

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 17TH AUGUST 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220802/0009837

COMPLAINANT.....

**MUKESH GUPTA
555, NARAYANAPPA BUILDING
RAMAGONDANAHALLI
BANGALORE-560066.**

(IN PERSON)

Vs

RESPONDENT.....

**M/S SHRIVISION TOWERS PVT LTD
40/43, 8TH MAIN, 4TH CROSS
SADASHIVA NAGAR
BANGALORE-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 GREENFIELD PHASE 2"** developed by **SHRIVISION TOWERS PRIVATE LIMITED** on Sy.No.73/1, 73/2A, 74(P) & 81, Bammenahalli Village, Bidarahalli Hobli, Bangalore East Taluk, Hoskote, Bengaluru Rural for the relief of interest on delay period.
2. This project has been registered under RERA bearing Registration No.PRM/KA/RERA/1250/304/PR/171014/001220 valid till 31/03/2021. The project was extended due to Covid-19 for a period of 9 months till 31/12/2021. The Authority has further extended its registration for a period of 12 months i.e. till 30/12/2022.

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Brief facts of the complaint are as under:-

3. The complainant has purchased a flat bearing No.G-1305, Tower-G, 13th Floor, Building-II in the project of the respondent and entered into an agreement of sale on 29/6/2018 and has paid an amount of Rs.49,01,852/- (Rupees Forty Nine Lakh One Thousand Eight and Fifty Two only) to the respondent on various dates (as per the consolidated receipt issued by the respondent company to the customer dated 29/6/2023). The respondent was supposed to hand over the possession of the flat to the complainant by 31/03/2021 with a grace period of six months i.e. latest by 30/9/2021. The complainant submits that the respondent had told verbally that the date of delivery of the flat will be on 31/3/2020, but the respondent told that if he fails to deliver the flat on that day, heavy penalty will be levied by RERA. The complainant submits that even in August 2022, the status on the progress of the construction was still 50% and the flooring, fittings, painting etc., are yet to be done. The complainant submits that he has followed up with the Bank to disburse the loan amount and took the burden of PEMI. The complainant further submits that the Indiabulls had denied for the disbursement at a certain stage due to milestone was not achieved. Hence, the complainant shifted the loan to HDFC and got the fund disbursed.
4. The complainant submits that paying PEMI and rent have become a burden on him. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent to pay interest for the delay period and handover possession of the flat in a livable condition. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and has filed statement of objections as under:

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6. The respondent contends that the complainant is not entitled for seeking such relief sought in light of the Agreement of Sale dated 29/6/2018 and submits that the delay in completion of the project was attributed to the pending litigations against the respondent before the Hon'ble National Green Tribunal in O.A.No.222/2014 as well as before the Hon'ble Supreme Court in Civil Appeal No.5016/2016 benches regarding maintenance of buffer zones where the apartment allotted to complainants in respect of the project was situated and on conclusion of the cases in Hon'ble NGT and Hon'ble Supreme Court, the construction proceeded.
7. The respondent further submits that in addition COVID-19 pandemic and the lockdowns imposed by the State Government to prevent spread of disease have also contributed significantly to the obstacles faced by the respondent.
8. The respondent submits that the project has not been completed within stipulated time and was unable to deliver the flat as promised in the agreement of sale 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, and the respondent cannot be held liable to compensate the complainant under section 18(1) of RERA Act.
9. The respondent submits that the project is still in the completion stage and under construction and that the complainant has approached this Hon'ble Authority seeking relief of delay period interest with an intention to reap profits in the instant complaint.
10. The respondent contends that amounts paid as GST cannot be considered for computing the delay period interest as the respondent has made the payments to the statutory authority.

