PROCEEDINGS OF THE AUTHORITY

BEFORE BENCH 5

Dated 17th JULY, 2023

PRESIDED BY HON'BLE MEMBER G.R. REDDY

COMPLAINT NO.CMP/210613/0007994

COMPLAINANTS	: Ms.Soni Kumari & Mr.Saket Kumar 34-004, Mantri Residency, Kalena Agrahara, Bannarghatta Road Bangalore : 560 076 Party in Person
RESPONDENT / PROMOTER	: 1. M/s.Shriram Properties Pvt Ltd. No.40/43, 8th Main, 4th Cross, Sadashiv Nagar, Bengaluru:560080 2. M/s.Shriprop Dwellers Pvt Ltd. No.40/43, 8th Main, 4th Cross, Sadashiv Nagar, Bengaluru:560080 By Mr.Bharath & Others, JSM Law Partners
PROJECT NAME & REGISTRATION NO.	: SHRIRAM SUMMITT PRM/KA/RERA/1251/308/PR/ 171015/001121

J U D G E M E N T

This complaint is filed under Sec-18 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project **SHRIRAM SUMMITT** praying for a direction to pay Delay Period Interest.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. The Complainants have entered into an agreement of sale with the Respondents on 28.03.2018 for purchase of an apartments. The project completion date as per agreement was 31.12.2019. The complainants have paid an amount of Rs.48,66,000/- (Rupees Forty eight lakhs sixty six thousand only) to the respondent till the date of complaint. Since there was delay of more than two years in handing over the apartment, the complainants have filed the above complaint before the Authority praying for a Direction to the Respondents to pay Delay Period Interest.

2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 31.12.2019. The promoter-respondent was required to complete the project and hand over possession of the apartment by 31.12.2019. In cases where the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, the Allottee has a right to file a complaint before the Authority and hence this complaint is admissible for relief in accordance with Section 18 of the Act.

3. After registration of the complaint, notice was issued by the Authority to both complainants and the Respondents to appear before the Authority. In pursuance of the notice, issued by the Authority, the Complainants have appeared in person and the respondents have appeared before the Authority through their counsel and authorised representative, filed statement of

objections. During the course of hearing, the Complainants have filed an application dated 15.02.2023 to amend their prayer from "Compensation due to delay" to " delay period Interest". The Respondent in its statement of objection contended that the project has not been completed within stipulated time due to force majeure events such as scarcity of raw materials, non availability of skilled labours, transport disruption or such reasons beyond the control of the respondent. In addition COVID-19 pandemic and the lockdown have also contributed significantly to the obstacles faced by the respondent. The Respondent further submits that the impact of the ruling of the NGT, New Delhi also caused for the delay in completion of the project. The Respondent has stated that the highlight of the NGT order was brought to the notice of K-RERA as well as the allottees / customers through their letters and email. No document is produced by the Respondent in support of their claim of informing K-RERA and Allottees. In support of their defence, the Respondent has submitted various documents like Occupancy Certificate, RERA Registration Certificate, copy of agreement of sale, order passed by the NGT, Copy of the order passed by the Hon'ble Supreme Court of India and other documents. 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 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 pay the delay period interest.

4. One of the contentions raised by the respondent for delay in completing the project is on account of Covid-19. As stated earlier, the delivery and completion of the project is December, 2018 and the actual Covid-19 pandemic started during the year 2020 and the respondent cannot plead before the Authority Covid-19 pandemic as the reason for delay in completing the project. The Respondent has obtained occupancy certificate and executed the registered sale deed on 08.07.2022 in favour of the complainants with a delay of more than 2 years. Therefore, the exemption sought by the Respondent on account of Covid-19 for calculation of delay period interest for 9 months is not tenable and the same is not agreed by the Authority. Further, the Respondent has not kept the RERA Authority informed about the litigation before NGT at the time of registration nor had intimated the complainant about the ongoing dispute and could delay their project. The Respondent could have taken longer time for completion at the time of seeking registration of the project. The onus is on the promoter to inform the complainants at the time of registration of the apartment by the Complainants and not keeping the customers in dark. The fact remain that the amounts paid remained with the respondent and there is a cost associated with it to the complainants recognised by the Act.

5. On a perusal of the documents filed and submissions made before the Authority, it is evident that complainants have paid sale consideration amount and admittedly there is a delay of more than three years in handing over the apartment as per the agreement. Hence the complainants are entitled to delay period interest u/s 18 of the Act and accordingly a memo of calculation submitted by the Complainants.

6. The Complainants have submitted before the Authority that the Respondents have executed the sale deed on 08.07.2022 and the possession was taken over by the Complainants with a delay of more than two years. The Complainants have also submitted various documents such as copy of the sale deed, Consolidated Receipt for payments, agreement to sale etc., and prayed the Authority to award delay period interest. On the other hand the Respondents have taken more than 4 months time for amicable settlement and the matter is not settled between the parties. The Complainants have submitted the MOC for delay period interest and served on the Respondent.

7. The Authority has heard the matter on 15.2.2023 and the matter was posted for orders. After 15.2.2023, the Authorised Representative of the Respondent has submitted before the Authority that negotiations are underway for an amicable settlement before the Lok Adalat in respect of all the Complaints pertaining to project SHRIRAM SUMMITT, including this complaint and prayed for time. It is relevant to mention that during the

hearing on 01.06.2023 in respect of other Complaint No.8291, the Respondents have submitted before the Authority that they could not arrive at amicable settlement between the parties in respect of all the complaints pertaining to SHRIRAM SUMMITT Projects in spite of taking sufficient time and prayed that the matter may be posted for orders.

8. The Respondents were given more than four months time for arriving at amicable settlement. Since, there was no information / submissions from the Respondents even after taking 4 months time, notice was given from the Authority to both Complainants and Respondents to appear before the Authority on 04.07.2023 to submit their versions, if any.

9. The Promoter-Respondent had submitted memo of calculation claiming exemption in payment of delay period interest to the complainants on account of NGT Order, Covid-19. The exemption claimed by the Respondent is not acceptable as per the reasons mentioned above at para no.4.

10. During the hearing on 4.7.2023, the Authorised representative of the respondent was present and submitted before the Authority that they are ready to settle the claims made by the complainants by paying 40% of the delay period interest due and payable by the Respondent to the complainant and prayed for time to arrive at an amicable settlement. The Complainants have not agreed for the offer of 40% made by the

Respondents. The complainants have objected for granting further time in the matter as the Respondents are adopting a delay tactics in settling the issue before this Authority and prayed for passing an award based on the MOC filed by the Complainant.

HENCE, 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/210613/0007994 is hereby allowed.

2. Respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 31.12.2019 till the date of possession i.e., 08.07.2022. The promoter shall pay the interest for the delay period as arrived at by the complainants amounting to Rs.13,18,408/- (Rupees Thirteen lakhs eighteen thousand four hundred eight only).

3. The Promoter-Respondent is also directed to pay interest on Rs. Rs.13,18,408/- (being the delay period interest awarded up to the date of possession i.e., 08.07.2022) for the subsequent period of delay in payment of the delay period interest to the Complainants at the rate of SBI MCLR + 2% up to the date of payment/realisation.

4. The Promoter-Respondent is directed to pay the amounts awarded at Sl.No.2 & 3 of the operative portion of the order

within 60 days from the date of this order. 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 orders of this Authority.

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