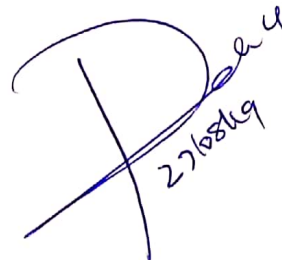


**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**  
**Complaint No. CMP/190108/0001835**  
**Presided by Shri K Palakshappa**  
**Adjudicating Officer**  
**Date: 27<sup>th</sup> of August 2019**

Complainant: Shridhar C. Bhasme &  
Kavita S. Bhasme  
H.no. 27, Bazar Galli Khasbag  
Belagavi-590003  
Rep. by Rajbhushan A. Angolkar Advocate

AND

Respondent: 1. Mrs. Leeladevi Premaraj Chandak  
2. Dilip,  
3. Giridhari,  
4. Suhas,  
5. Uttam s/o. Premaraj  
6. Satish Laxman Giri Divesta  
Lotus landmarks (1) Pvt. Ltd.  
Rh 1, Richmand Park  
Baner Road, Baner  
Pune-411045  
R6 is rep. by Sri. Shobhith.N.Shetty  
Advocate.



## J U D G E M E N T

1. Shridhar C. Bhasme & Kavita S. Bhasm under complaint no. CMP/190108/0001835 have filed this complaint under Section 31 of RERA Act against the project "Pinnacle" developed by Lotus landmarks (1) Pvt. Ltd. as the complainants are the consumers in the said project. Their complaint reads as under:

*The Complainants state that the land bearing R.S.No.124/2 ad-measuring 38 Gunthas situated at Chougalewadi, Belagavi is owned by Respondent No 1 to 5. Further the Respondent No. 6 is the Developer who had agreed to develop the said land and accordingly the JDA dated 27.01.2011 and GPA dated 29.2.2012 came to be entered between the Respondents. And the name the said project is Lotus County. And that after knowing about the said project the Complainant had approached the Respondent No 6 and expressed their willingness to purchase the flat and they have agreed to purchase the flat bearing no. A403 measuring 876.35 Sq fts on 4th floor, in Pinnacle Apartment? for Rs 24,97,740/- towards a total sale consideration. And the Complainants had paid Rs. 100000/- towards advance sale consideration vide cheque bearing No 000091 to the Respondent No.6 and the Respondent No.6 has acknowledges the same vide receipt No 724. And Registered Agreement of Sale dated 30.5.2014 came to be entered between the Complainant?s and Respondent No. 6 and as per the said Agreement the Respondent No. 6 has to complete the above project on or before 30 months i e 30.12.2016. It is further agreed that, if the same has been not completed on or before 30 months, in that, contingency the Respondent No 6 has to pay the interest @ 18% p.a. The Complainants state that, in order to purchase the above flat they have raised the loan from financial institution. Presently, the complainants are paying the interest towards the loan*

*[Handwritten signature]*  
27/8/19

raised for purchase the said Flat to the financial institution. These being the state of affairs, the Respondent No 6 has not completed the above project, and as complainants are paying the interest started requesting the respondent No 6 to complete the project work as early. Looking to the indifferent attitude of the Respondent No 6, complainants was constrained to issue the legal notice calling upon him to complete the project or pay the 18% interest as agreed by respondent No.6. On service of the said notice the respondent No 6 approached the complainants and agreed to pay the past and future interest paid by the complainants. He also agreed that, he will refund the entire amount with damages. Thus, looking to the financial problems of the Respondent No 6, complainants have also agreed for his proposal. Thus, from 06.04.2017 the respondent No 6 is only paying the interest of the loan amount raised by the complainants. These being the affairs the Respondent No. 6 has issued the legal notice to the complainants on his mail on 24.11.2018 and falsely contend that, he has paid the entire sale consideration amount and cancelled the Registered Agreement of sale dated 30.05.2014, looking to the indifferent attitude of the Respondent No 6, the complainants have also given the suitable reply dated 03.12.2018. By issuing legal notice to the Complainants to his mail, the respondent No 6 has made his ill motive to dupe the amount of the complainants.

*Relief Sought from RERA :Refund of balance amt.  
consideration with interest*

2. After registration of this complaint the notice has been issued to the developer. At this stage I would like to say that the complainant has shown 6 persons as respondents in his complaint. On 5/02/2019 Shri. R.A.A advocate has filed vakalath on behalf of the complainant. But the respondent did not appear. On 28/02/2019 Shri. SMS advocate filed vakalath on behalf of 6<sup>th</sup> respondent.