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11. The respondent contends that there is no willful 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. The respondent denies the allegations of the complainant and submits that the delay has been caused as a result of factors beyond the control of the respondent such as the ruling of the NGT and force majeure of the pandemic. The respondent prays this Hon'ble Authority not to grant the relief sought by the complainant and to dismiss the complaint.
12. The complainant in their rejoinder to the statement of objections submitted by the respondent contend that the respondent has admitted the delay in completion of the project and opposes the relief sought on the ground that the construction was delayed due to the Hon'ble NGT and Hon'ble Supreme Court orders with regard to buffer zone.
13. The complainant further contend that the ruling of Hon'ble NGT was in 2016 and the respondent did not inform either the Authority at the time of registration nor the complainant, though the respondent had entered into agreement of sale in 2018, sanctioned plan was obtained in 2016 and the project was an ongoing project in 2017 nor during the interaction with the CRM Team or when emails were sent to the CRM Team to ascertain why there is delay in the completion of the project. The complainant prays the Authority to issue directions to the respondent to pay interest on delay period until the flat is handed over to him.
14. In support of their defence, the respondent has submitted copies of Agreement for Sale, Order dated 4/5/2016 passed by the Hon'ble National Green Tribunal in O.A.No.222/2014, Order dated

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5/3/2019 passed by the Hon'ble Supreme Court in Civil Appeal No.5016/2016, maps of Bommenahalli village and Bendiganahalli village depicting the lake, screenshot from Google maps depicting the location of the project and the lake, Sanctioned Plan dated 10/5/2016, RERA registration, extension and covid extension certificates and memo of calculation as on 9/8/2023.

15. In support of his claim, the complainant has produced documents such as copies of agreement of sale, customer statement of account dated 29/6/2023 issued by the respondent and memo of calculation as on 2/7/2023.

16. This case was heard on 22/12/2022, 9/2/2023, 7/3/2023, 13/4/2023, 22/6/2023 and 10/8/2023. Heard arguments of both sides.

17. **On the above averments, the following points would arise for my consideration:-**

1. Whether the complainant is entitled for the relief claimed?
2. What order?

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

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

REASONS

19. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of the flat within 31/03/2021 with a grace period of six months i.e. latest by 30/9/2021, the respondent has failed to abide by the terms of the agreement and not handed over the possession of the flat to the complainant till date.

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20. The Hon'ble Authority has perused the statement of objections submitted by the respondent and rejoinder submitted by the complainant. The Authority has not accepted the contentions of the respondent raised in their statement of objections.
21. During the process of the hearing the Authority in similar cases had directed the respondent to furnish information regarding the date of start of NGT litigation, date of order of Hon'ble NGT/Hon'ble Supreme Court, when the appeal was filed before the Hon'ble Supreme Court, date of sale of apartment to the complainants, whether the complainants/customers were kept informed about the litigation existing at the time of sale of agreement, whether they had kept the RERA Authority informed about this litigation at the time of registration, date of application for RERA registration.
22. The respondent have not kept the RERA Authority informed about the litigation at the time of Registration nor had intimated the complainant/customers about the ongoing dispute despite knowing the fact that the Hon'ble NGT order could delay their project. At the time of registration in RERA, the respondent could have taken longer time for completion or changed their building plan. The respondent's contention that the ruling of the NGT, New Delhi had been extensively published in the media and newspapers and that the buyer ought to have been aware about the ruling of the NGT, New Delhi is not acceptable. The onus is on the promoter to open all their cards at the time of sales and not to keep the customers in dark.
23. The complainant vide his memo of calculation as on 02/07/2023 has claimed an amount of Rs.6,85,196/- as delay period interest calculated from 31/03/2021 to 02/07/2023.

Relu

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24. The respondent has submitted that the complainant is to be paid an amount of Rs.5,64,135/- as delay period interest calculated from 31/12/2021 to 9/8/2023. There is difference in the principle amount between the two parties. The complainant has submitted documentary proof in the form of customer statement of accounts dated 29/6/2023 issued by the respondent to substantiate his claim.
25. The Hon'ble Authority perused the memo of calculation submitted by both the parties and did not accept them, as the calculation should have been made from 30/9/2021.
26. Having regard to all these aspects, this Authority concludes that the complainant is entitled for delay period interest from 30/09/2021 till the date of handing over possession of the flat by the respondent.
27. Therefore, it is incumbent upon the respondent to pay interest on delay determined as under:

