

**KARNATAKA REAL ESTATE REGULATORY AUTHORITY,
BENGALURU**

FIFTH ADDITIONAL BENCH

PRESENT

**SHRI.G.R. REDDY
HON'BLE MEMBER**

COMPLAINT NO.CMP/200826/0006429

DATED THIS 31ST DAY OF JANUARY 2023

RECTIFICATION UNDER SECTION 39 OF THE RERA ACT

COMPLAINANTS : Mr.Agnelo Raj
No.58, 1st Floor, C.K.Garden,
Wheeler Road Extension, Cooke
Town, Bangalore : 560 084

RESPONDENT / : M/s.Elegant Properties
PROMOTER No.1, Coles Road, Frazer Town,
Bangalore : 560 005

PROJECT NAME & : ELEGANT ALTIS
REGISTRATION NO.

J U D G E M E N T

This complaint is filed under Sec-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project ELEGANT ALTIS praying for a direction to pay delay period interest and for other reliefs:

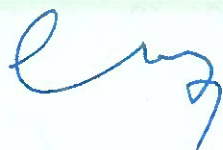
BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. The complainants have entered into an agreement of sale on 17.10.2014. The project completion date as per agreement was 17.10.2016. The complainants have paid an amount of Rs.13,00,000/- (Rupees thirteen lakhs only)

to the respondent till date. Since there was delay of more than six years in handing over the apartment, the complainants have filed the above complaint before the Authority praying for the following reliefs:

- a) Direct the Respondents to complete the project
 - b) Direct the Respondent to deliver the possession by executing the sale deed
 - c) Direct the Respondents to pay monthly rent compensation
 - d) Direct the Respondents to pay unliquidated damages for the delay caused.
 - e) Direct the Respondents to pay the interest payable to financial institutions
 - f) Direct the Respondents to pay Rs.5,00,000/- lakhs for mental agony and hardship.
2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 17.10.2016. The promoter-respondent was required to complete the project and hand over possession of the apartment by 17.10.2016. In cases where in the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, such cases are admissible for relief in accordance with Section 18 of the Act.

2A. The Complainant had filed an application dated 16th January, 2023 inviting the attention of the Authority to rectify the following mistakes that has crept in the Authority's judgment dated 4th November, 2022.



(i) The complainant name mentioned as **ANGELO RAJ** instead of **AGNELO RAJ**.

(ii) Delay Period Interest mentioned as **Rs.18,70,129/-** instead of **Rs.7,72,834/-**

(The complainant has submitted that there are two complaints before the Authority bearing No.6428 & 6429. The said two complaints pertains to two brothers of the same family namely Agnelo Raj and Angelo Raj. While submitting the MOC it was wrongly submitted between the brothers before the Authority. Hence prayed for correction in the order of the Authority in correcting "Name of the Complaint and Delay Period Interest payable".)

3. The application filed by the Complainant has been verified and it is found necessary to rectify the order dated 4.11.2022.

(i) This rectification is done within two years from the date of the original judgment i.e., 4.11.2022.

(ii) No substantive part of the order is amended

4. The Authority's judgment dated 4.11.2022 is declared Non Est and replaced by this order dated 31-01-2023.

5. During the course of hearing of the complaint, it was brought to the notice of the Authority that despite the fact that the project was not completed as on the date of the commencement of the Act, the Promoter of the project failed to register the project as an ongoing project under Sec-3 of the Act. The developer/promoter of the project and the land owners of the project were heard on

