

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

Dated 23rd September 2022

COMPLAINT No: CMP/220124/0008859

COMPLAINANT....

**Mr.Asim Kumar Priyadarshi &
Mrs. Harshita Raashi**
Flat 9115, Tower 9,
Prestige Tranquility,
Bengaluru-560049.

(In Person)

V/S

RESPONDENT.....

Shrivation Towers Private Ltd
No.40/43, 8th Main,
4th Cross, Sadashivanagar,
Bengaluru-560080.

**(By Mr.Joseph Anthony,
Advocate & others, JSM Law
Partners)**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "SHRIRAM GREENFIELD PHASE-2" developed by "SHRIVISION TOWERS PRIVATE LIMITED" on Sy.No.73/1, 73/2A, 74(P) & 81, Bommanahalli Village, Bidarahalli Hobli, Bangalore East Taluk, Hoskote, Bengaluru Rural District Attibele-Sarjapura Main Road, Bidaraguppe Village, Attibele Hobli, Anekal Taluk, Bangalore District for the relief of interest on delay.

2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1250/304/PR/171014/001220 valid from 10/8/2017 till 31/3/2021. The project was extended due to COVID-19 for a period of 9 months



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i.e. till 31/12/2021. As the registration of the project expired on 31/12/2021, the Authority extended the registration for a further period of 12 months which is valid till 31/12/2022.

Brief facts of the complaint are as under:-

3. The complainants have purchased an apartment H-1113, 11th Floor, Tower H, in the project of respondent by entering into an agreement for sale on 27/4/2018 and has paid an amount of Rs.42,28,209/- (Rupees Forty Two Lakh Twenty Eight Thousand Two Hundred and Nine only) till date. As per the agreement respondent was supposed to handover the apartment by March 2021 with a grace period of six months. Even with the grace period it was supposed to handover the possession by October 2021, but till today the respondent has not handed over the apartment to the complainants. Though more than three years have been lapsed, the respondent has failed to complete the project and deliver the possession of flat on time. The respondent has simply kept postponing the date of possession and has defaulted on terms and conditions, due to which as a buyer, the complainant has suffered monetary losses by paying rent and EMIs to Bank. Hence, the respondent is liable to pay interest on delay period.

4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and filed statement of objections as under:

5. The Respondent contends that the complainant is not entitled for seeking relief sought in light of of the Agreement of Sale dated 27/4/2018 and submits that the delay in completion of the project was attributed to the pending lis against the respondent before the Hon'ble National Green Tribunal in O.A.No.222/2014 as well as before the Hon'ble Supreme Court in Civil Appeal No.5016/2016 benches as regards the discrepancies in the maintenance of buffer zones where the apartment allotted to complainants in respect of the project was situated and on

MWS

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conclusion of the cases in Hon'ble NGT and Hon'ble Supreme Court, the construction proceeded.

6. The respondent submits that the project has not been completed within stipulated time due to force majeure events such as, scarcity of raw materials, non-availability of skilled labours, transport disruption or such reasons beyond the control of the respondent, and the respondent cannot be held liable to compensate the complainant under section 18(1) of RERA Act. In addition COVID-19 pandemic and the lockdown have also contributed significantly to the obstacles faced by the respondent. The respondent contends that there is no wilful delay or default by the respondent in handing over the possession of the apartment to the complainants and continues to remain committed to delivering the possession to its customers. The respondent denies the allegations of the complainants and submits that the delay has been caused as a result of factors beyond the control of the respondent such as the ruling of the NGT and force majeure of the pandemic. The respondent further submits that the impact of the ruling of the NGT, New Delhi was common knowledge as the same had been extensively published in the media and the newspapers as the same was widely covered in public knowledge and prays not to grant the relief sought by the complainants in the interest of justice and equity.

7. In support of their claim, the respondent has uploaded copy of the Agreement for Sale, copy of the order dated 4/5/2016 passed by the Hon'ble National Green Tribunal in O.A.No.222/2014, copy of the order dated 5/3/2019 passed by the Hon'ble Supreme Court in Civil Appeal No.5016/2016, Sanctioned Plan dated 1/3/2016, Village map of Bommanahalli, Village map of Bendiganahalli, Screenshot depicting the location of project vis-à-vis the lake.

8. The complainants have uploaded and produced in all 4 documents such as copies of Agreement of Sale, payment receipt, Bank loan agreement letter and memo of calculation as on 29/6/2022.



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9. Heard arguments of both sides.

10. On the above averments, the following points would arise for my consideration:-

1. Whether the complainants are entitled for the relief claimed?
2. What order?

11. My answer to the above points are as under:-

1. In the Affirmative.
2. As per final order for the following

REASONS

12. My answer to point No.1:-From the materials placed on record, it is apparent that inspite of entering into an agreement to handover the possession of an apartment within 3 years from the date of agreement for sale dated 27/4/2018 and even with the grace period of six months, the respondent was supposed to handover the possession by October 2021 and failed to abide by the terms of the agreement and not handed over the possession of the apartment to the complainants till today.

13. During the process of the hearing the Authority directed the respondent to furnish information regarding the date of detailed sanctioned plan, date of start of NGT litigation, date of order of Hon'ble NGT/Supreme Court, date of sale of apartment to the complainant, whether the complainants/customers were kept informed about the litigation existing at the time of sale of agreement, whether they had kept the RERA Authority informed about this litigation at the time of registration.

14. The respondent has not kept the RERA Authority informed about the litigation at the time of Registration nor had intimated the complainants/ customers about the ongoing dispute despite knowing the fact that the Hon'ble NGT order could delay their project. At the time of registration in RER as well as at the time of

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doing sale deed, the respondent could have taken longer time for completion or could have changed their building plan altogether. The respondent's contention that the ruling of the NGT, New Delhi had been extensively published in the media and newspapers and that the buyer ought to have been aware about the ruling of the NGT, New Delhi is not acceptable. The onus is on the promoter to open all their cards at the time of sales and not to keep the customers in dark. Having regard to the above aspects, the Authority is of the opinion that the complainant is entitled for delay period interest from October 2021.

15. Therefore, it is incumbent upon the respondent to pay interest on delay which is determined as under -

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT	42,28,209	27-10-2021

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 42,28,209						
1	27-10-2021	27-11-2021	31	7.3	9.3 as on 15-10-2021	33,397
2	27-11-2021	27-12-2021	30	7.3	9.3 as on 15-11-2021	32,319
3	27-12-2021	27-01-2022	31	7.3	9.3 as on 15-12-2021	33,397
4	27-01-2022	27-02-2022	31	7.3	9.3 as on 15-01-2022	33,397
5	27-02-2022	27-03-2022	28	7.3	9.3 as on 15-02-2022	30,165
6	27-03-2022	27-04-2022	31	7.3	9.3 as on 15-03-2022	33,397
7	27-04-2022	27-05-2022	30	7.4	9.4 as on 15-04-2022	32,667

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8	27-05-2022	27-06-2022	31	7.5	9.5 as on 15-05-2022	34,115
9	27-06-2022	29-06-2022	02	7.7	9.7 as on 15-06-2022	2,247
10					TOTAL DELAYED INTEREST as on 29/06/2022	2,65,101

16. Accordingly, the point raised above is answered in the Affirmative.

17. My answer to point No.2:- In view of the above discussion, 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/220124/0008859** is hereby allowed. Respondent is directed to pay a sum of Rs.2,65,101/- (Rupees Two Lakh Sixty Five Thousand One Hundred and One only) calculated at MCLR + 2% from 27/10/2021 till 29/06/2022 to the complainants within 60 days from the date of this order. The interest due from 30/06/2022 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.


(Neelmani N Raju)
Member-2
K-RERA