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	23,20,201	30-09-2021
2	SUBSEQUENT PAYMENT 1	12,70,100	26-07-2022
3	SUBSEQUENT PAYMENT 2	2,90,025	22-08-2022
4	SUBSEQUENT PAYMENT 3	2,90,026	30-09-2022
5	SUBSEQUENT PAYMENT 4	2,90,025	04-03-2023
6	SUBSEQUENT PAYMENT 5	1,51,450	21-03-2023
7	SUBSEQUENT PAYMENT 6	2,90,025	08-06-2023
8	TOTAL PRINCIPLE AMOUNT	49,01,852	
9	TOTAL DELAYED INTEREST as on 17/08/2023	6,59,504	

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Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 2,320,201						
1	30-09-2021	30-10-2021	30	7.3	9.3 as on 15-09-2021	17,735
2	30-10-2021	30-11-2021	31	7.3	9.3 as on 15-10-2021	18,326
3	30-11-2021	30-12-2021	30	7.3	9.3 as on 15-11-2021	17,735
4	30-12-2021	30-01-2022	31	7.3	9.3 as on 15-12-2021	18,326
5	30-01-2022	28-02-2022	29	7.3	9.3 as on 15-01-2022	17,144
6	28-02-2022	28-03-2022	28	7.3	9.3 as on 15-02-2022	16,552
7	28-03-2022	28-04-2022	31	7.3	9.3 as on 15-03-2022	18,326
8	28-04-2022	28-05-2022	30	7.4	9.4 as on 15-04-2022	17,925
9	28-05-2022	28-06-2022	31	7.5	9.5 as on 15-05-2022	18,720
10	28-06-2022	28-07-2022	30	7.7	9.7 as on 15-06-2022	18,498
11	28-07-2022	28-08-2022	31	7.8	9.8 as on 15-07-2022	19,311
12	28-08-2022	28-09-2022	31	8	10.0 as on 15-08-2022	19,705
13	28-09-2022	28-10-2022	30	8	10.0 as on 15-09-2022	19,070
14	28-10-2022	28-11-2022	31	8.25	10.25 as on 15-10-2022	20,198
15	28-11-2022	28-12-2022	30	8.35	10.35 as on 15-11-2022	19,737

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HWS

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16	28-12-2022	28-01-2023	31	8.75	10.75 as on 15-07-2023	21,183
17	28-01-2023	28-02-2023	31	8.6	10.6 as on 15-01-2023	20,888
18	28-02-2023	28-03-2023	28	8.7	10.7 as on 15-02-2023	19,044
19	28-03-2023	28-04-2023	31	8.7	10.7 as on 15-03-2023	21,085
20	28-04-2023	28-05-2023	30	8.7	10.7 as on 15-04-2023	20,405
21	28-05-2023	28-06-2023	31	8.7	10.7 as on 15-05-2023	21,085
22	28-06-2023	28-07-2023	30	8.7	10.7 as on 15-06-2023	20,405
23	28-07-2023	17-08-2023	20	8.75	10.75 as on 15-07-2023	13,666
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 1,270,100						
1	26-07-2022	26-08-2022	31	7.8	9.8 as on 15-07-2022	10,571
2	26-08-2022	26-09-2022	31	8	10.0 as on 15-08-2022	10,787
3	26-09-2022	26-10-2022	30	8	10.0 as on 15-09-2022	10,439
4	26-10-2022	26-11-2022	31	8.25	10.25 as on 15-10-2022	11,056
5	26-11-2022	26-12-2022	30	8.35	10.35 as on 15-11-2022	10,804
6	26-12-2022	26-01-2023	31	8.75	10.75 as on 15-07-2023	11,596
7	26-01-2023	26-02-2023	31	8.6	10.6 as on 15-01-2023	11,434
8	26-02-2023	26-03-2023	28	8.7	10.7 as on 15-02-2023	10,425