29.04.2022, 26.5.2022 and 6.7.2022 during which the promoters together have undertaken to comply with the requirement of the registration of the project by uploading the registration application and the requisite documents for completion of the registration process. However, the applications uploaded for registration of the project by the developer-promoter did not comply with all the requisite submission and uploading of the documents in accordance with the procedure laid down by the Authority. The deficiencies in the documents has been brought to the notice of the promoters of the project by sending emails and further conducting hearing by the Full Bench of the Authority on 08.09.2022 and 22.09.2022. During the hearing of the Full Bench of the Authority, the promoters of the project i.e., developer-promoter as well as land owners, have once again undertaken that they will comply with the application procedure and upload all the documents which are pre-condition for granting registration of the project. It is noted that there is a failure on the part of the promoter of the project in complying with the uploading of all the requisite documents even as on date. The Full Bench of the Authority has taken into consideration the failure on the part of the promoter of the project to register the project as an ongoing project, despite the fact that the project was incomplete as on the date of commencement of the Act and by the order dt.04.11.2022 has directed the promoter to comply with the requirement of registration under Sec-3 of the Act. In view of the direction of the Full Bench of the



Authority, this project is deemed to be a registered Project and accordingly falls within the ambit and jurisdiction of the Authority for adjudicating the complaints filed by the complainants against the promoter of the project.

6. On perusal of the documents filed and materials placed before the Authority, it is evident that complainant has paid an advance sale consideration amount and admittedly, there is a delay in handing over the apartment as per the agreement. Hence the complainant is entitled to delay period interest u/s 18 of the Act and accordingly a memo of calculation submitted by the Complainant. The Promoter-Respondent has not submitted any memo of calculation.
7. As regards the relief in the form of cost of accommodation sought by the allottee, the delay period interest admissible u/s 18 of the Act is the appropriate relief available to the allottee. There is no provision under the Act for granting cost of accommodation as an additional relief to the allottee during the completion delay in the project.
8. As regards damages of Rs.5,00,000/-Lakhs claimed by the allottee on account of mental agony and pain, the complainant is at liberty to seek an appropriate relief by filing a complaint before the Adjudicating Officer who is empowered to adjudge the compensation under the provisions of the Act. Similarly as regards the compensation claimed for unfair trade practice, the complainant is at liberty to seek appropriate relief by filing a complaint before the Adjudicating Officer.



And accordingly the Authority orders the following:

ORDER

1. In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing CMP/200826/0006429 is hereby partly allowed.
2. Respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 17.10.2016 till the date of handing over possession along with occupancy certificate. The working submitted by the complainant is enclosed to this order as Annexure-A. The promoter shall pay the interest for the delay period as arrived at amounting to Rs.7,72,834/ (Seven lakhs seventy two thousand eight hundred thirty four only) within 60 days from the date of this order. The Promoter is also liable to pay delay period interest every month for the subsequent period and up to the date of completion of the project.
3. Respondent-Promoter is directed to complete the construction of the project at the earliest with all amenities, obtain occupancy certificate and handover the apartment to the allottees at the earliest.
4. As regards the relief in the form of cost of accommodation sought by the allottee, the delay period interest admissible u/s 18 of the Act is the appropriate relief available to the allottee. There is no provision under the Act for additionally granting cost of accommodation as an additional relief to the allottee during



the completion delay in the project. Therefore, this claim is not entertained.

5. As regards damages of Rs.5,00,000/- Lakhs claimed by the allottee on account of mental agony and pain, the complainant may seek an appropriate relief by filing a complaint before the Adjudicating Officer who is empowered to adjudge the compensation under the provisions of the Act.

6. Similarly the compensation claimed for unfair trade practice also the complainant is at liberty to seek appropriate relief by filing a complaint before the Adjudicating Officer.


