

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K PALAKSHAPPA

Adjudicating Officer

Date: 11th FEBRUARY 2020

Complaint No.	CMP/190904/0004120
Complainant	Jyoti Mataladinni & Bandimath Siddesha Adiga, Sandeep Vihar, Flat No.902, D13, Kannamangala, Near Seegehalli Whitefield, Bangalore-560067 Rep.by Smt. Shalini A.Hasinal, Advocate
Opponent	M/s Sri Chowdeshwari Projects, Partnership firm Rep.by its Managing Partner Mr. D. V. Raghu S/o Sri Ramanna, Mr. Sri. Vedanadha Murthy & Sri. Keshav Murthy No.306/A, Terrace Floor No.666, Meenakshi Comforts, Kalena Agrahara, MLA Layout, Begur Ward No.195, Bannerghatta Road, S. O. S. Post, Bangalore-560007

"J U D G E M E N T"

1. Jyoti Mataladinni and Bandimath Siddesha Adiga, Complainants have jointly filed this complaint bearing complaint no. CMP/190904/0004120 under Section 31 of RERA Act against the project "Thirumala Lakshmi Vaibhav" developed by 'Sri Chowdeshwari Projects' for refund of the entire amount, as the complainant is the consumer in the said project. The complaint is as follows:

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We had entered into an Agreement of Sale and Construction dated 11.04.2015 (hereinafter referred to as ?Agreement?) with the land owners of Sy. No. 25/1 & 26/1, Seegahalli Village, Bidhrahalli Hobli, Bengaluru East Taluk, Bengaluru ? 560 064 represented by their GPA Holder M/s. Sri Chowdeshwari Projects and M/s. Sri Chowdeshwari Projects, i.e. the Respondent herein (hereinafter referred to as ?Developer?) represented by its Managing Partner Sri D.V. Raghu for sale and construction of Flat No. 402, in Block -1 (Garudadri Block), 4th Floor, Thirumala Lakshmi Vaibhav, Sy. No. 25/1 & 26/1, Seegahalli Village, Bidhrahalli Hobli, Bengaluru East Taluk, Bengaluru ? 560 064 (hereinafter referred to as ?Flat?). The total consideration amount is Rs. 45,75,000/-. We paid Rs. 1,00,000/- vide Cheque No. 569017 dated 01.03.2015 drawn on State Bank of India towards booking and Rs. 8,15,000/- vide cheque No. 000005 dated 11.04.2015 drawn on HDFC Bank towards agreement. This has been recited in Clause 2 of the Agreement. The remaining balance amount Rs. 36,60,000/- was agreed to be remitted through our banker from time to time as the project progressed as agreed in Clause 3 of the Agreement. We have paid Rs. 26,51,975/- till now on various dates to the Respondent. The details of the payment as follows: Payment done to Sri Chowdeshwari Projects till date

Sl. No.	Receipt No.	Date	Towards/ Stage Amount (in Rupees)	Cheque No.	Bank Interest @ 18% till date (in Rupees)
1.	678	01-Mar-2015	Booking	1,00,000	569017
2.	-	10-Apr-2015	Stamp duty	4,575	Net Banking
3.	700	11-Apr-2015	Sale Agreement	8,15,000	000005
4.	018	18-Feb-2016	Foundation	4,57,000	713816
5.	019	01-Mar-2016	Parking Floor Slab	4,57,000	713817
6.	502	28-May-2016	Ground Floor Slab	4,57,000	713819
7.	353	17-Sep-2016	First Floor Slab	3,59,900	cash
Total 26,51,975 + 17,45,692 = Rs. 42,97,667/-					

As per Clause 12 of the Agreement, the Developer had agreed to deliver possession of the aforementioned flat with all amenities as per the Agreement was on or before December 2016 with grace period of four (4) months. Hence, the due date for delivery

[Handwritten signature]
11/02/2016

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of our flat with grace period fell due in April 2017. The Developer has halted the entire project since June 2017 (month and year). The aforementioned flat is at the stage of Second floor slab (present status of the flat) till this date. The Developer has failed and neglected deliver the possession of ready flat with all amenities. The Developer has gobbled up Rs. 26,51,975/- till date. Further, as per Clause 12, the Developer has agreed to pay Rs. 8/- per Sq. Ft. of built up area of the flat per month for the delayed period. The super built up area of our flat is 1386 Sq. Ft. The delay period in our case has been commenced from May 2017. The delay compensation commencing from May 2017 to till this date is Rs. 3,04,920/-. This delay compensation commencing from May 2017 to till this date is Rs. 3,04,920/- should be granted with interest 18% PA till the date of realization. As per Clause 18.1, the Developer had assured and guaranteed that 12 meters wide public road on north side of the project shall be made available to the Allottees/Purchasers before December 2015. The Developer further also guaranteed that if developer fails to provide the road within the said period, the shall pay back the purchaser all his monies so far paid to the developer with 18% interest and also Rs. 1,00,000/- in addition to the principal and interest as damage in case of cancellation. The Developer has failed and neglected to form aforesaid road till this date. Hence, the Developer is liable to pay Rs. 26,51,975/- (amounts paid by us till this date) with 18% PA till this date is Rs. 16,45,692/-. The total amount with Rs. 1,00,000 towards compensation is Rs. 42,97,667/-. The Respondent has stalled the construction of the said project and has completely neglected and failed to complete the construction as per the Agreement and deliver the possession of the aforementioned Flat. The time period (including grace period) agreed to finish the construction and deliver the possession of the flat has been lapsed. Further, the Developer has failed to form the public road on the north side of the project within the stipulated time period. Our efforts to bridge communication with the Respondent has gone in vain. The Respondent has turned deaf to our legitimate demands. Hence, the present Complaint for refund of monies paid towards the aforementioned flat with interest, delay compensation

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11/6/2020

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with interest, additional compensation of Rs. 1,00,000/- for failing to form the public road as per the Agreement.

