

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 7<sup>th</sup> OF AUGUST 2023**

**Complaint No. CMP/220412/0009345**

**COMPLAINANT:**

**A. VENKATESHAPPA  
RESIDING AT BASAVANTHA  
TAMAKA POST  
KOLAR-563101.**

**(BY SMT. SUJATHA H.H.  
ADVOCATE)**

V/s

**RESPONDENT....**

**M/s UNISHIRE SKYSCAPES  
LLP, NO: 36, RAILWAY  
PARALLEL ROAD  
NEHRU NAGAR  
BENGALURU URBAN-560020.**

**(ABSENT)**

**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA Act, against the project **'UNISHIRE PREMIA'** developed by **"M/s UNISHIRE SKYSCAPES LLP"** for the relief of interest on delay period.

2. The respondent has developed this project situated at Sy.No: 24/3, Srirampura Village, Yelahanka Hobli, Bengaluru North Additional Taluk, Jakkur Double Road, Bengaluru North, Bengaluru Urban.

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3. This project has been registered in RERA vide registration no. PRM/KA/RERA/1251/309/PR/180516/001678.

4. **The brief facts of the complaint are as under:** The complainant had booked an apartment bearing **1204** situated on the 12<sup>th</sup> floor in the residential apartment building "**UNISHIRE PREMIA**" of the respondent-promoter and thereafter entered into an Memorandum of sale agreement dated 31/12/2018 for a valuable sale consideration of Rs.95,70,114/- (Rs. Ninety five lakhs seventy thousand one hundred fourteen only. The complainant has paid an amount of Rs.45,00,000/- on 31/12/2018 (Rs. Forty five lakhs only) towards the purchase of the said apartment to the respondent which has been duly acknowledged by him. The respondent was required to hand over the possession of the said apartment unit within 12 months from the date of memorandum of agreement of sale i.e. by 31/12/2019. The respondent has failed to hand over the possession of the said apartment to the complainant within the stipulated timeline and thereby failed abide by the terms and conditions of the memorandum of agreement of sale dated 31/12/2018. Therefore, the complainant has approached this Authority for the relief of interest on delay period. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent absented himself from appearance during the proceedings held on 19/9/2022, 12/10/2022, 28/10/2022, 15/11/2022, 2/12/2022, 20/12/2022, 11/01/2023, 21/2/2023, 21/3/2023, 11/4/2023, 31/5/2023 and on 28/7/2023. Hence, in spite of providing sufficient opportunity, it is seen that the respondent has not appeared



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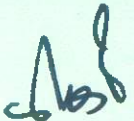
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before the Authority to put forth his grievances and has not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf but remained absent on the aforesaid dates of hearings. The Advocate for the complainant has served notice to the respondent through paper publication in (1) Indian Express dated 3/5/2023 and (2) Kannada Prabha news paper dated 3/5/2023 since the respondent remained absent from the date of first hearing.

6. On perusal of the memorandum of agreement of sale, 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 wherein the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for the relief in accordance with Section 18 of the Act.

7. The complainant in support of their claim, has produced documents such as (1) Memo of calculation (2) payment receipts (3) copy of memorandum of sale agreement dated 31/12/2018 (4) copies of notice served to the respondent through paper publication in (1) the new Indian Express dated 3/5/2023 and (2) Kannada Prabha news paper dated 3/5/2023

8. Heard the complainant.



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

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

2. What order?

13. **Findings on the above points are as under:**

14. 1. In the Affirmative

2. As per final order for the following:

**FINDINGS**

15. **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 within the stipulated timeline as per memorandum of sale agreement dated 31/12/2018. The respondent was required to hand over the possession of the aforesaid apartment by 31/12/2019. Admittedly, there is a delay of more than 3 years and 7 months in handing over possession of the said apartment to him by the respondent. Therefore, the complainant has approached this Authority for the relief of interest on delayed period.

16. In pursuance of the notice, the respondent has not appeared before this Authority but continuously remained absent on all the dates of hearings. Subsequently the respondent has failed to file statement of objections, furnishing documents on its behalf.

17. At this juncture, my attention was drawn to Para-25 of the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021(arising out of SLP (Civil) No(s)



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3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, it is held as under:

*"Para-25: The unqualified right of the allottee to seek refund under section 18(1) (a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*

18. 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 3 year and 7 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.

19. Despite several notices were served upon the respondent, he remained continuously absent on all the dates of hearings. Besides, notice was served to the respondent through paper publication (1) Indian Express dated 3/5/2023 and (2) Kannada Prabha news paper dated 3/5/2023, the respondent was remained absent from the date of



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first hearing. Subsequently, the respondent has failed to file statement of objections and furnishing documents if any, in support of his defence and hence not contested the matter. In the absence of any resistance by the respondent and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant.

20. Therefore, it is incumbent upon the respondent to pay interest on delay period as determined as under:

**Payment details**

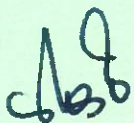
| Sl.No. | Type                                     | Amount    | Date       |
|--------|--|-----------|------------|
| 1.     | Total payment till possession            | 45,00,000 | 31/12/2019 |
| 2.     | Total delayed interest as on<br>4/8/2023 | 15,34,089 |            |

21. 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 31/12/2019 but failed to hand over possession of the said apartment. Considering all the above aspects, the point raised above is answered in the Affirmative.

22. **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/220412/0009345** is hereby allowed and the following order is passed.



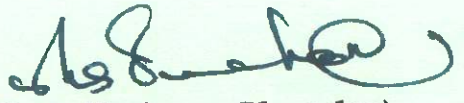
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1. The respondent is hereby directed to pay a sum of Rs. **15,34,089/-** (Rs. Fifteen lakhs thirty four thousand eighty nine only) towards interest on delay period to the complainant, calculated at the rate of SBI MCLR + 2 % from 31/12/2019 till 4/8/2023. The interest due from 5/8/2023 shall be calculated likewise and paid to the complainant till the date of handing over possession of the apartment to the complainant.
2. The respondent is hereby directed to register the residential apartment bearing No.1204, situated at 12<sup>th</sup> Floor, in the project **"UNISHIRE PREMIA"** to the complainant immediately upon receiving the balance amount, if any. The net balance amount, if any, shall be after deduction of delay period interest. After registration of sale deed, the respondent shall hand over the possession of the same to the complainant.
3. The respondent is hereby directed to register and hand over possession and pay delay period interest to the complainant within 60 days from the date of this order.
4. 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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