



**PROCEEDINGS OF THE AUTHORITY**  
**DATED 12<sup>th</sup> March 2020**

<b>Ref. No.</b>	<b>CMP/171013/0000140</b>
<b>Complainant</b>	<b>NISHANT KASHYAP</b> 2nd Floor, Edifice Building, Asvathnagar, RMV Extn., 2nd Stage, Bengaluru-560094. (Rep. by: Sri Rishabha Raj Thakur, Advocate)
<b>Opponent</b>	<b>KSR Properties Pvt. Ltd.,</b> 23, Sankey Apartment, Square Sankey Cross Road, Sadashivanagar Bengaluru -560003 (Rep.by :Sri R.Muralidara, Advocate)

**"J U D G E M E N T"**

1. NISHANT KASHYAP, Complainant has filed this complaint bearing complaint no.CMP/171013/0000140 under Section 31 of The Real Estate (Regulation and Development) Act 2016 (Act) against the project KSR CORDELIA developed by "KSR Properties Pvt. Ltd.," as the complainant is an Allottee in the said project. The complaint is as follows:

*I, Nishant Kashyap booked an apartment (CB0808) on 4th Nov, 2011 and executed the agreement attached here-with on 1st Apr, 2013. As per Agreement to Build (AOB), the flat had to be handed over in 23 months i.e. Feb, 2015, with a grace period of 6 months which ended in Aug, 2015. The unexplained delay and repeated failure to meet the deadlines has caused me severe mental harassment, pain and suffering, apart from huge financial loss. While paying the installment payment post Aug, 2015 (23 months + 6 months), I am deducting the amount as per the AOB which amounts to a small value of 8568/- only (1428 SQFT \* Rs 6 / SQFT = INR 8568/-) because of the unilateral agreement favouring the builder, however this is far from meeting my financial hardships suffered due to the non delivery of my apartment. I request you to refer AOB Pt. 7 which states that, if the Builder delays the project, they are liable to pay Rs. 6 Per / SQFT only, whereas, as per Point AOB 3.1, Consequence of delay to pay by the buyer is fixed at 15%, which is far more in comparison to Rs 6 / SQFT which the builder is liable to compensate. Hence, it is evident that the builder since*

*Nishant Kashyap*

*Nishant*

*[Signature]*



## Karnataka Real Estate Regulatory Authority,

# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building Back Side, CS. Compound,  
3rd Cross, Mission Road, Bengaluru-560072



inception had mala fide intention and wanted to make profit out of such unilateral terms and conditions, and mis-appropriated payment received from us by way of trust. I had agreed to purchase my apartment at a higher price of INR 3484 / SQFT+++ (in the year 2011), in comparison to the market rate, only on the basis of the Prospectus (attached herewith) which mentioned amenities as under, but I recently learnt from the builder that the amenities have been unilaterally reduced to save cost, and still they wish to charge us Rs. 150,000/- for the Club house. Prospectus / Brochure - attached for your kind reference. Details of provisions and amenities as per the attached prospectus / brochure which was basis of the sale. Inside the club house A) Banquet Hall, B) Aerobic Centre, C) Squash Court, D) Gym, E) Meditation Hall, F) Library, G) Table Tennis, H) Billiards, I) Snookers, J) Pool Table, K) Spa, L) Jacuzzi, M) Steam Room, N) Sauna, O) Change Rooms, P) Creche, Q) Departmental Store, R) Unisex Saloon Amenities A) Swimming Pool, B) Amphitheater, C) Enchanting Walkaway, D) Half Basketball Court, E) Gazzibo, F) Centralized Gas System, G) Wifi System, H) 24/7 Security System, I) Jogging Track, J) Skating Ring, K) Mystical Fountain, L) Guest Suite, M) Water cascade Needless to say that the builder is enjoying every luxury of life at our cost, and has forced us to lead miserable life, where on one hand we are burdened with the huge EMI for the loan, and on the other hand, have to pay the rent for the existing house. The builder does not give any satisfactory answer for what has been done to the money collected from us in past several years, where most of us have paid 85% of the project's cost already and few have even paid entire 100% of the apartment's cost. The builder keeps citing reasons like Labour shortage, Festivals, Strike, Election, Slump, Demonitization and GST implementation for further delay and thus keeps pushing the deadlines time and again. We as buyers are being given hope always that in next 6 months, we will have the keys of our apartment and then we hear a new reason for extension for another 6 months. The builder is enjoying our money at marginal cost of Rs. 6 / SQFT and has almost deserted the site due to lack of any deterrence. We were surprised that the builder has not registered the project KSR Cordelia under RERA and cleverly sent an application to BBMP for OC & CC in March, 2017 without completion of basic requisites (even to the date of filing this complaint) and have been stating to us that as they have sent an application to the BBMP, hence this project is out of purview of RERA and they have discussed it with RERA officials. Time and again, we have discussed with the builder for timely completion, increasing compensation, keeping their words on amenities as per the prospectus, meeting the quality workmanship but the builder has failed to meet all of these and have now interpreted the law in



