

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-4

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

Dated 24th APRIL 2023

Complaint No. CMP/200116/0005234

COMPLAINANT:

**ARCHANA SINGH
201, HM Astoria
10, Benson Cross Road
Benson Town
BENGALURU URBAN-560046**

(IN PERSON)

V/s

RESPONDENT

**SHRIRAM PROPERTIES
PRIVATE LIMITED
No. 40/43, 8th Main, 4th Cross
Sadashivanagar
BENGALURU URBAN-560 080**

**(By Sri Joseph Anthony
Advocate)**

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project '**SHRIRAM SAMEEKSHA**' developed by '**SHRIRAM PROPERTIES PRIVATE LIMITED**' for the relief of interest on delay period.

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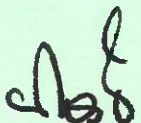
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2. This project has been registered in RERA bearing registration no.PRM/KA/RERA/1251/309/PR/171010/001126. The registration is valid from 4.8.2017 and ending with 30.9.2018.

3. The respondent has developed this project in the limits of Kuvempu Nagara, Singapura Village, Yelahanka Hobli, Bengaluru North Taluk, Bengaluru North, Bengaluru Urban.

4. **The brief facts of the complaint are as under:** The complainant had entered into an agreement to sell and construction agreement both dated 28.10.2013 for purchase of an apartment bearing No. 18.6.1 on sixth floor in Block-E2 in Tower-18 in the project "**SHRIRAM SAMEEKSHA**" of the respondent. The complainant has paid the entire sale consideration of Rs.41,91,322/- to the respondent on various dates. The respondent was required to hand over the possession of the aforesaid apartment within August 2016 with a grace period of 6 months by February 2017. The respondent has failed to complete the project and deliver the possession of the flat within the stipulated timeline as agreed. Thereafter, the respondent has executed registered sale deed dated 5th July 2018. In reality, the said apartment was handed over on 12th July 2018. The BBMP has issued occupancy certificate in April 2019 only for tower-18 after 2 years. At the time of handover, the BESCOM connection was still not available and power was being drawn from another completed tower. Since there was a delay of more than one year and 4 months in handing over the apartment, the complainant had filed the above complaint before this Authority praying for the following relief.



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a) direct the respondent to pay delay period interest.

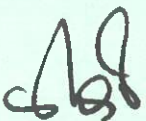
Hence, this complaint.

5. On a perusal of agreement of sale and construction agreement, it is seen that the completion date is agreed as August 2016 with a grace period of 6 months by February 2017. The respondent-promoter was required to complete the project and hand over the possession of the apartment by February 2017. In cases where in the respondent-promoter has failed to complete or unable to hand over the possession of the apartment to the allottee, this complaint is admissible for relief in accordance with Section 18 of the Act.

6. 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:

Statement of objections filed by the respondent are as under:

7. The respondent has denied all the allegations made against them by the complainant as false. As per the terms of agreement, it was agreed between the respondent and the complainant that the complainant's residential apartment would be delivered within August 2016 with a grace period of 6 months i.e. by February 2017. The delay in completion of the project was due to events that were beyond the control of the respondent as stipulated in the clause 5.2 of the agreement to build. The respondent completed the project and received certification for the completion certificate from a duly empanelled Architect on 18/1/2018. Thereafter the respondent applied for the occupancy certificate on



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7/3/2018 and in turn the BBMP has issued partial occupancy certificate on 15.4.2019 which included the complainant's block/tower. The respondent has executed the registered sale deed in favour of the complainant on 5.7.2018 and handed over the apartment on 05.7.2018. Hence, prayed this Authority to dismiss the complaint with cost.

8. The complainant in support of her claim, has produced documents such as (1) copies of agreement to sell and agreement to build (2) reply to objection of the respondent (3) calculation for delayed payment (4) schedule of payments (5) copy of sale deed dated 5.7.2018.

9. The respondent in support of its defence, has produced documents such as (1) copy of RERA registration certificate (2) copy of agreement to sell and agreement to build both dated 28.10.2013 (3) copy of completion certificate dated 18.1.2018 (4) copy of the application for occupancy certificate acknowledged by the BBMP (5) copy of occupancy certificate (partial) dated 15.4.2019 (6) copy of sale deed dated 5.7.2018 (7) copy of the handing over form dated July 12, 2018.

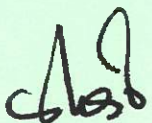
10. Heard both the parties. This matter was heard on 11/7/2022, 26/9/2022, 17/10/2022 and on 2/12/2022.

11. On the above averments, the following points would arise for the consideration of the Authority.

1. Whether the complainant is entitled to the relief claimed?

2. What order?

12. Findings on the above points are as under:



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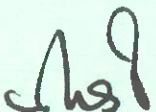
1. In the Affirmative
2. As per final order for the following:

FINDINGS

14. Findings on point no.1: The grievance of the complainant is that the respondent has defaulted and not handed over the possession of her apartment as per terms of agreement and agreement of sale and construction agreement both dated 28.10.2013 within the stipulated timeline. The respondent was required to hand over the possession of the aforesaid apartment within August 2016 with a grace period of six months i.e. by February 2017 as envisaged in the agreement of sale and construction agreement both dated 28.10.2013.

