

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 2nd May 2023

Complaint No. CMP/220607/0009595

COMPLAINANT:

**VISHAL SHASHIKANT PATIL
& DEEPTI VISHAL PATIL
Flat No.215, Nishant Pride
B-Block, 60 Feet Road
Kamadhenu Layout
B-Narayanapura
Bengaluru Urban-560 016.**

**(BY SRI. DASHARATHA
DHONDIBA JADHAV,
ADVOCATE)**

V/s

RESPONDENT

**M/s SHYAMARAJU & CO
(INDIA)PRIVATE LIMITED
DivyaSree Chambers
A-Wing, #11, Shaugnessy Road
BENGALURU RURAL-560 025**

**(By Sri. S.T. PRASHANTH,
HITENDRA V. HIEMATH,
ADVOCATES)**

PROJECT NAME:

**REPUBLIC OF WHITEFIELD
(PHASE-2)**

REGISTRATION NO.

**PRM/KA/RERA/1251/446/PR/
171015/000623**

198

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

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project **'REPUBLIC OF WHITEFIELD (PHASE 2)'** developed by **"SHYAMARAJU & CO(INDIA) PRIVATE LIMITED"** for the relief of interest on delay period and possession.

2. The respondent has developed this project in the limits of Kundalahalli Village, K.R. Puram Hobli, Bengaluru East Taluk, Bengaluru East, Bengaluru Urban.

3. **The brief facts of the complaint are as under:** The complainants have entered into an agreement for sale towards the purchase of an apartment bearing **H-1848 on 16.12.2014**. Subsequently, they have also entered in to the construction agreement dated 16.12.2014 for the construction of their said apartment with M/s DIVYASHREE R O W PROJECTS LLP appointed by the respondent-developer. The complainants have paid an amount of **Rs.1,14,13,823/-** on various dates and the balance of **Rs.10,86,667** to be paid to the respondent at the time of handing over/sale deed. As per the terms of agreements, the respondent is required to hand over the possession of the said apartment to the complainants within 30.9.2017 with a grace period of six months. The final committed date of handing over possession of the apartment was 31.3.2018. All obligations as per agreements have been completed by the complainants and the respondent-promoter has not abide by the terms and conditions of the agreement. Despite substantial consideration paid by the complainants, the respondent has

198

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

not handed over the possession. The complainants have approached this Authority for the relief interest on delay period and handing over possession. Hence, this complaint.

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:

The respondent has denied all the allegations made against them by the complainants as false. In the statement of objections, the respondent contends that the project has not been completed within the stipulated timeline due to force majeure events such as scarcity of raw materials, non availability of skilled labours, demonetization, transport disruption or such reasons beyond the control of the respondent. The respondent has obtained the occupancy certificate of Whitefield(Phase-2) on 26/11/2019 and served on the complainants. The respondent after completing all developmental works in the project, has issued intimation seeking the appointment of the complainants to come forward to inspect the apartment purchased by them. The complainants after inspection have pointed out certain snags which were duly undertaken by him. Thereafter, the complainants have raised certain major clauses to be rectified in the sale deed along with claim for delay compensation and has issued legal notice dated 21/3/2022 to that effect.

Further, the complainants herein orally agreed and promised to accept Rs.8,50,000/- as delay compensation, however they diverged from their

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

promise and refused to enter into an separate document accepting Rs.8,50,000/- as delay compensation. The complainants in spite of multiple meetings, clarifications by the respondent for the past one year kept on delaying with the reasons best known to them. Under the provision Clause 9.5.1 of agreement for sale and 6.5.1 of construction agreement with respect to apartment no. H-1848 the complainants accepted to pay holding charges in case they fail to come forward and execute the sale deed within a period of 60 days. The complainants have not come forward for executing the sale deed by paying remaining sale consideration. Wherefore, the respondent prays this Authority to dismiss the complaint.

7. The complainant in support of his claim, has produced documents such as (1) copy of agreement for sale and construction (2) payment details (3) emails in sequence – for follow-up (4) emails in sequence regarding completion (5) emails in sequence for follow up after getting completion mail (6) draft sale deed (7) legal notice dated 21.3.2022 from complainants (8) reply from developer to legal notice dated 11.4.2022.

