/3/2023, 31/3/2023, 21/4/2023, 12/6/2023. Subsequently, they have not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on their behalf. Besides, respondents no.3 has appeared before this Authority through its counsel and filed objections as under:

6. Respondents no.3 denied all the allegations made against it by the complainant as false. It is contended that the complainant in the present complaint has entered into a sale agreement dated 3/2/2016. Thereafter they have executed registered sale deed in favour of the complainant on 28/3/2016. In the agreement of sale it has been clearly mentioned that the said property belonging to builders i.e. respondents 1 and 2 and the same has been sold to the complainant. The respondents no.3 are the mother and son who were the absolute owners of property bearing Sy.No: 74/1 and Sy.No.74/3 situated at Horamavu Agara Village, K.R. Puram Hobli, Bengaluru South Taluk totally measuring 2 acres 2 guntas They entered into registered joint development agreement wherein the respondents 1 and 2 collectively undertook to develop the aforesaid premises into multi-storied residential building. As per the joint development agreement dated 3/9/2012, the respondents no.1 & 2 were supposed to complete the construction of the said premises within 36 months from the date of

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sanction plan. Respondents no.3 are the victim of fraud committed by respondents no.1 and 2 by not completing the construction as agreed upon them under the joint development agreement. The property purchased by the complainant belongs to developers and the relief in the present complaint is against the developers. The respondents' no.3 are not a party to the present complaint.

7. It is contended that the complaint and respondents no.3 have no financial transactions and they are nowhere responsible for the completion of the apartment purchased by the complainant or for getting the occupancy certificate issued by competent authority. The relief sought for by the complainant in the present complaint is only confined to against respondents' no.1 & 2. Having regard to the undisputed fact there is no contractual obligation by the complainant as against the proposed respondent's no.3. Hence, seeking impleadment of respondents' no.3 is nothing but an harassment to the proposed respondents' no.3. Hence, prayed to dismiss the complaint.

8. On perusal of the agreement of sale, it is seen that the completion date is agreed as 31/3/2016. The Promoter-respondent was required to complete the project and hand over possession of the apartment by 31/3/2016. In cases wherein the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for the relief in accordance with Section 18 of the Act.

9. The complainant in support of his claim, have produced documents such as (1) copy of RERA interim order dated 22.11.2022 (2)



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Interlocutory application submitted on 18/11/2022 (3) copy of agreement of sale dated 3/2/2016(4) copy of sale deed dated 28/3/2016.

10. The respondents no.3 in support of their defence have not produced any documents.

11. Heard the parties.

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

1. Whether the complainant is entitled for the relief claimed?

2. What order?

13. **Findings on the above points are as under:**

14. 1. Partly Affirmative

2. As per final order for the following:

FINDINGS

15. **Findings on point no.1:** The grievance of the complainant is that the respondent has defaulted and not handed over the possession of the his flat No: A-109 within the stipulated timeline as per agreement of sale dated 3/2/2016. The respondent was required to hand over the possession of the aforesaid apartment by 31/3/2016. Admittedly, there is a delay of more than 6 years 4 in handing over possession of the said apartment to him by the respondents. Therefore, the complainant has approached this Authority for the relief of interest on delayed period.

16. 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)

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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 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

17. 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 6 year and 4 months in handing over the apartment as per the agreement. The present complaint is only confined to as against respondents no.1 and 2. The question of respondents no.3 being made as party to the proceedings or imposing any liability on them does not arise for consideration. Further the complainant has also filed a complaint before the Hon'ble District Consumer Redressal Forum in C.C. No. 480/2021 and respondents no.3 are not a party to the said complaint. The complainant had sought for a relief in deficiency in service only against the respondents no.1 & 2 which also came to

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allowed in part. Besides, respondents no.3 are in nowhere related to the present complaint or relief sought by the complainant as the property purchased by the complainant belongs to developers and the relief is only against the developers i.e. respondents no.1 and 2. Hence, respondents no.1 & 2 are liable to pay interest on delay period to the complainant under section 18 of the Act.

18. In spite of providing several opportunities to respondent no.1 & 2, they have failed to file statement of objections and furnishing documents if any, in support of their defence and hence not contested the matter. In the absence of any resistance by the respondent nos. 1 & 2 and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant.

19. 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	54,65,376	28/3/2016
2.	Subsequent payment 1	75,000	10/7/2016
3.	Subsequent payment 2	10,000	29/11/2019
4.	TOTAL PRINCIPAL AMOUNT	55,50,376	
2.	Total delayed interest as on 13/9/2022	34,97,270	

20. The relief of amenities with pending works besides compensation of Rs.1,00,000/- towards mental agony has already been considered by the District Consumer Disputes Redressal Commission in consumer complaint No.480/2021. That apart, the relief sought by the complainant in the present complaint with regard to interest on delay

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period and to provide copy of OC to the complainant has only been considered by this Authority. Considering all the above aspects, the point raised above is answered as Partly Affirmative.


21. **Findings on point no.2:** In view of the above findings, I conclude that the complaint deserves to be allowed partly. 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/UR/200620/0006058** is hereby allowed partly and the following order is passed.

1. The respondent nos. 1 & 2 are hereby directed to pay a sum of Rs. **34,97,270/-** (Rs. Thirty four lakhs ninety seven thousand two hundred seventy only) towards interest on delay period to the complainant within 60 days from the date of this order, calculated at the rate of 9% from 28/3/2016 to 30/4/2017. Further, at the rate of SBI MCLR + 2 % from 1/5/2017 till 13/9/2022. The interest due from 14/9/2022 shall be calculated likewise and paid to the complainant till the date of handing over possession of the apartment to the complainant.
2. The respondent is hereby directed to provide occupation certificate upon receiving balance amount if any from the complainant within 60 days from the date of this order.
3. The complainant is 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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