(G.R.REDDY)

MEMBER

FIFTH ADDITIONAL BENCH
K-RERA

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Home / Memo Calculation

ANNEXURE - AMemo Calculation For Delay Period Interest1. Guidelines to The Complaints Seeking Refund with Interest and Delay Period Interest2. SBI MCLR Historical Rates

3. Interest Rate Till 30/04/2017 is 9.00 %

4. Interest Rate From 01/05/2017 is SBI MCLR Rate+2 %

Complaint Number : CMP/200826/0006429

Complainant Name : AGNELO RAJ

Project Name :

Promoter Name :

Is Project Registered With RERA : NO

Amount payable as per
Agreement : 4,300,000Date of Agreement for
Sale : 17-10-2014Total Amount paid till Possession
Date : 1,300,000Possession Date as per
Agreement : 17-10-2016Is there any Subsequent Payments
made after Possession Date ? : NO

Submitted By : COMPLAINANT

Submitted On : 31-10-2022

Type of Memo : Delay Period Interest

Payment Details

S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	1,300,000	17-10-2016

Interest Calculation

S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 1,300,000						
1	17-10-2016	17-11-2016	31		9	9,936
2	17-11-2016	17-12-2016	30		9	9,616
3	17-12-2016	17-01-2017	31		9	9,936
4	17-01-2017	17-02-2017	31		9	9,936
5	17-02-2017	17-03-2017	28		9	8,975
6	17-03-2017	17-04-2017	31		9	9,936
7	17-04-2017	17-05-2017	30		9	9,616
8	17-05-2017	17-06-2017	31	8.15	10.15 as on 01-05-2017	11,206
9	17-06-2017	17-07-2017	30	8.15	10.15 as on 01-06-2017	10,845
10	17-07-2017	17-08-2017	31	8.15	10.15 as on 01-07-2017	11,206
11	17-08-2017	17-09-2017	31	8.15	10.15 as on 01-08-2017	11,206

S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST DATE	INTEREST
12	17-09-2017	17-10-2017	30	8.15	10.15 as on 01-09-2017	10,845
13	17-10-2017	17-11-2017	31	8.15	10.15 as on 01-10-2017	11,206
14	17-11-2017	17-12-2017	30	8.1	10.1 as on 01-11-2017	10,791
15	17-12-2017	17-01-2018	31	8.1	10.1 as on 01-12-2017	11,151
16	17-01-2018	17-02-2018	31	8.1	10.1 as on 01-01-2018	11,151
17	17-02-2018	17-03-2018	28	8.1	10.1 as on 01-02-2018	10,072
18	17-03-2018	17-04-2018	31	8.35	10.35 as on 01-03-2018	11,427
19	17-04-2018	17-05-2018	30	8.35	10.35 as on 01-04-2018	11,058
20	17-05-2018	17-06-2018	31	8.35	10.35 as on 01-05-2018	11,427
21	17-06-2018	17-07-2018	30	8.45	10.45 as on 01-06-2018	11,165
22	17-07-2018	17-08-2018	31	8.45	10.45 as on 01-07-2018	11,537
23	17-08-2018	17-09-2018	31	8.45	10.45 as on 01-08-2018	11,537
24	17-09-2018	17-10-2018	30	8.65	10.65 as on 01-09-2018	11,379
25	17-10-2018	17-11-2018	31	8.7	10.7 as on 01-10-2018	11,813
26	17-11-2018	17-12-2018	30	8.7	10.7 as on 01-11-2018	11,432
27	17-12-2018	17-01-2019	31	8.75	10.75 as on 10-12-2018	11,869
28	17-01-2019	17-02-2019	31	8.75	10.75 as on 10-01-2019	11,869
29	17-02-2019	17-03-2019	28	8.75	10.75 as on 10-02-2019	10,720
30	17-03-2019	17-04-2019	31	8.75	10.75 as on 10-03-2019	11,869
31	17-04-2019	17-05-2019	30	8.7	10.7 as on 10-04-2019	11,432
32	17-05-2019	17-06-2019	31	8.65	10.65 as on 10-05-2019	11,758
33	17-06-2019	17-07-2019	30	8.65	10.65 as on 10-06-2019	11,379
34	17-07-2019	17-08-2019	31	8.6	10.6 as on 10-07-2019	11,703
35	17-08-2019	17-09-2019	31	8.45	10.45 as on 10-08-2019	11,537
36	17-09-2019	17-10-2019	30	8.35	10.35 as on 10-09-2019	11,058
37	17-10-2019	17-11-2019	31	8.25	10.25 as on 10-10-2019	11,317
38	17-11-2019	17-12-2019	30	8.2	10.2 as on 10-11-2019	10,898
39	17-12-2019	17-01-2020	31	8.2	10.2 as on 10-12-2019	11,261
40	17-01-2020	17-02-2020	31	8.2	10.2 as on 10-01-2020	11,261
41	17-02-2020	17-03-2020	29	8.15	10.15 as on 10-02-2020	10,483
42	17-03-2020	17-04-2020	31	8.05	10.05 as on 10-03-2020	11,096
43	17-04-2020	17-05-2020	30	7.7	9.7 as on 10-04-2020	10,364
44	17-05-2020	17-06-2020	31	7.55	9.55 as on 10-05-2020	10,544
45	17-06-2020	17-07-2020	30	7.3	9.3 as on 10-06-2020	9,936
46	17-07-2020	17-08-2020	31	7.3	9.3 as on 10-07-2020	10,268
47	17-08-2020	17-09-2020	31	7.3	9.3 as on 10-08-2020	10,268
48	17-09-2020	17-10-2020	30	7.3	9.3 as on 10-09-2020	9,936
49	17-10-2020	17-11-2020	31	7.3	9.3 as on 10-10-2020	10,268
50	17-11-2020	17-12-2020	30	7.3	9.3 as on 10-11-2020	9,936
51	17-12-2020	17-01-2021	31	7.3	9.3 as on 10-12-2020	10,268