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their own way for being out of purview of RERA. Thus, in the light of above facts, I request to the Hon'ble RERA officials to pass below Interim order: a) To ask KSR Properties Pvt. Ltd. to immediately register the project - 'PKSR Cordelia' under RERA. b) To instruct KSR Properties Pvt. Ltd. to meet the latest deadline of 31st Oct, 2017 for completing all apartments / flats for interior purpose. c) To instruct KSR Properties Pvt. Ltd. to meet the new deadline of 31st Dec, 2017 for completing the project in entirety with the amenities as mentioned in the attached prospectus and brochure. d) To instruct KSR Properties Pvt. Ltd. that if there is any reduction in the amenities from the list provided in the Prospectus / Brochure, then they shall waive off the Club house charges of INR 150,000/- which too is also not adequate compensation because I purchased the apartment at a whopping rate of INR 3484 / SQFT in the year 2011 based on the amenities promised by way of Prospectus / Brochure. e) As per the AOB, the interest charged for any delay from the Buyer's side in payment is 15% whereas, the delay compensation the Builder is liable to pay is mere Rs. 6 / SQFT, this is a unilateral agreement and delay component of Rs. 6 / SQFT could have been accepted for a month or two, to take care of some spill over, rather than the present scenario where builder has intentionally made the delay and is profiting out of it. Hence the builder should be instructed that in the next installment due, they shall reduce INR 30,000/- \* number of month in excess to the 23 months by which the apartment had to be handed over. This 30,000/- is the average rental value for a 3BHK apartment of 1428 SQFT in the area where the said project is located. f) To increase the defect liability from 1 year to 5 years from date of OC and CC which ever is later so that the builder is liable for poor workmanship and any cracks and seepage in the building because of delay. g) Any other relief, which the Hon'ble authority feels is justified in this case. h) The difference of GST and VAT be paid by the builder as due to the incessant delay from their end, project has fallen into GST regime.

**Relief Sought from RERA:** As requested above in facts of complaints

2. This project is not registered with RERA, Karnataka. The present complainant has filed his complaint seeking for possession with delay compensation. Similar complaints are filed with the Authority for seeking Registration of the Project, seeking award of compensation for the delay and issue of directions to the Project Promoter to handover the possession of the apartment as required and complete the Registration of the property as required under

*Li Sharmar*

*Umba*

*[Signature]*





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the Act. All such complaints seeking similar relief are heard by the Authority.

