

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 6**

**Dated 27<sup>TH</sup> JUNE 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.:CMP/220521/0009505**

**COMPLAINANTS.....**

**MR. VIJAYA KUMAR D &  
MRS. GOMATHI VIJAYAKUMAR  
KALPATARU SAMPURNA  
3 A NO.476/28, 12<sup>TH</sup> CROSS  
WILSON GARDEN  
BENGALURU-560027.**

**(IN PERSON)**

**V/S**

**RESPONDENT....**

**SHRIPROP PROJECTS PRIVATE LTD  
NO.40/43, 8<sup>TH</sup> MAIN, 4<sup>TH</sup> CROSS  
SADASHIV NAGAR  
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 SOUTHERN CREST**" developed by "**SHRIPROP PROJECTS PRIVATE LIMITED**" on Sy.No.39, 40, 41 & 42/3A, Municipal No.243/254/41, 1 to 9/83/93 to 101 of Jaranganahalli Village, Uttarahalli Hobli, Bangalore South Taluk, Bengaluru Urban District for the relief of interest for delay period subsequently amended the relief sought to refund with interest.

2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/310/PR/171014/000364 valid from 01/8/2017 till

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30/06/2021. The project was extended due to COVID-19 for a period of 9 months i.e. till 30/03/2022. The Authority extended the registration for a further period of 12 months valid till 30/03/2023.

**Brief facts of the complaint are as under:-**

3. The complainants have purchased an apartment in the project of respondent by entering into an agreement for sale and construction agreement on 28/06/2017 and have paid an amount of Rs.88,27,055/- (Rupees Eighty Eight Lakh Twenty Seven Thousand and Fifty Five only) to the respondent till date. The complainants submit that they have entered into Tripartite Agreement on 5/4/2018 with the respondent and State Bank of India for housing loan. The respondent has not mentioned date of handing over possession of the apartment either in the agreement of sale nor in the construction agreement. The complainants submit that though they have paid more than 90% of the payment, the respondent has not handed over the possession of the apartment to the complainants even after five years. The respondent has simply kept postponing the date of possession and has defaulted on terms and conditions, due to which as buyers, the complainants have suffered monetary losses by paying rent and EMIs to the Bank. The complainants also submit that the State Bank of India has considered that the project (Shriram Properties) is a stalled project and did not extend moratorium. There is no response from the respondent to their emails. Aggrieved by the attitude of the respondent, the complainants have opted for full refund with interest. Thus the complainants have approached the Authority and pray for directions to the respondent for refund with interest. Hence, this complaint.

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 complainants are not entitled for seeking relief sought in light of the Agreement of Sale and Construction

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Agreement dated 28/6/2017 and submits that the delay in completion of the project was due to force majeure conditions such as, scarcity of raw materials, non-availability of skilled labours, transport disruption or such reasons which were beyond the control of the respondent and as such, the respondent was unable to deliver the apartment to the complainants as assured in the agreements.

6. In addition COVID-19 pandemic and the lockdowns have also contributed significantly to the obstacles faced by the respondent and that the COVID-19 situation prevailing throughout the country in 2020-21 was considered as a force majeure event. The respondent submits that Partial Occupancy Certificate dated 26/9/2022 has been issued by the competent authority and that the apartment in the project has now been completed.

7. The respondent submits that the amounts paid by the complainants cannot be considered for computing the interest, as a part of the amount has been contributed towards GST which shall be excluded while computing the refund with interest. The respondent also submits that they are not liable to pay any interest to the complainants on the amounts received by them from the Bank.

8. The respondent contends that as per Tripartite Agreement and Construction Agreement, the respondent is entitled to recover charges equivalent to 20% of the total construction cost along with e-stamp and brokerage charges and refund the balance amount if any to the complainants within two months thereof.

9. 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 prays not to grant the relief sought by the complainants and to dismiss the complaint.

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10. The complainants in their rejoinder to the statement of objections filed by the respondent submit that the bank has made the disbursement on behalf of the purchaser who is paying interest on the loan availed from the bank and hence, the interest payable on the complainants portion is not tenable. It is evident that the respondent has defaulted in handing over possession of the apartment by not adhering to the timelines. The respondent was supposed to execute and register the flats in favour of the allottees by 30/3/2022 which he has failed to adhere. The complainants are entitled for refund of entire amount paid to the respondent along with interest due to default by the seller. The complainants have not agreed with the contention of the respondent that the GST amount will not be computed for calculation of interest payable to the complainants.

11. The complainants have also contended that the respondent company has not adhered to the project specific milestones and failed to execute the project within the extended dates. The complainants also submit that the Bank has not given any relaxation or subsidy due to Covid-19 pandemic, except that EMI were delayed for six months and the interest accrued on these six months was added to the principal amount, which further increased EMI burden. The complainants pray this Authority to direct the respondent to pay refund with interest.

12. In support of their defence, the respondent has submitted copies of the Agreement for Sale, Construction Agreement, Tripartite Agreement, Partial Occupancy Certificate dated 26/9/2022 issued by the competent authority, copies of the RERA Registration and extension certificates.

13. The complainants have produced documents such as copies of Agreement of Sale, Construction Agreement, payment receipts, customer statement of account dated 2/9/2022 issued by the respondent, statement of account dated 15/4/2023 issued by SBI and memo of calculation as on 17/07/2022.



14. This matter was heard on 18/10/2022, 17/11/2022, 19/1/2023, 3/2/2023, 14/3/2023, 13/4/2023 and 22/6/2023. Heard arguments of both sides.

**15. 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?

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

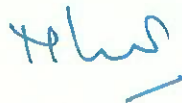
1. In the Affirmative.
2. As per final order for the following:-

**REASONS**

**17. 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 (the date of handing over possession is nowhere mentioned either in the Agreement of Sale or Construction Agreement), the respondent failed to abide by the terms of the agreement and not handed over the possession of the apartment to the complainants till today.

18. During the process of the hearing on 18/10/2022, the complainants made a submission for amendment in relief sought from delay period interest to refund with interest. The Authority accepted and amended the relief sought to refund with interest. The complainants mentioned that the assured date of possession was March 2020, whereas there is no mention of date of delivery in the agreements of sale and construction.

19. On 13/4/2023, the respondent filed a memo to implead State Bank of India, RACPC, Basavanagudi as Respondent-2 in the complaint to state how much money is outstanding to them and how much EMI the complainants have paid back. The Authority did not agree with the submission made by



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the respondent and directed the complainants to get the bank loan particulars and submit before the Authority.

20. Accordingly, on 22/6/2023, the complainants submitted bank documents issued by the State Bank of India before the Authority.

21. The Authority has perused the statement of objections and rejoinder filed by the respondent and the complainants. The Authority did not agree with the contentions of the respondent that the construction was delayed due to force majeure events and that the GST should be exempted from calculating interest for refund.

22. The complainants vide their memo of calculation as on 28/10/2022 have claimed an amount of Rs.1,24,03,063/- as refund with interest. The respondent has not filed their memo of calculation despite several opportunities given. Having regard to all the above aspects, the Authority is of the opinion that the complainants are entitled for refund with interest.

23. Therefore, it is incumbent upon the respondent to pay refund with interest determined as under:

Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	0	2	30-04-2017	0
2		0		TOTAL INTEREST ( I1 )	0

Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	2006	28-10-2022	8.15	10.15 as on 01-05-2017	0
2	09-05-2017	1,00,000	1998	28-10-2022	8.15	10.15 as on 01-05-2017	55,560

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3	15-05-2017	4,00,000	1992	28-10-2022	8.15	10.15 as on 01-05-2017	2,21,575
4	22-06-2017	4,51,786	1954	28-10-2022	8.15	10.15 as on 01-06-2017	2,45,488
5	22-06-2017	8,00,000	1954	28-10-2022	8.15	10.15 as on 01-06-2017	4,34,698
6	07-08-2017	9,08,833	1908	28-10-2022	8.15	10.15 as on 01-08-2017	4,82,209
7	05-02-2018	8,11,460	1726	28-10-2022	8.1	10.1 as on 01-02-2018	3,87,557
8	05-02-2018	97,375	1726	28-10-2022	8.1	10.1 as on 01-02-2018	46,506
9	24-04-2018	4,54,417	1648	28-10-2022	8.35	10.35 as on 01-04-2018	2,12,353
10	24-01-2019	7,27,071	1222	28-10-2022	8.65	10.65 as on 10-06-2019	2,59,241
11	08-03-2019	7,27,069	1330	28-10-2022	8.75	10.75 as on 10-02-2019	2,84,801
12	17-05-2019	7,27,070	1260	28-10-2022	8.65	10.65 as on 10-05-2019	2,67,302
13	17-07-2019	7,27,067	1199	28-10-2022	8.6	10.6 as on 10-07-2019	2,53,166
14	22-11-2019	7,27,068	1071	28-10-2022	8.2	10.2 as on 10-11-2019	2,17,606
15	10-07-2020	4,54,418	840	28-10-2022	7.3	9.3 as on 10-07-2020	97,257
16	18-12-2020	4,54,421	679	28-10-2022	7.3	9.3 as on 10-12-2020	78,617
17	29-06-2021	2,59,000	486	28-10-2022	7.3	9.3 as on 15-06-2021	32,072
18	TOTAL AMOUNT	88,27,055				TOTAL INTEREST (12)	35,76,008

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST ( B = I1 + I2 ) AS ON 28-10-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
88,27,055	35,76,008	0	1,24,03,063

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

25. **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/220521/0009505** is hereby allowed.

Respondent is directed to pay a sum of **Rs.1,24,03,063/- (Rupees One Crore Twenty Four Lakh Three Thousand and Sixty Three only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 01/05/2017 to 28/10/2022 and later on. The interest accruing from 29/10/2022 till the date of final payment will be calculated likewise and paid to the complainants.

Failing which, 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, K-RERA