*Dea 9*  
*27/08/19*



3. The complainant has filed his written argument and documents. Similarly Respondent 6 alone filed his written argument along with some documents.

4. Heard the argument

5. The point arise for my consideration whether the complainant proves that the developer is not entitled to forfeit Rs. 3,00,903/- towards administration charges.

6. My answer is affirmatively in part.

7. Sum and substance of the case of the parties is that the complainant has agreed to purchase Flat NO-403 for total consideration amount of Rs. 24,97,700/- and infrastructure charges Rs.3,95,000/- and maintenance charges of Rs.1,60,000/- it means the complainant was expected to pay the developer for purchase of above said flat. But the complainant had paid only Rs.21,50,000/- In this regard agreement executed on 30/05/2014 and according to complainant the project was to be completed on or before 30/11/2016. But now it is alleged that the 6<sup>th</sup> respondent being the developer has demanded amount of Rs.1,50,000/- as additional charges. On verification of project it is found that the project was not completed even after the lapse of 30 months.

8. In this regard the complainant has said as under :

*I respectfully submit that, as per the agreement of sale dated 30/05/2014 the respondent no.6 has to hand over the possession of the flat under question to the complainants on or before the 30months i.e. on or before 30/11/2016. However, on 16/9/2016 the complainants have paid the amount of Rs.21,50,000/- which is not disputed by either of the parties to the lies. I respectfully submits that, the total sale consideration amount of Rs. 24,97,740/-. If*

*27/08/19*

the advance sale consideration amount of Rs. 21,50,000/- has been deducted from total consideration amount i. e. 24,97,740-21,50,000/- then the remaining balance sale consideration will be 3,47,740/- only. Such being the case if the same has been looked from the percentage wise the purchasers/complainants have paid more than 85% of consideration amount much prior to the agreed date of registration of Deed of sale i.e. 30/11/2016. Under such circumstances I failed to understand that, the purchasers who have paid the majority of the sale consideration amount the seller/respondent no.6 who has received the majority of sale consideration amount it cannot be said that, the complainants are defaulter in installments. Inter alia respondent No. 6 has not placed the single documentary evidence to show that, as per the agreement of sale dated 30.5.2014 he has completed his project and afford the said flat for execution of final deed of registration. Today the complainants have produced the latest photographs of the project under the petition as per the separate list of documents dated 31/5/2018. The photos are clearly shows that, the project under this petition is not at all completed still today.

9. Per contra the 6<sup>th</sup> respondent has contended as under:

That the agreement of said flat was executed on 30/5/2015 & respondent No. 6 has personally contacted the complainant and has requested to pay the remaining installments and consideration amount as and when amount was due but complainant has failed to pay the same. Complainant had paid all the past installment payments consistently very late from the due date.



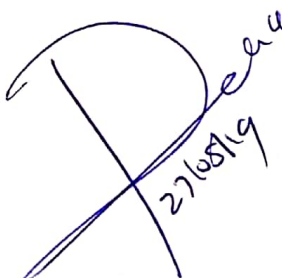


This delay is in violation to the terms ~~with~~ conditions mentioned and agreed upon by complainant in the registered "Agreement for sale without possession". The respondent no. 6 also state that the complainants have shown willingness to cancel the said flat and asked to refund the paid amount to respondent no. 6 orally also by writing email dated 10/3/2017.

It is submitted that, after cancellation of the said flat no.A-403 respondent no. 6 paid Rs.18,49,097/- on various dates from 3/6/2017 till date and as per clause no.8 of the agreement for sale without possession of flat A 403. The respondent no.6 deducted balance amount of Rs.3,00,903/- for administration and other expenses as agreed by complainant in agreement for sale without possession.

10. In view of the same now the only point remained for my consideration is whether the deduction made by the 6<sup>th</sup> respondent/developer is correct or not?
11. The developer has referred to clause 8 of the agreement and forfeited the amount. I would like to say that Section 19 of the Act the developer is also having some obligations. He was expected to complete the project on or before 30/11/2016. Even till today it is not the case of the developer that either his project is completed or about to be completed or even applied for O.C. He also fails to comply as per the terms of agreement. When that being the case he can not penalize the complainant and as such I would like to say that the developer cannot exercise his power of forfeiture just because there is a clause for forfeiture in case of termination.

6



27/05/19

12. On going through the papers it is clear that the other respondents of the case have no any important role in this issue. The developer who had forfeited the amount has to defend his stand.

