

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 6

Dated 26th JUNE 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/221216/0010467

COMPLAINANT.....

**Krishnaraj Salian
Swathi House, 2nd Main
1st Cross, Subhashnagar
Mangalore-575001**

**District: Dakshina Kannada
State: Karnataka**

**(BY MR. KANTARAJ TAVANE,
ADVOCATE)**

Vs

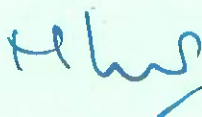
RESPONDENTS.....

**1. AASHIRWAD INFRA DEVELOPERS
Door No 4-8-739/26, Shop No 3
1st Floor, Divya Enclave
M G Road,
Mangaluru-575003**

**2. P GEETHA N RAO
W/o. P Narasimha Rao
"Shivaprasad"
Derebail, Konchady
Mangalore-575006**

**3. P Narasimha Rao
"Shivaprasad"
Derebail, Konchady
Mangalore-575006**

**4. P Varun Rao
S/o. P Narasimha Rao
"Shivaprasad"
Derebail, Konchady
Mangalore-575006**



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(R-1 TO R-4 PLACED AS EX-PARTE)

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**DVARAKA ENCLAVE**" developed by **AASHIRWAD INFRA DEVELOPERS** situated at **Dvaraka Enclave, Derebail-Konchady, Kuntikan - Kavour Road, Mangalore -575001, Dakshina Kannada District** for the relief of interest on delay period, execution of sale deed, completion of the project, formation of an association, handover of common area, etc.
2. This project has been registered under RERA bearing Registration No. **PRM/KA/RERA/1257/334/PR/180222/002371** valid till 31/12/2019. The Hon'ble Authority has granted further extension for a period of 12 months i.e. valid till 31/12/2020.

Brief facts of the complaint are as under:-

3. The complainant had booked a flat bearing No.505, 5th Floor in the project of the respondents and entered into an agreement for sale dated 20/05/2019 with the respondents No.1 to 4 and has paid total sale consideration of Rs.16,00,000/- to the respondent No.1 on various dates which has been duly acknowledged by the respondent No.1. The respondent No.1 vide their certificate dated 15/10/2022 has stated that there are no dues from the complainant towards the total sale consideration. They have also stated that there is no objection from their side if the complainant wants to sell the flat to any other third party. The respondent No.1 had assured that the above flat will be handed over to the complainant by December 2019. The respondent No.1 has failed to

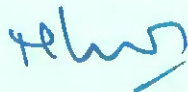
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handover possession of the flat as agreed and to execute sale deed in favour of the complainant.

4. The complainant submits that the respondent No.1 has received significant portion of the sale consideration from the home buyers and made profits. The respondents are not showing interest to complete the project. The amenities such as Lift, Generator, Transformer, Drainage system, STP, Painting etc. have not been provided. The respondents have also not obtained completion certificate from the competent authority. It appears that there is no indication that the construction will be completed in the near future, thereby causing financial losses and mental agony to the complainant. The delay has also resulted in loss of potential income tax benefits, interest on home loan etc.
5. The complainant also submits that the respondents have not updated Quarterly reports, Annual reports including Form 5 and Form 7 and have not deposited 70% of the collected amount into a separate escrow account for this project as required by RERA.
6. The complainant has approached the Hon'ble Authority and prays for direction to the respondent No.1 to pay interest on delay period until handing over possession of the flat with all approvals/license/NOCs, execution of sale deed, to complete the project within next three months, formation of an Association, handover of common area, levy penalty on the respondents for violation of RERA Act. Hence, this complaint.
7. After registration of the complaint, several notices were sent to the respondents at their given address and email IDs for appearance during the hearing before the Authority, but the respondents never attended the hearings. As per the directions of the Hon'ble Authority, summons dated



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14/7/2023 was sent to the respondents, but they did not appear for the hearing. The complainant's counsel requested for issue of hand summons to be served on the respondents. According, the summons dated 8/9/2023 calling upon the respondents to appear before the Authority on 12/10/2023 was given to the complainant's counsel. The complainant's counsel filed a Memo on 30/1/2024 that due to unavoidable circumstances the summons could not be served on the respondents.

8. Finally paper publication was issued in local Kannada daily newspaper "VIJAYA KARNATAKA" on 06/01/2024 for the appearance of the respondents on 30/01/2024. In spite of paper publication, the respondents did not appear before the Authority and hence, the respondents R-1 to R-4 have been placed as **EX-PARTE**.

9. In support of his claim, the complainant has produced documents such as copies of brochure, JDA, Agreement for Sale, payment receipts, NDC dated 15/10/2022, RERA registration and extension certificates, newspaper publication published in "VIJAYA KARNATAKA" Kannada daily dated 6/1/2024 and memo of calculation as on 15/02/2024 (calculated from 31/12/2019 till 15/02/2024).

10. This case was heard on 15/3/2023, 6/6/2023, 13/7/2023, 7/9/2023, 12/10/2023, 13/12/2023, 30/1/2024, 20/2/2024, 21/3/2024 and 20/6/2024. The case was finally posted for orders on 20/6/2024.

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?

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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:-** The complainant has approached this forum seeking various reliefs such as interest on delay period, completion of the project, execution of sale deed, formation of an association, handover of common area, etc. The contention of the complainant is that the respondent No.1 was supposed to complete the project and handover the flat bearing No.505, 5th Floor in the project 'Dvaraka Enclave' on or before December 2019. However, the respondent No.1 has failed to handover the possession of the said flat as agreed and to execute the sale deed.
14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid total sale consideration to the respondent No.1. The respondent No.1 after receiving the total sale consideration, has failed to keep up their promise to handover possession of the flat to the complainant till date, certainly entitles the complainant herein for interest on delay period.
15. During the process of the hearing, the Hon'ble Authority has perused the written submissions filed by the complainant and also has noticed that though several notices/summons were sent to the respondents on their given address and email IDs and newspaper publication in local Kannada daily "Vijaya Karnataka" dated 6/1/2024 for their appearance before the Authority, the respondents have not appeared before the Authority to participate in the proceedings by filing statement of objections and producing documents if any on their behalf. This conduct of the respondents clearly goes to show that they have taken the complainant for a ride and have deprived him of owning his own flat.



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16. The Hon'ble Authority has also noticed that the respondents in the agreement for sale dated 20/5/2019 had also agreed to pay interest if the allottee/complainant does not withdraw from the project at the rate prescribed in the Rules for every month of delay, till the handing over possession of the flat, but has failed to pay interest on delay period to the complainant.
17. 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, and hence, it is necessary that it shall be free from any ambiguity and vagueness. Here, in this case the respondent has not complied with the terms of the said agreement for sale.
18. The respondents have not at all disputed the claim of the complainant in any manner. Therefore, the claim of the complainant remained unchallenged and it is corroborated with the cogent evidence. These being the facts, in the absence of any resistance by the respondents, there is no option left to this Authority except to accept the claim of the complainant.
19. At this juncture, my attention is drawn towards the decision of the Hon'ble Supreme Court in Appeal No.6750-57/2021 M/s Newtech Promoters v/s The State of Uttar Pradesh which 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;

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(C) in addition, can also claim compensation under sections 18(2) & 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 month's delay in handing over possession at such rates as may be prescribed."

20. The complainant vide his memo of calculation as on 15/02/2024 has claimed an amount of Rs.6,51,614/- as delay period interest calculated from 31/12/2019 to 15/02/2024 supported by documentary proof. The respondent No.1 has not submitted their memo of calculation despite several opportunities provided to them.

21. Having regard to all these aspects, there is no option left to this Authority except to accept the claim of the complainant for delay period interest from 31/12/2019 to 15/02/2024.