9. The respondent in support of its defence, has produced documents such as (1) copy of agreement for sale dated 16/12/2014 (2) copy of construction dated 16/12/2014 (3) Registration certificate dated 15/10/2017(phase-I), Phase II, III (4) Certificate of extension of registration of project phase-2 dated 1.4.2021 (5) copy of occupancy certificates of phase-1 and 2 (6) copy of legal notice dated 21.3.2022 (7) reply to legal notice dated 11.4.2022.

Handwritten signature

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

10. Heard both the parties. This matter was heard on 8/8/2022, 2/9/2022, 14/10/2022, 14/11/2022 and on 19/12/2022.

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:

13. 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 their apartment-H-1848 as per terms of agreements of sale and constructions both dated 16/12/2014. The respondent was required to hand over the possession of the aforesaid apartment within 30.9.2017 with a grace period of six months i.e. by 31.3.2018 as envisaged in agreement of sale and construction agreement both dated 16/12/2014.

15. Same is resisted by the respondent on the grounds 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. It is contended that after obtaining the occupancy certificate of "Republic of

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

Whitefield (Phase-2) on 26.11.2019 and after completing all developmental works in the project, the respondent has issued the intimation seeking the appointment of the complainants to come forward to inspect the apartments in order to rectify any snags in the apartment. After constant follow-up the complainants have not come forward for executing the sale deed by paying remaining sale consideration. The complainants have raised certain major clauses to be rectified in the sale deed along with claim for delay compensation. They have also issued legal notice dated 21/3/2022 to that effect. The respondent in his reply dated 11/4/2022 to this legal notice has further asked the complainants to come forward to complete the execution and registration of the sale deed and to take possession of the flat, but the complainant did not co-operate with him.

16. It is pertinent to note that the respondent has sought to explain the delay by referring to above issues which are nothing but routine requirements of compliances and constructions related issues which are required to be handled by the promoter of any project who has undertaken to develop the real estate project. None of the reason 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 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 have paid substantial sale consideration and admittedly there is a delay of 4 years and 11 months in handing over the apartment as per the agreement.

16/9

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

The respondent was supposed to hand over the possession on 31.3.2018. From this it is apparent that the respondent has not completed the construction work as agreed. Having accepted the said amount and failure to keep up promise to hand over possession of the apartment and to register the sale deed, certainly entitles the complainants herein for the relief of interest on delayed period under section 18 of the Act.

17. The complainants have furnished memo of calculation dated 17.3.2023 for the period from 31.3.2018 to 11.4.2022 amounting to Rs.45,65,851/-. Copy of the same was served on the respondent. The respondent objected that the memo of calculation filed by the complainants cannot be taken into consideration as the same includes the amounts paid towards the taxes. It is contended that the respondent cannot be made liable for the amounts collected towards taxes and remitted to competent authority. Coming to the aspects of payment of amounts towards taxes, it is already discussed in the judgement that when the complainants are going to purchase the said plot and claiming interest for delay period from the respondent, the complaints have to pay the amount towards the taxes because it is needless to say that the person who purchases the property has to bear the taxes also.

18. It is apparent from the available records that there is a delay of more than 4 years 11 months in handing over possession of the said apartment in favour of the complainants. Considering all the materials available on records, the complainant has established that his claim is genuine. Therefore, it is incumbent upon the respondent to pay interest

6/98

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

on delay period as per memo of calculation furnished by the complainants. The details are as below:

Payment details

Sl.No.	Type	Amount	Date
1.	Total payment till possession	1,14,13,823	11.4.2022
2.	Total delayed interest as on 11.4.2022	45,65,851	

Considering all these 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/220607/0009595** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to pay a sum of Rs. **45,65,851/-** (Rs. Forty five lakhs sixty five thousand eight hundred fifty one only) towards interest on delay period to the complainants within 60 days from the date of this order calculated at the rate of SBI MCLR + 2 %. from **31.3.2018 till 11.4.2022.**

18


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

2. The respondent is hereby directed to register and execute the sale deed of an apartment bearing No.H-1848 in the project "**Republic of Whitefield(Phase-2)**" in favour of the complainants immediately upon receiving the balance amount, if any, from the complainant. The amount should be set off against the delay period interest and only further dues, if any, needs to be paid. If the delay period interest is more than the amount due from the complainants, the remaining balance shall be paid to the complainants.
3. The complainants are at liberty to initiate further action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

No order as to costs.


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

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY