

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 V

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 22nd October 2024

COMPLAINT NO: CMP/220622/0009658

COMPLAINANT...

**Mariam Sheela Joseph
No.16, 1st Main,
Rainbow Drive Wipro Corporate Office,
Sarjapur Road, Doddakannali Carmelarm
post, Bengaluru-560035.
STATE: KARNATAKA**

(In Person)

Vs

RESPONDENT.....

**Krishna E Campus Pvt. Ltd.,
Nirmal, No.344,
RMV 2nd Stage, 2nd Block,
1st Cross, BENGALURU-560094.
(Miss Jasleen Kaur, Advocate)**

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "**Lapalazo Residences**" developed by M/s Krishna E Campus Pvt. Ltd., seeking relief of interest on delay period and completion of the entire work as agreed.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/446/PR/171014/00301 valid till 30-09-2018 and extended till 30-09-2019.
3. Said project is situated at Sy.no.46/1,47/1,48/1, Ambalipura village, Varthur Hobli, Bangalore south Taluq, now Esat Taluq, ORR Junction, Sarjapur Road, Bengaluru East, Bengaluru Urban.

Brief facts of the complaint are as under:-

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4. The complainant had agreed to purchase a flat bearing No. 302 in the project of respondent "Lapalazzo Residences" for a total sale consideration of Rs.74,00,000/- (Rupees Seventy Four Lakhs only). The complainant and respondent had entered into an agreement of sale cum construction on 15-02-2018. At the time of entering into an agreement of sale, the complainant had paid the sum of Rs.66,60,000/- (Rupees Sixty Six Lakhs Sixty Thousand only) on the various dates to the respondent. The respondent was supposed to complete the work and to handover the possession of the said flat to the complainant in February 2022. Though more than 4 years have been lapsed, the respondent has failed to complete the project as agreed and to handover the possession of the said flat to the complainant. The complainant had sought for interest on delay period and completion of the entire development works as agreed. Hence, this complaint.
5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainant advocate had appeared before the Authority. The respondent has appeared through his counsel before the Authority and filed his statement of objection as under:
6. The respondent has denied the entire allegation made against it by the complainant as false. According to him the complainant herein had filed a complaint no. 9932

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before this Authority and again on 20-06-2024 as an after thought seeking relief of interest on delay period. The complainant had filed an application for allotment of private residence in the said project on 04-01-2019 and he had been allotted private residence no. 302 on the second floor of the project along with 2 car parking slots in the basement. They have entered into agreement of sale dated 15-02-2018. It was mutually observed by the parties herein that certain agreed terms and conditions have not been incorporated in the agreement of sale and the parties desire to have such modifications done and hence entered into a supplemental agreement on 15-02-2019. Both the parties have agreed that the use of the apartment as a show flat will be without any remuneration to the complainant until the time of handover the apartment or a period of nine months from the signed of agreement of sale whichever comes earlier. Further, to this period the respondent will pay the buyer monthly rent for the apartment at market rate until such time the actual possession of the apartment is handed over to the purchaser.

7. Further, it has contended that the aforesaid amounts to waiver of the statutory rights of the complainant having waived a statutory right through a contractual agreement is now bound by that waiver and cannot revert to the statutory

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remedy for convenience. The complainant has denied a settlement proposal previously offered by the respondent and is now seeking to agitate for her rights as per convenience. Once a settlement proposal is denied the complainant cannot later seek to enforce the same. Further, contended that the said project commenced with a shoring, piling and excogitation work in April 2013. Due to the encounter of unforeseen rock a delay of 100 days was occurred. Untimely, rainfall with strong wind conditions due to depression in the Bay of Bengal during November and December 2015 further slowed down the progress of the project. Further, on account of the demonetisation, the respondent had to face labour issues. The events being beyond the control of the respondent fall under the force majeure condition and the respondent is entitled to an extension of time for completion of the project.

8. Further, it has contended that the flat allotted to the complainant was ready in 2017 itself, since the complainant and respondent had mutually agreed that the said flat being a show flat could be continued to be used as one, the respondent continued to use a said flat as a model flat. The respondent had completed the entire work of the project and applied for occupancy certificate on 21-08-2019 and obtained the same on 14-02-2022. The respondent in the month of February 2022 sent out an invitation to the

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complainant to take handover a possession of the said flat. However, the complainant didn't come forward to take possession and agitated for unjust enrichment by misusing the liberal wordings of supplementary agreement. The complainant had made delay in making payments. Hence, prayed to dismiss the complaint.

9. In support of his claim, the complainant had produced documents such as copies of agreement of sale, bank statement, payment receipts, sale deed, statement of bank account and possession notice dated 14-12-2022 received from the respondent. The respondent has appeared through his counsel and filed his objections, email conversation of both and payment details.
10. This matter was heard on 10-10-2023, 26-03-2024, 20-06-2024, 06-08-2024, 27-08-2024 and 09-09-2024.
11. **On the above averments, the following points would arise for my consideration:-**

1. Whether the complainant is entitled for the relief claimed?
 2. What order?
12. **My answer to the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following.

REASONS

13. **My answer to Point No. 1:-** From the materials available on record, it is apparent that the complainant and the

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respondent have entered into an agreement of sale and construction agreement both dated 15-02-2018 towards purchase of flat bearing no.302 in the project 'Lapalazzo Residences' situated at Sy.no.46/1,47/1,48/1,Ambalipura village, Varthur Hobli, Bangalore south Taluq, now Esat Taluq, ORR Junction, Sarjapur Road, Bengaluru East, Bengaluru Urban.

14. The complainant has approached this forum seeking for the relief of interest on delay period and completion of the entire development work as agreed. The grounds urged are that as per the terms and conditions of agreement of sale dated 15-02-2018 the respondent was supposed to complete the work and to handover the possession of the said flat to the complainant in February 2022. However, the respondent has failed to complete the project as agreed and handover possession of the said flat to the complainant.

15. On the other hand, the respondent has contended that the complainant herein had filed a complaint no.9932 before this Authority and it was mutually observed by both the parties that certain agreed terms and conditions have not been incorporate in the agreement of sale. The complainant has denied a settlement proposal previously offered by the respondent. They have completed the entire development work and obtained Occupancy Certificate on 14-02-2022. Soon after obtaining Occupancy Certificate they have asked

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the complainant to come forward to take possession, but he didn't come for the same.

16. Looking to the averments of agreement, the parties herein have entered into an agreement of sale on 15-02-2018. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale, the respondent was supposed to handover the possession of said flat to the complainant in February 2022. In addition as per clause 2(a) of construction agreement, in the event of delay, the respondent had agreed to pay late penal charges at the rate of 18% per annum for the delay payments.

17. As per decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters vs The State Of Uttar Pradesh it is held as under

Para No 22. If we take a conjoint reading of subsections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed'.

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18. The said principle laid down in the above decision is aptly applicable to the present case on hand.
19. As per sec.18 of RERA Act, the respondent is liable to pay interest on delay period. Considering the entire materials available on record, the delay in handing over possession being apparent, this Authority see no legal impediment in allowing the complaint as prayed. The complainant had paid Rs. 1,96,06,455/- (Rupees One Crore Ninety Six Lakhs Six Thousand Four Hundred and Fifty Five only) to the respondent towards sale consideration.
20. As per section 14 of the RERA Act, it is a bounden duty and obligation of the promoter to complete the project as per sanctioned plan, layout plans and specifications as approved by the competent Authorities. So also it is his responsibility to provide all the amenities as agreed.
21. The complainant had claimed of Rs. 28,43,467/- (Rupees Twenty Eight Lakhs Forty Three Thousand Four Hundred and Sixty Seven only) as interest on delay period vide his memo of calculation as on 02-08-2024 calculated from 15-11-2019 to 14-12-2024. Despite opportunities given, the respondent has not filed his memo of calculation. Having regard to all these aspects, this Authority concludes that the complainant is entitled for interest on delay period from 15-11-2019.
22. The complainant had established his claim by producing cogent evidence i.e. agreement of sale and construction dated

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15-02-2018, payment receipts, bank statement and memo of calculation etc.,.

23. A thorough verification of the documentary evidence placed by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for interest on delay period as submitted vide their memo of calculation as on 02-08-2024.

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION AS PER AGREEMENT	1,96,06,455	15-11-2019
2	SUBSEQUENT PAYMENT 1	11,74,101	16-05-2022
3	TOTAL PRINCIPLE AMOUNT	2,07,80,556	
4	TOTAL DELAYED INTEREST as on 14/12/2022	58,43,467	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 1,96,06,455						
1	15-11-2019	15-12-2019	30	8.2	10.2 as on 10-11-2019	1,64,371
2	15-12-2019	15-01-2020	31	8.2	10.2 as on 10-12-2019	1,69,850
3	15-01-2020	15-02-2020	31	8.2	10.2 as on 10-01-2020	1,69,850
4	15-02-2020	15-03-2020	29	8.15	10.15 as on 10-02-2020	1,58,113
5	15-03-2020	15-04-2020	31	8.05	10.05 as on 10-03-2020	1,67,353
6	15-04-2020	15-05-2020	30	7.7	9.7 as on 10-04-2020	1,56,314
7	15-05-2020	15-06-2020	31	7.55	9.55 as on 10-05-2020	1,59,027
8	15-06-2020	15-07-2020	30	7.3	9.3 as on 10-06-2020	1,49,868
9	15-07-2020	15-08-2020	31	7.3	9.3 as on 10-07-2020	1,54,864
10	15-08-2020	15-09-2020	31	7.3	9.3 as on 10-08-2020	1,54,864
11	15-09-2020	15-10-2020	30	7.3	9.3 as on 10-09-2020	1,49,868