Relief Sought from RERA : Refund money & grant Compensation

2. In pursuance of the notice issued by this authority, complainant has appeared through her advocate Smt. Shalini A Hasinal, but the developer who is the respondent remained absent.
3. I have heard arguments of the complainant and posted for judgment.
4. The points that arise for consideration are:
 - a. Whether the complainant is entitled for the relief as sought in the complaint?
 - b. If so, what is the order?
5. My answer to the above point is in the affirmative for the following

REASONS

6. The complainant has entered into agreement of sale with the developer on 11/04/2015 along with his wife in respect of flat bearing No.402, Block-1 and its sale consideration was Rs.45,75,000/-. In pursuance of the said agreement, the complainant has paid Rs.9,15,000/-. The developer has agreed to complete the project on or before December 2016 with grace period of four months, It means it comes to April 2017. It is also submitted that the developer has agreed to provide 12 meter wide public road in the northern side of complainant's property. If not; he has assured the complainant that he will return Rs.1 lakh with interest @18% p.a. as compensation. Now, it is alleged by the complainant that project has been completely halted since 2016 and no progress is going on. According to complainant, the project has been abandoned. The allegations made by the complainant

[Signature]
11/02/2020

remained as unanswered since he remained absent. The complainant has produced necessary documents to prove his case.

7. The complainant has said that the developer has agreed in the agreement of sale itself regarding the road. He submitted that the developer has agreed give access at all reasonable time to the works while under construction and to inspect the same. The purchaser shall not have the right to obstruct or interfere. In clause No.18.1 it is said as under:

18.1: The developer hereby assure and guarantees the purchaser that 12 meters side public road duly notified by Bangalore Development Authority on north side of the schedule property which has been notified by the government of Karnataka through Revised Master Plan 2015 Bangalore 2007, Proposed land use plans Volume 2, (Approved by Govt. vide G.O No.UDD 540 BEM AA SE 2004 dated 25/06/2007 as part of the Revised Master Plan 2015) the said 12 mts side road which has been also demarked in the plan sanction of the Thirumala Green Fields of Sy.No.24/14, and the portion of the land has been also relinquish to the BDA by the developer for the purpose. The said road formation note has been issued by the Commissioner of BDA on 18th January 2014. Hence, we 100% guarantee the purchaser that the road wide 12 meters shall be formed before December 2015. The developer further also guaranteed the purchaser that if the developer fails to provide the road with the said period the developer shall pay back to the purchaser all his money so far paid to the developer with 18% of interest and also Rs.1,00,000/- in additional to the principal and interest as damage in case of cancellation.

8. Further, the complainants have produced Xerox copy of the receipts for having paid the amount to the developer. All these oral and

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documentary evidence has not been denied by the other side. Therefore, the complainant has filed this complaint seeking for the refund of their amount with applicable interest.

9. However the complainants have given the prayer column as under:

- a. *Cancel agreement for sale and construction dated 11.04.2015 produced at Annexure – A and grant refund of money & delay compensation, other compensations with 18% interest PA;*
- b. *To direct the respondent to refund Rs. 26,51,975/- paid towards Flat No. 402 with interest at the rate of 18% PA till the date of realization: 42,97,667/-*
- c. *To grant delay compensation of Rs. 3,04,920/- with interest at the rate of 18% PA till the date of realization;*
- d. *To direct the respondent to pay Rs. 1,00,000/- towards failure to form public road as per the Clause 18.1 of the Agreement for sale and construction dated 11.04.2015, with the interest at the rate of 18% PA till the date of realization;*
- e. *To grant of Sate bank of India housing loan processing fees, foreclosure and cancellation amounting in sum of Rs. 35,000/-;*
- f. *To grant the fanatical loss due to continue sating in rented house till date Rs. 6,00,000/-*
- g. *Grant cost of the litigation'*

10. The complainants have sought for above relief but the calculation of interest @ 18% is not permissible. Now the grant of interest to the amount paid to the developer is itself compensation. The other relief sought by the complainant has been merged with the main relief. Therefore, I say that the complaint is deserves to be allowed in part.

Devi
11/6/2020

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11. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. The said 60 days to be computed from the date of appearance of the parties. This complaint was filed on 04/09/2019. In this case the complainant was present on 03/10/2019. After hearing arguments of the complainant, the matter came up for judgment. With this observation, I proceed to pass the following.

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190904/0004120 is hereby allowed.
- b. The developer is hereby directed to pay Rs. 26,51,975/- to the complainant.
- c. The developer is hereby directed to pay interest 9% P.A on the respective amount paid on the respective date till 30/04/2017 and he has also directed to pay interest @ 2% above MCLR of SBI on the total amount commencing from 01/05/2017 till realisation of the entire amount.
- d. The complainant is hereby directed to execute cancellation deed after realisation of the entire amount.
- e. The developer shall also pay Rs.5,000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 11/02/2020).

(K.Palakshappa)
Adjudicating Officer

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