S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
52	17-01-2021	17-02-2021	31	7.3	9.3 as on 10-01-2021	10,268
53	17-02-2021	17-03-2021	28	7.3	9.3 as on 10-02-2021	9,274
54	17-03-2021	17-04-2021	31	7.3	9.3 as on 10-03-2021	10,268
55	17-04-2021	17-05-2021	30	7.3	9.3 as on 10-04-2021	9,936
56	17-05-2021	17-06-2021	31	7.3	9.3 as on 15-05-2021	10,268
57	17-06-2021	17-07-2021	30	7.3	9.3 as on 15-06-2021	9,936
58	17-07-2021	17-08-2021	31	7.3	9.3 as on 15-07-2021	10,268
59	17-08-2021	17-09-2021	31	7.3	9.3 as on 15-08-2021	10,268
60	17-09-2021	17-10-2021	30	7.3	9.3 as on 15-09-2021	9,936
61	17-10-2021	17-11-2021	31	7.3	9.3 as on 15-10-2021	10,268
62	17-11-2021	17-12-2021	30	7.3	9.3 as on 15-11-2021	9,936
63	17-12-2021	17-01-2022	31	7.3	9.3 as on 15-12-2021	10,268
64	17-01-2022	17-02-2022	31	7.3	9.3 as on 15-01-2022	10,268
65	17-02-2022	17-03-2022	28	7.3	9.3 as on 15-02-2022	9,274
66	17-03-2022	17-04-2022	31	7.3	9.3 as on 15-03-2022	10,268
67	17-04-2022	17-05-2022	30	7.4	9.4 as on 15-04-2022	10,043
68	17-05-2022	17-06-2022	31	7.5	9.5 as on 15-05-2022	10,489
69	17-06-2022	17-07-2022	30	7.7	9.7 as on 15-06-2022	10,364
70	17-07-2022	17-08-2022	31	7.8	9.8 as on 15-07-2022	10,820
71	17-08-2022	17-09-2022	31	8.0	10.0 as on 15-08-2022	11,041
72	17-09-2022	17-10-2022	30	8.0	10.0 as on 15-08-2022	10,684
73	17-10-2022	31-10-2022	14	8.0	10.0 as on 15-08-2022	4,986
TOTAL DELAYED INTEREST as on 31/10/2022						772,834

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