13. In this regard the complainant has sent a mail dated 18/8/2019 stating that he has paid Rs.21,50,000/- on which he has received Rs.18,15,097/- from the developer.

I would like to say that the complainant has calculated his memo by claiming interest @18%p.a. but law does not permit for the same. Therefore the complainant is entitled for 9%p.a., on the previous payments prior to coming into force of this Act and @ 2% p.a. above the SBI marginal lending rate of interest on the Home Loan after 1/5/2017.

16. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 08/1/2019. In the present case, the parties have appeared on 28/02/2019 and further as there are 6 respondents in this case time has been consumed for appearance and filing objections. Hence, the complaint is being disposed of with some delay. With this observation I proceed to pass the following order;

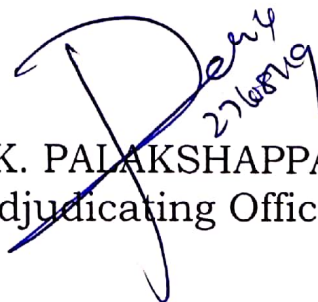
Done  
29/6/2019

## **ORDER**

- a. The complaint no.\_CMP/190108/0001835 is allowed by directing the developer to pay interest @9%p.a. from the date of respective payment made on respective date till 30/4/2017 and the developer is also directed to pay interest @ 2% p.a. above the SBI marginal lending rate of interest on the Home Loan on the amount left out after deduction of payment made by the developer.
- b. The developer is also directed to pay Rs.1,33,000/- paid by the complainant to the developer towards insurance.
- c. The developer is also liable to pay cost of Rs.5,000/-as cost of petition.
- d. The complainant is hereby directed to execute the cancellation of Agreement of Sale after the entire amount is realised.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 27/08/2019)

  
(K. PALAKSHAPPA)  
Adjudicating Officer





## ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತದ ಸಂಖ್ಯೆ ..... LMP 1835.....

ಪುಟ ಸಂಖ್ಯೆ ..... 02.....

ವಿಷಯ ..... Regarding Execution of orders.....

ಕಂಡಿಕೆ  
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

Complaint under Section 31 of RERA Act has been initiated by the complainant Shridhar Chandrkant who is the consumer under the project "Pinnacle" which is developed by "Lotus Landmarks(i) Pvt. Ltd.," This complaint was filed by the complainant claiming to refund of the amount. After hearing the parties, order was passed on 27/08/2019 by directing the developer to pay the delay compensation on the total amount received from the complainant and the delay compensation shall be in the form of interest @9%P.A. on the amount received prior to 30/4/2017 and interest 2%p.a. above the SBI marginal lending rate of interest on the home loans on the amount left out after deduction of payment made by the developer. The developer is also directed to pay Rs.1,33,000/- paid by the complainant to the developer towards insurance and cost of the petition Rs.5,000/-.

The complainant has given a representation on 06/12/2019 to this authority to take action against the developer for recovery of the said amount since the developer failed to comply with the order.

On the basis of the representation, notice was issued to the developer to appear before the Adjudicating Officer on 24/12/2019. Both the parties were present and the developer failed to give refund amount Therefore, the matter was posted for orders.

As per Rule 25 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 the recovery of the amount due is to be considered as arrears of land revenue. In support of the same the authority is



# ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತದ ಸಂಖ್ಯೆ .....CMP 1835.....

ಪುಟ ಸಂಖ್ಯೆ .....03.....

ವಿಷಯ .....Regarding Execution of Order.....

ಕಂಡಿಕೆ  
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಅದೇಶಗಳು

taking the shelter under Section 40 of the RERA Act which reads as follows;

Sec 40(1): "if a promoter or an allottee of a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the regulatory authority or the appellate authority, as the case may be, under this Act or the rules and regulations made there under, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue"

When Sec. 40 read with Rule 25, the Deputy Commissioner is empowered to execute the order dated 27/08/2019 considering this amount as arrears of land revenue and has to be recovered from the developer. Hence the following order:-

## ORDER

By acting under Section 40 of the RERA Act, read with Rule 25, the amount payable of Rs. 20,04,425/- which treated as arrears of land revenue from developer "Lotus Landmarks(i) Pvt. Ltd." (Respondent Local address is Lotus County, RS No 124/2, Opposite Air force Ground gate, Mandoli Road, Chouglewadi, Belgaum-6.) and the same has to be recovered by sending the file to Deputy Commissioner for recovery as arrears of land revenue. The same amount shall be deposited in the office Account.

Adjudicating Officer