22. Therefore, it is incumbent upon the respondent No.1 to pay interest on delay period determined as under:

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION AS PER AGREEMENT	16,00,000	31/12/2019
3	TOTAL DELAYED INTEREST as on 15/02/2024	6,51,614	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 16,00,000						

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1	31/12/2019	31/01/2020	31	8.2	10.2 as on 10-12-2019	13,860
2	31/01/2020	29/02/2020	29	8.2	10.2 as on 10-01-2020	12,966
3	29/02/2020	29/03/2020	29	8.15	10.15 as on 10-02-2020	12,903
4	29/03/2020	29/04/2020	31	8.05	10.05 as on 10-03-2020	13,656
5	29/04/2020	29/05/2020	30	7.7	9.7 as on 10-04-2020	12,756
6	29/05/2020	29/06/2020	31	7.55	9.55 as on 10-05-2020	12,977
7	29/06/2020	29/07/2020	30	7.3	9.3 as on 10-06-2020	12,230
8	29/07/2020	29/08/2020	31	7.3	9.3 as on 10-07-2020	12,637
9	29/08/2020	29/09/2020	31	7.3	9.3 as on 10-08-2020	12,637
10	29/09/2020	29/10/2020	30	7.3	9.3 as on 10-09-2020	12,230
11	29/10/2020	29/11/2020	31	7.3	9.3 as on 10-10-2020	12,637
12	29/11/2020	29/12/2020	30	7.3	9.3 as on 10-11-2020	12,230
13	29/12/2020	29/01/2021	31	7.3	9.3 as on 10-12-2020	12,637
14	29/01/2021	28/02/2021	30	7.3	9.3 as on 10-01-2021	12,230
15	28/02/2021	28/03/2021	28	7.3	9.3 as on 10-02-2021	11,414

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16	28/03/2021	28/04/2021	31	7.3	9.3 as on 10-03-2021	12,637
17	28/04/2021	28/05/2021	30	7.3	9.3 as on 10-04-2021	12,230
18	28/05/2021	28/06/2021	31	7.3	9.3 as on 15-05-2021	12,637
19	28/06/2021	28/07/2021	30	7.3	9.3 as on 15-06-2021	12,230
20	28/07/2021	28/08/2021	31	7.3	9.3 as on 15-07-2021	12,637
21	28/08/2021	28/09/2021	31	7.3	9.3 as on 15-08-2021	12,637
22	28/09/2021	28/10/2021	30	7.3	9.3 as on 15-09-2021	12,230
23	28/10/2021	28/11/2021	31	7.3	9.3 as on 15-10-2021	12,637
24	28/11/2021	28/12/2021	30	7.3	9.3 as on 15-11-2021	12,230
25	28/12/2021	28/01/2022	31	7.3	9.3 as on 15-12-2021	12,637
26	28/01/2022	28/02/2022	31	7.3	9.3 as on 15-01-2022	12,637
27	28/02/2022	28/03/2022	28	7.3	9.3 as on 15-02-2022	11,414
28	28/03/2022	28/04/2022	31	7.3	9.3 as on 15-03-2022	12,637
29	28/04/2022	28/05/2022	30	7.4	9.4 as on 15-04-2022	12,361
30	28/05/2022	28/06/2022	31	7.5	9.5 as on 15-05-2022	12,909

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31	28/06/2022	28/07/2022	30	7.7	9.7 as on 15-06-2022	12,756
32	28/07/2022	28/08/2022	31	7.8	9.8 as on 15-07-2022	13,317
33	28/08/2022	28/09/2022	31	8	10.0 as on 15-08-2022	13,589
34	28/09/2022	28/10/2022	30	8	10.0 as on 15-09-2022	13,150
35	28/10/2022	28/11/2022	31	8.25	10.25 as on 15-10-2022	13,928
36	28/11/2022	28/12/2022	30	8.35	10.35 as on 15-11-2022	13,610
37	28/12/2022	28/01/2023	31	8.6	10.6 as on 15-12-2022	14,404
38	28/01/2023	28/02/2023	31	8.6	10.6 as on 15-01-2023	14,404
39	28/02/2023	28/03/2023	28	8.7	10.7 as on 15-02-2023	13,133
40	28/03/2023	28/04/2023	31	8.7	10.7 as on 15-03-2023	14,540
41	28/04/2023	28/05/2023	30	8.7	10.7 as on 15-04-2023	14,071
42	28/05/2023	28/06/2023	31	8.7	10.7 as on 15-05-2023	14,540
43	28/06/2023	28/07/2023	30	8.7	10.7 as on 15-06-2023	14,071
44	28/07/2023	28/08/2023	31	8.75	10.75 as on 15-07-2023	14,608
45	28/08/2023	28/09/2023	31	8.75	10.75 as on 15-08-2023	14,608