15. Same is resisted by the respondent on the grounds that as per the averment of the complainant, the respondent has executed the registered sale deed in favour of the complainant on 5.7.2018 and has obtained occupancy certificate on 15.4.2019. The said apartment has been handed over to the complainant on 5.7.2018. The respondent contends that there is no wilful delay or default by the respondent in handing over the possession of the apartment to the complainant and continues to remain committed to delivering the possession to its customers.

16. The respondent has sought to explain the delay by referring to above issues which are nothing but routine requirements of compliances and construction related issues which are required to be handled by the promoter of any project who has undertaken to develop the real estate



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project. None of the reasons submitted by the respondent has any force and legal validity to justify the delay in completion of the project and provide any exception from the application of Section 18 of the Act. Therefore, as per Section 18 of the Act, the promoter is liable to pay the interest on delay period.

16. On a perusal of the documents filed and oral submissions made before the Authority, it is evident that the complainant had paid substantial sale consideration and admittedly there is a delay of more than one year and five months in handing over the apartment as per the agreement. Hence, the complainant is entitled for interest on delay period under section 18 of the Act.

17. The complainant has furnished memo of calculation dated 13/12/2022. The details are as below:

Payment Details

S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	4,191,322	28-02-2017
2	SUBSEQUENT PAYMENT 1	50,000	15-12-2022
3	SUBSEQUENT PAYMENT 2	22,250	16-12-2022
4	TOTAL PRINCIPLE AMOUNT	4,263,572	
5	TOTAL DELAYED INTEREST as on 05/07/2018	563,344	

Ans

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Interest Calculation

S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 4,191,322						
1	28-02-2017	28-03-2017	28		9	28,937
2	28-03-2017	28-04-2017	31		9	32,037
3	28-04-2017	28-05-2017	30		9	31,004
4	28-05-2017	28-06-2017	31	8.15	10.15 as on 01-05-2017	36,131
5	28-06-2017	28-07-2017	30	8.15	10.15 as on 01-06-2017	34,965
6	28-07-2017	28-08-2017	31	8.15	10.15 as on 01-07-2017	36,131
7	28-08-2017	28-09-2017	31	8.15	10.15 as on 01-08-2017	36,131
8	28-09-2017	28-10-2017	30	8.15	10.15 as on 01-09-2017	34,965
9	28-10-2017	28-11-2017	31	8.15	10.15 as on 01-10-2017	36,131
10	28-11-2017	28-12-2017	30	8.1	10.1 as on 01-11-2017	34,793
11	28-12-2017	28-01-2018	31	8.1	10.1 as on 01-12-2017	35,953
12	28-01-2018	28-02-2018	31	8.1	10.1 as on 01-01-2018	35,953
13	28-02-2018	28-03-2018	28	8.1	10.1 as on 01-02-2018	32,474

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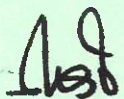
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S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
14	28-03-2018	28-04-2018	31	8.35	10.35 as on 01-03-2018	36,843
15	28-04-2018	28-05-2018	30	8.35	10.35 as on 01-04-2018	35,654
16	28-05-2018	28-06-2018	31	8.35	10.35 as on 01-05-2018	36,843
17	28-06-2018	05-07-2018	7	8.45	10.45 as on 01-06-2018	8,399
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 50,000						
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 22,250						
					TOTAL DELAYED INTEREST as on 05/07/2018	563,344

From the information furnished by the complainant in the memo of calculation for interest on delayed period, it is apparent that the promoter has to deliver the apartment within February 2017 but failed to hand over possession of the said apartment. On the other hand respondent has also filed memo of calculation. As per the memo of calculation submitted by the respondent, total cost of the flat is Rs.41,91,321 less deductions towards statutory charges/GST/BWSSB which comes to Rs.30,51,802/- and hence amount taken for computation of delay compensation is Rs.30,52,502/-. As such a total of Rs.2,65,871/- has to be paid by the respondent to the complainant towards interest on delay period. It is contended that the link for delay



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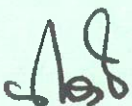
interest period provided by Hon'ble RERA does not provide for deduction/exclusion from the total sale consideration paid by the complainant towards the apartment. Further, such deductions and exclusions include corpus fund, BWSSB connections and statutory payments such as GST that is to be paid by the respondent to the concerned appropriate authorities. Perused the payment schedule furnished by the complainant. As per the payment schedule the complainant has paid an amount of Rs.41,91,322/- to the respondent and hence the claim of the complainant is genuine. Therefore, in the considered opinion of this Authority, the complainant is entitled for the relief as claimed. Considering all the above aspects, the point raised above is answered in the Affirmative.

18. Findings on point no.2: In view of the above findings, I conclude that the complaint deserves to be allowed. Hence, I proceed to pass the following order:

ORDER

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 No: **CMP/200116/0005234** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to pay interest on delay period as arrived and calculated by the complainant amounting to Rs. **5,63,344/-** (Rs. Five lakhs forty sixty three thousand three hundred thirty four only) calculated at the rate of 9% from 1.8.2016 till 30.4.2017. Further, at the rate of SBI MCLR + 2 %. from **1.5.2017** till **05.7.2018** i.e. the date of handing over the possession of the apartment **within 60 days from the date of this order**. The net balance



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amount, if any, shall be after deduction of delay period interest.

2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fail to comply with the order.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
K-RERA

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