

**PROCEEDINGS OF THE AUTHORITY**

**BEFORE BENCH 5**

**Dated 25<sup>th</sup> MAY, 2023**

**PRESIDED BY HON'BLE MEMBER G.R. REDDY**

**COMPLAINT NO.CMP/201014/0006844**

COMPLAINANTS : Mr.Sarat Prabhakar  
Yahweh Yireh, 10, 2<sup>nd</sup> Main  
Amrutha Nagar, Phase 2,  
Kasavanahalli  
Bengaluru : 560 035  
(By Mr.Girish, Advocate)

RESPONDENT / : M/s.Reddy Shelters Pvt Ltd.  
PROMOTER No.133/1, 2<sup>nd</sup> Floor,  
Residency Road,  
Bangalore : 560 025  
(By Ms.Sujatha, Advocate)

PROJECT NAME & : MAHAVEER RANCHES PHASE-I  
REGISTRATION NO. PRM/KA/RERA/1251/310/PR  
171015/000421

**J U D G E M E N T**

This complaint is filed before this Authority under Sec-18 of the Real Estate (Regulation and Development) Act, 2016 against the project MAHAVEER RANCHES PHASE-I praying for a direction to Respondent to pay compensation or refund:

**BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-**

1. The complainant has entered into an agreement of sale on 04-07-2015. The project completion date as per agreement was 03.07.2018 with a grace period of 6 months. The complainant has paid on various dates an amount of Rs.53,62,420/- (Rupees fifty three lakhs sixty two thousand four hundred twenty only) to the respondent. Since there was delay of more than two years in handing over the apartment, the complainant has filed the above complaint before the Authority praying for a direction to pay compensation or refund.

2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 03.07.2018. The promoter-respondent was required to complete the project and hand over possession of the apartment by 03.07.2018. In cases where in the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, the complaint is admissible for relief in accordance with Section 18 of the Act.

3. After registration of the complaint, the Authority has issued Notice to both the parties for appearance before the Authority. In pursuance of the notice, the Complainant has appeared before the Authority through his counsel and the Respondent has not appeared before the Authority on three occasions on 28.07.2022, 17.08.2022 and 14.09.2022. During the hearing on 14.09.2022, the Complainant has submitted

before the Authority that the Respondent has not appeared nor filed any statement of objections in spite of giving three opportunities and hence prayed for grant of delay period interest. Accordingly, the matter was posted for orders based on the records available with the Authority. The Presiding Officer of Fifth Additional Bench, who was hearing the above complaint, has retired and the new Presiding Officer has taken charge. Though the above complaint is posted for orders, before passing any order in the above complaint, an opportunity was given to both Complainant as well as the Respondent to make submissions, if any, before the Authority in view of change in incumbent. Accordingly, notice of hearing was issued to both the parties to appear before the Authority on 19.01.2023. Both the parties were absent and the matter was adjourned to 02.02.2023. On 02.02.2023 the Respondent appeared before the Authority through its Counsel and filed written arguments. In the written arguments, it is admitted by the Respondent that there is a delay in completing the project on account of various reasons beyond the control of the Respondent such as Demonetization and Covid-19 Pandemic. Covid-19 Pandemic started in the year 2020, the project completion date as per agreement is July, 2018 with a grace period of 6 months. Therefore, the reason quoted by the Respondent is not acceptable and even the grace period of 6 months will not enure to the benefit of the Respondent as the project is not completed even after taking into account grace period of 6 months. For all practical purpose the completion date of the project will be construed as July, 2018 only and the grace period of 6 months



will not be applicable. Further, the Advocate for the Respondent argued that the Complainant had written an e-mail to the respondent stating that he want to exit from the project on account of delay in completing the project and the Respondent was ready to return his amount with interest by deducting the interest on delayed payment. As per the Act, the Respondent cannot deduct interest on the delayed payment when the Complainant wants to exit from the project on account of delay in completion. However, no documentary evidence is produced by the Respondent for having sent the refund amount to the complainant and the complainant refusing to accept the same. Since the Respondent did not refund the amount even after more than two years from the date of email stated to have been sent by the complainant opting to exit from the project. The complainant during the hearing on 14.09.2022 prayed before the Authority to grant delay period interest by continuing with the project. The Authority has permitted the prayer of the complainant and the matter was posted for orders. 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 delay period interest for not completing the project within the period mentioned in the agreement.

3. The complainant also filed written arguments dated 28.07.2022 and reply dated 21.02.2023 to the written arguments filed by the Respondent. In the reply to the written



arguments, the Complainant has made a categorical submissions that the Respondent has not obtained Occupancy Certificate even as on date (21.02.2023). The statement of the Respondent in its written arguments states that the building is fit to live-in and some of the customers have started occupying in January, 2019 itself. The said written argument filed by the Respondent is during the month of February, 2023. In the said written argument also, the respondent never stated anything about completion of the project and obtaining occupancy certificate establishing that the project is not complete even as on February, 2023. The Complainant is not willing to take possession of the apartment without occupancy certificate as there are some more pending works to be completed by the Respondent.

4. The Complainant has produced before the Authority copy of the sale agreement, construction agreement, copy of the receipts, copy of the account statement, gmail correspondence and memo of calculation for delay period interest in support of his contention. On the other hand the Respondent also submitted copy of the agreement of sale, construction agreement, RERA registration certificate, copy of the sale deed executed to other allottees, copy of payment details and copy of email communications in support of its contention.

5. On a perusal of the documents and written submissions filed before the Authority, it is evident that the complainant has paid a sum of Rs.53,62,420/- and the Respondent has



acknowledged receipt of the same. Admittedly there is a delay of more than four years in handing over the apartment as per the agreement. Hence the Complainant is entitled to delay period interest u/s 18 of the Act. Accordingly the Complainant had filed a memo of calculation in support of his claim. The Promoter-Respondent has not filed any memo of calculation for delay period interest nor disputed the claim made by the Complainant.

5. It is seen from the memo of calculation of delay period interest calculated by the Complainant is from the date of 04.01.2019 after taking into account the grace period of six months though it is not applicable in the present case as the Respondent has not completed the project even as on this date. The Respondent has pleaded in its written arguments that there is a delay in making the payment from the Complainant at every stage of payment and did not submit the total amount due from the complainant towards interest on delayed payment. The complainant has disputed the said delay pointed out by the Respondent in making payment to the respondent and the same is misleading in nature. The Respondent having failed to produce any calculation for the delay in making the payment by the complainant to the respondent and not disputing the memo of calculation for delay period interest filed by the Complainant, the claim of the Respondent is untenable for want of any documentary proof.

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/201014/0006844 filed by the Complainant is hereby allowed.
2. Respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 04.01.2019 till the date of handing over possession along with occupancy certificate. The promoter shall pay the interest for the delay period as arrived at by the Complainant amounting to Rs.22,76,586/- (Rupees Twenty two lakhs seventy six thousand five hundred eighty six only) within 60 days from the date of this order. The Promoter-Respondent 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 as per agreement, obtain occupancy certificate and handover the apartment to the Complainant at the earliest on receiving the balance payment, if any, from the Complainant.

  
(G.R. REDDY)  
MEMBER  
FIFTH ADDITIONAL BENCH  
K-RERA