

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 5

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

Dated 23rd May 2024

COMPLAINT NO: CMP/00193/2023

COMPLAINANT...

**K Vimalkumar
SKM Sai Krishna Flats,
NO. 52, C-Block, Bazaar Street,
ICF Employee Colony,
Chennai-600077.
STATE: Tamil Nadu
(In Person)**

Vs

RESPONDENTS.....

**1 ND Developers Pvt. Ltd.,
No. 398, 1st Floor, 7th Cross,
Micro Layout, BTM 2nd Stage,
BENGALURU-560076.
(Ex parte)**

**2 Sandeep S
No. 254-A, 14th Cross, 26th Main,
Sector-1, HSR Layout,
Bangalore-560102.
(In person)**

**3 N Srinivas Reddy
No. 254-A, 14th Cross,
26th Main, Sector-1, HSR Layout,
Bangalore-560102.
(In person)**

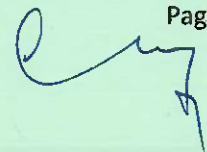
**4 Jayalakshmi Reddy
No. 254-A, 14th Cross,
26th Main, Sector-1, HSR Layout,
Bangalore-560102.
(In person)**

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "**ND Passion Elite**" developed by M/s ND Developers Pvt Ltd., seeking for the relief of interest on delay period and possession.
2. This project has been registered with RERA vide registration No.
PRM/KA/RERA/1251/310/PR/180313/000661 valid till 31-12-2018 and extended till 31-12-2019.
3. Said project is situated at No. 54,87/1, 87/2 & 88/2, Kudlu Village, Anekal Taluk, Sarjapur Hobli, Bangalore, Bengaluru South, Bengaluru Urban.

Brief facts of the complaint are as under:-

4. The complainant had agreed to purchase of a flat bearing No.C-502, in the project of respondent "ND Passion Elite" for a total sale consideration of Rs.93,37,700/-(Rupees Ninety Three Lakhs Thirty Seven Thousand Seven Hundred only). The complainant and respondent had entered into an agreement of sale on 15-02-2019 and the sale deed was executed on 05-03-2019. The complainant had paid the total sale consideration of Rs.93,37,700/-(Rupees Ninety Three Lakhs Thirty Seven Thousand Seven Hundred only) on the various dates to the respondent. The complainant had taken home loan of Rs.75,00,000/-(Rupees Seventy



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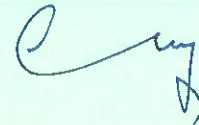
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Five Lakhs only) in Andra Bank and he has been paying emi of Rs.59,000/-(Rupees Fifty Nine Thousand only). The respondent was supposed to handover the possession of the said flat to the complainant 05-03-2019. Though more than 5 years have been lapsed, 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 sent several email correspondence to the respondent, there is no response from their end. The complainant had visited numerous times to the office of the respondents there he got fake promises from their end. The respondents had completed all the amenities and handover the possession to the home buyers who have purchased through the builder share but not the buyers of landowner share.

5. The complainant had filed a complaint seeking possession with all amenities as soon as possible, occupancy certificate from the respondent and interest on delay period until the possession. Hence, this complaint.

6. 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 had appeared before the Authority and filed a memo of calculation, statement of bank account, payment receipts agreements of sale and construction. The respondent no.1 has not

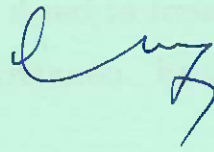


appeared before the Authority and did not file any statement of objections. Hence, the respondent was placed as ex-parte. The respondents no.2,3, & 4 had appeared before the Authority and filed a judgement copy of Hon'ble High Court of Karnataka.

7. In support of his claim, the complainant had produced documents such as copies of agreement of sale and construction, bank statement, payment receipts and memo of calculation as on 08-05-2024.
8. This matter was heard on 13-09-2023, 21-11-2023, 01-03-2024, 13-03-2024 and 24-04-2024.
9. **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?
10. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following.

REASONS

11. **My answer to Point No. 1:-** The complainant had approached this forum seeking for the relief of interest on delay period and requesting for handing over the possession along with amenities and occupancy certificate. The grounds urged are that the complainant had booked a flat bearing



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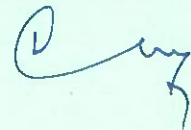
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No.C-502 in 'ND Passion Elite' in the project of the respondent by entering into sale deed on 05-03-2019. As per the sale deed, the respondent was supposed to handover possession of the said flat to the complainant on the same day i.e. 05-03-2019, but the respondent has not handed over possession of the said flat to the complainant as agreed. The complainant had tried to contact with the builder and the land owners to know the status of the project, but he did not get any clarity of the project. In spite of receiving the substantial sale consideration, the respondent had not handed over the possession to the complainant.

12. Looking to the averments of sale deed, parties herein have entered into an absolute sale deed on 05-03-2019. The sale deed is a key instrument which binds the parties in a contractual relation to be enforceable in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the absolute sale deed, the respondent was supposed to handover the possession of said flat to the complainant in March 2019. The complainant had tried to contact to the respondents and he had requested to fulfil all amenities and hand over the possession, but there is no response from there end.

13. During the hearing the respondents nos. 2,3 & 4 had produced a copy of the judgement of Hon'ble High Court. In the judgement, the Hon'ble High Court has directed the



respondents to fulfil all the amenities as per the agreement of sale and hand over the possession to the home buyers.

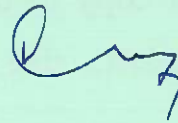
14. As per decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters vs The State Of Uttar Pradesh it is held as under

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'.

15. The said principle laid down in the above decision is aptly applicable to the present case on hand.

16. 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.93,37,700/- (Rupees Ninety Three Lakhs Thirty Seven Thousand Seven Hundred only) to the respondent towards sale consideration.

15. In response to the notice, the respondent no.1 who is promoter has not taken any interest to participate in the



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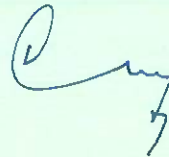
proceedings and to resist the claim of complainant. Hence, the claim of complainant remained unchallenged and his claim is corroborated with cogent materials. There is no reason to discard the claim of complainant.

16. The complainant had claimed Rs. 48,43,473/- (Rupees Forty Eight Lakhs Forty Three Thousand Four Hundred and Seventy Three only) as interest on delay period vide their memo of calculation as on 08-05-2024 calculated from 05-03-2019 to 15-03-2024. Despite opportunities given, the respondent nos. 1 to 4 have not filed their memo of calculation. Having regard to all these aspects, this Authority concludes that the complainant is entitled for interest on delay period from 05-03-2019.

17. The complainant had established his claim by producing cogent evidence i.e. agreement of sale dated 15-03-2019, payment receipts, bank statement and memo of calculation etc.,.

18. A thorough verification of the documentary evidence placed by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for interest on delay period as submitted vide his memo of calculation as on 08-05-2024.

Payment Details			
S.NO	TYPE	AMOUNT	DATE



1	TOTAL PAYMENT TILL POSSESSION AS PER AGREEMENT	93,37,700	05-03-2019
2	TOTAL DELAYED INTEREST as on 08/05/2024	48,43,473	

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

20. **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

21. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/00268/2023** is hereby allowed.

1. Respondent is hereby directed to pay a sum of **Rs.48,43,473/- (Rupees Forty Eight Lakhs Forty Three Thousand Four Hundred and Seventy Three only)** towards interest on delay period as on 08-05-2024, from 05-03-2019 to 15-03-2024 to the complainant within 60 days from the date of this order.
2. The interest due from 16-03-2024 up to the date of final payment will be calculated likewise and paid to the complainants.
3. Respondent is directed to complete all the pending works in the flat bearing no.C-502, as per agreement and execute the sale deed of flat

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and hand over the possession of the same to
the complainant at the earliest.

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-RERA

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