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9	26-03-2023	26-04-2023	31	8.7	10.7 as on 15-03-2023	11,542
10	26-04-2023	26-05-2023	30	8.7	10.7 as on 15-04-2023	11,169
11	26-05-2023	26-06-2023	31	8.7	10.7 as on 15-05-2023	11,542
12	26-06-2023	26-07-2023	30	8.7	10.7 as on 15-06-2023	11,169
13	26-07-2023	17-08-2023	22	8.75	10.75 as on 15-07-2023	8,229
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 290,025						
1	22-08-2022	22-09-2022	31	8	10.0 as on 15-08-2022	2,463
2	22-09-2022	22-10-2022	30	8	10.0 as on 15-09-2022	2,383
3	22-10-2022	22-11-2022	31	8.25	10.25 as on 15-10-2022	2,524
4	22-11-2022	22-12-2022	30	8.35	10.35 as on 15-11-2022	2,467
5	22-12-2022	22-01-2023	31	8.75	10.75 as on 15-07-2023	2,647
6	22-01-2023	22-02-2023	31	8.6	10.6 as on 15-01-2023	2,611
7	22-02-2023	22-03-2023	28	8.7	10.7 as on 15-02-2023	2,380
8	04-03-2023	04-04-2023	31	8.7	10.7 as on 15-02-2023	2,635
9	22-03-2023	22-04-2023	31	8.7	10.7 as on 15-03-2023	2,635
10	04-04-2023	04-05-2023	30	8.7	10.7 as on 15-03-2023	2,550
11	22-04-2023	22-05-2023	30	8.7	10.7 as on 15-04-2023	2,550

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12	04-05-2023	04-06-2023	31	8.7	10.7 as on 15-04-2023	2,635
13	22-05-2023	22-06-2023	31	8.7	10.7 as on 15-05-2023	2,635
14	04-06-2023	04-07-2023	30	8.7	10.7 as on 15-05-2023	2,550
15	08-06-2023	08-07-2023	30	8.7	10.7 as on 15-05-2023	2,550
16	22-06-2023	22-07-2023	30	8.7	10.7 as on 15-06-2023	2,550
17	04-07-2023	04-08-2023	31	8.7	10.7 as on 15-06-2023	2,635
18	08-07-2023	08-08-2023	31	8.7	10.7 as on 15-06-2023	2,635
19	22-07-2023	17-08-2023	26	8.75	10.75 as on 15-07-2023	2,220
20	04-08-2023	17-08-2023	13	8.75	10.75 as on 15-07-2023	1,110
21	08-08-2023	17-08-2023	9	8.75	10.75 as on 15-07-2023	768
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 290,026						
1	30-09-2022	30-10-2022	30	8	10.0 as on 15-09-2022	2,383
2	30-10-2022	30-11-2022	31	8.25	10.25 as on 15-10-2022	2,524
3	30-11-2022	30-12-2022	30	8.35	10.35 as on 15-11-2022	2,467
4	30-12-2022	30-01-2023	31	8.75	10.75 as on 15-07-2023	2,647
5	30-01-2023	28-02-2023	29	8.6	10.6 as on 15-01-2023	2,442
6	28-02-2023	28-03-2023	28	8.7	10.7 as on 15-02-2023	2,380

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7	28-03-2023	28-04-2023	31	8.7	10.7 as on 15-03-2023	2,635
8	28-04-2023	28-05-2023	30	8.7	10.7 as on 15-04-2023	2,550
9	28-05-2023	28-06-2023	31	8.7	10.7 as on 15-05-2023	2,635
10	28-06-2023	28-07-2023	30	8.7	10.7 as on 15-06-2023	2,550
11	28-07-2023	17-08-2023	20	8.75	10.75 as on 15-07-2023	1,708
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 151,450						
1	21-03-2023	21-04-2023	31	8.7	10.7 as on 15-03-2023	1,376
2	21-04-2023	21-05-2023	30	8.7	10.7 as on 15-04-2023	1,331
3	21-05-2023	21-06-2023	31	8.7	10.7 as on 15-05-2023	1,376
4	21-06-2023	21-07-2023	30	8.7	10.7 as on 15-06-2023	1,331
5	21-07-2023	17-08-2023	27	8.75	10.75 as on 15-07-2023	1,204
					TOTAL DELAYED INTEREST as on 17/08/2023	6,59,504

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

29. **My answer to Point No.2:-** In view of the above discussion, I proceed to pass the following order –

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the

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complaint bearing No.**CMP/220802/0009837** is hereby allowed.

The respondent is directed to pay a sum of **Rs.6,59,504/- (Rupees Six Lakh Fifty Nine Thousand Five Hundred and Four only)** towards delay period interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 30/09/2021 to 17/08/2023.

The interest on delay period due from 18/08/2023 till the date of handing over possession of the flat will be calculated likewise and paid to the complainant.

The complainant is 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.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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