3. In response to the summons issued by this authority, the parties were present. The complainant is represented by his advocate Sri.Rishabha Raj Thakur and the developer is represented by his advocate Sri R. Muralidhar.
4. Issues raised by the Complainant and the objections and explanations submitted by the Respondent are taken into consideration.
5. The complainant has sought delay compensation from the developer. According to the complainant, the developer has executed agreement of sale on 01/04/2013 wherein the developer has agreed to deliver the possession of his unit bearing No.CB-08-08 on or before 01/09/2015 including the grace period. It is alleged by the complainant that the project has not been completed till date, in all its aspects such as external and internal development works and the requisite amenities.
6. The developer has appeared through his counsel and filed detailed objection to the allegations made by the complainant. In para-5 of the objection statement he has admitted that there is delay, but he has given his excuses stating that there was a delay due to various reasons such as labour problem, demonetisation, implementation of GST and other reasons. It is said by the developer that he has more than 150 happy customers, but the complainant has not paid required amount as per agreement and showing hostile attitude. It is also alleged by the developer that the purchasers have formed a group and giving bad image to the others against the developer. Further he has submitted that it is a Joint Development Agreement where it was agreed to construct 272 units out of it 176 is belonging to the developer. He further submitted that he has agreed to pay Rs.6 per sq.ft, per month as delay compensation and the complainant has also taken that compensation. It is submitted that the complainant cannot seek more than Rs.6 per sq.ft., per month as it is agreed in the agreement.

*Likhanurandhu*

*Vmsam*

*[Signature]*



7. Since the developer has submitted that he has paid delay compensation @ Rs.6 per sq.ft. per month, it proves that there is a delay. Therefore, the authority need not discuss much to give finding on finding on that aspect. We would say that, the developer is bound to compensate as per Sec.18 and 19 of the Act. Before the commencement of this Act, the developer was bound to give compensation as per Section 8 of Karnataka Apartment Ownership Act 1972 where the interest by way of delay compensation has to be paid on the total amount in the form of interest @ 9% p.a. After induction of the Act, the delay compensation is @ 2% above the MCLR of SBI commencing from 01.05.2017 on the total amount paid by the complainant. When that being the case, the compensation as mentioned in the agreement has no force at all. It is not correct on the part of the developer to say that he is obliged to pay Rs.6/-per sq. ft. per month. As per the agreement the developer has to complete the project within 29 months from the date of agreement including grace period. It means 01/09/2015 was the dead line. It is not correct on the part of the developer to say that the complainant who had taken the compensation @ Rs.6/-per sq. ft., per month is debarred from claiming the compensation as per the Act. As per the submission made by the complainant, the developer was expected to complete the project on or before 01/09/2015, but till today it is not completed. The developer who has paid the compensation admitting the delay is an important aspect to award compensation here because the developer has compensated the complainant at the rate of Rs.6/-per sq.ft., is very much low, since the complainant is entitled for delay compensation as per Rule 16. Hence, the complaint has to be allowed.

8. Hence the following order:

**ORDER**

- a. The Complaint filed by the complainant bearing No.CMP/171013/00000140 is hereby allowed.

*Li. Murugan*

*VM. Sankar*

*[Signature]*



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- b. The developer is hereby directed to pay delay compensation @ 9% p.a. simple interest on the total amount paid as on 02/09/2015 till 30.04.2017 as per KERA Act and @ 2% above the MCLR of SBI simple interest on the total amount commencing from 01.05.2017 till possession is delivered, with amenities, and after obtaining occupancy certificate.
- c. The compensation amount already paid by the developer may be deducted from the amount payable by the developer as per this order.
- d. The promoter of the project is directed to deliver the possession of the apartment, after ensuring that all the internal and external development works are completed and the requisite amenities are provided, without further delay.
- e. The promoter is also directed to Register the apartment in favour of the Allottee Complainant, after obtaining Occupancy Certificate.
- f. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.
- g. As regards the Registration of the Project, a separate order is passed, a copy of which shall be sent to the Complainant as well as to the Respondent.

Intimate the parties regarding the order.

  
(D. Vishnuvardhana Reddy)

Member-1  
K-RERA

  
(Adoni Syed Saleem)

Member-2  
K-RERA

  
(M.R. Kamble)

Chairman  
K-RERA