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12	15-10-2020	15-11-2020	31	7.3	9.3 as on 10-10-2020	1,54,864
13	15-11-2020	15-12-2020	30	7.3	9.3 as on 10-11-2020	1,49,868
14	15-12-2020	15-01-2021	31	7.3	9.3 as on 10-12-2020	1,54,864
15	15-01-2021	15-02-2021	31	7.3	9.3 as on 10-01-2021	1,54,864
16	15-02-2021	15-03-2021	28	7.3	9.3 as on 10-02-2021	1,39,877
17	15-03-2021	15-04-2021	31	7.3	9.3 as on 10-03-2021	1,54,864
18	15-04-2021	15-05-2021	30	7.3	9.3 as on 10-04-2021	1,49,868
19	15-05-2021	15-06-2021	31	7.3	9.3 as on 15-05-2021	1,54,864
20	15-06-2021	15-07-2021	30	7.3	9.3 as on 15-06-2021	1,49,868
21	15-07-2021	15-08-2021	31	7.3	9.3 as on 15-07-2021	1,54,864
22	15-08-2021	15-09-2021	31	7.3	9.3 as on 15-08-2021	1,54,864
23	15-09-2021	15-10-2021	30	7.3	9.3 as on 15-09-2021	1,49,868
24	15-10-2021	15-11-2021	31	7.3	9.3 as on 15-10-2021	1,54,864
25	15-11-2021	15-12-2021	30	7.3	9.3 as on 15-11-2021	1,49,868
26	15-12-2021	15-01-2022	31	7.3	9.3 as on 15-12-2021	1,54,864
27	15-01-2022	15-02-2022	31	7.3	9.3 as on 15-01-2022	1,54,864
28	15-02-2022	15-03-2022	28	7.3	9.3 as on 15-02-2022	1,39,877
29	15-03-2022	15-04-2022	31	7.3	9.3 as on 15-03-2022	1,54,864
30	15-04-2022	15-05-2022	30	7.4	9.4 as on 15-04-2022	1,51,480
31	15-05-2022	15-06-2022	31	7.5	9.5 as on 15-05-2022	1,58,194
32	15-06-2022	15-07-2022	30	7.7	9.7 as on 15-06-2022	1,56,314
33	15-07-2022	15-08-2022	31	7.8	9.8 as on 15-07-2022	1,63,190
34	15-08-2022	15-09-2022	31	8	10.0 as on 15-08-2022	1,66,520
35	15-09-2022	15-10-2022	30	8	10.0 as on 15-09-2022	1,61,148
36	15-10-2022	15-11-2022	31	8.25	10.25 as on 15-10-2022	1,70,683
37	15-11-2022	14-12-2022	29	8.35	10.35 as on 15-11-2022	1,61,229
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 11,74,101						
1	16-05-2022	16-06-2022	31	7.5	9.5 as on 15-05-2022	9,473
2	16-06-2022	16-07-2022	30	7.7	9.7 as on 15-06-2022	9,360
3	16-07-2022	16-08-2022	31	7.8	9.8 as on 15-07-2022	9,772
4	16-08-2022	16-09-2022	31	8	10.0 as on 15-08-2022	9,971
5	16-09-2022	16-10-2022	30	8	10.0 as on 15-09-2022	9,650
6	16-10-2022	16-11-2022	31	8.25	10.25 as on 15-10-2022	10,221
7	16-11-2022	14-12-2022	28	8.35	10.35 as on 15-11-2022	9,322
TOTAL DELAYED INTEREST as on 14/12/2022						58,43,467

24. Accordingly the point raised above is answered in the Affirmative.

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25. My answer to point No.2:- In view of the above observation, I am of the opinion that this complaint deserves to be allowed. Hence, I proceed to pass the following:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/220622/0009658** is hereby allowed.

1. The Respondent is hereby directed to pay a sum of **Rs.58,43,461/- (Rupees Fifty Eight Lakhs Forty Three Thousand Four Hundred and Sixty One only)** towards interest on delay period as on 02-08-2024 calculated from 15-11-2019 to 16-11-2022 to the complainant within 60 days from the date of this order.
2. The interest due from 17-11-2022 up to the date of final payment will be calculated likewise and paid to the complainant.
3. Further, respondent is directed to complete all the pending works in the flat bearing no.302, in the project 'Lapalazo Residences' situated at Sy.no.46/1,47/1,48/1,Ambalipura village, Varthur Hobli, Bangalore south Taluq, now Esat Taluq, ORR Junction, Sarjapur Road, Bengaluru East, Bengaluru Urban as per agreement within 60 days from the date of this order.

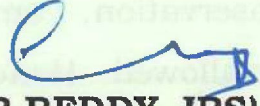
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4. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to comply with the order of this Authority.

No order as to costs.


(G R REDDY, IRS)
Member, K-RER

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