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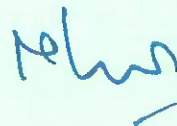
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46	28/09/2023	28/10/2023	30	8.75	10.75 as on 15-09-2023	14,136
47	28/10/2023	28/11/2023	31	8.75	10.75 as on 15-10-2023	14,608
48	28/11/2023	28/12/2023	30	8.75	10.75 as on 15-11-2023	14,136
49	28/12/2023	28/01/2024	31	8.85	10.85 as on 15-12-2023	14,744
50	28/01/2024	15/02/2024	18	8.85	10.85 as on 15-12-2023	8,561
					TOTAL DELAYED INTEREST as on 15/02/2024	6,51,614

23. During the proceedings, the complainant has submitted written submissions narrating additional facts that the respondent No.1 promoter has not completed the project as agreed and also not executed sale deed of his flat. After completion of the project the respondent No.1 is to be directed to form an association of allottees and to handover common area to them. Further, the respondent No.1 has not submitted quarterly updates, annual reports, not deposited 70% of the amount in a separate escrow account. Hence, the respondent No.1 has violated the provisions of RERA Act.

24. With regard to other reliefs, as per section 11(4) (a) and (f) of the Act, the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act and to complete the development work of the project as per the terms of agreement of sale and to form an association of allottees and to handover common areas to the association.

25. Under the light of these provisions, it is the bounden duty and responsibility of the promoter to complete the project as agreed, after



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completion of the project he has to form an association of allottees and thereafter fulfill all other requirements including handover of common areas to the association. Considering all these facts and circumstances of the case, it is just and proper to issue necessary directions to the promoter. Accordingly, the point raised above is answered in the Affirmative.

26. **My answer to Point No.2:-** In view of the above discussion, 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/221216/0010467** is hereby allowed.

1. The Respondent No.1 is directed to pay the amount of **Rs.6,51,614/- (Rupees Six Lakh Fifty One Thousand Six Hundred and Fourteen only) towards interest on delay period** calculated at MCLR + 2% from 31/12/2019 till 15/02/2024 to the complainant within 60 days from the date of this order.
2. The interest due from 16/02/2024 up to the date of handing over possession of the flat by the Respondent No.1 will be calculated likewise and paid to the complainant.
3. Further, the Respondent No.1 is directed to complete the project 'Dvaraka Enclave' situated at Dvaraka Enclave, Derebail-Konchady, Kuntikan-Kavoor Road, Mangalore-575001, Dakshina Kannada District with all amenities as

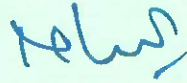
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agreed and to obtain occupancy certificate within 60 days from the date of this order.

4. Further, the Respondent No.1 is directed to execute the sale deed of Flat bearing No.505 on 5th Floor of the aforesaid project in favour of the complainant after receipt of balance sale consideration, if any and to handover possession of the said flat within 60 days from the date of this order.
5. Further, the Respondent No.1 is directed to form an association of allottees in accordance with law and to handover common areas to the association and to fulfill all other requirements immediately after completion of the aforesaid project.
6. The Secretary, KRERA is directed to check whether there are any violations committed by the respondents with regard to quarterly updates, annual reports, depositing 70% of the amount in a separate escrow account and take appropriate action against the respondents if there are any such violations.
7. The complainant is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.
8. No order as to the costs.



(Neelmani N Raju)
Member, K-RERA

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