

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 21st AUGUST 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/221221/0010507

COMPLAINANTS.....

**FIROJ KUMAR MEHER &
SUREKHA MEHER
FLAT-102, FOYER APARTMENT
21ST CROSS, MUNESHWARNAGAR
TC PALYA MAIN ROAD
RAMAMURTHYNAGAR
BANGALORE-560016.**

(IN PERSON THROUGH SKYPE)

Vs

RESPONDENTS.....

**1.M/S.RAJA HOUSING LIMITED
F-2, RAJA MAHALAKSHMI
NO.12, BASAPPA ROAD
SHANTHINAGAR
BANGALORE-560027.**

**2. RAJA DATTA
3. RAJA SUCHINDRA
F-2, RAJA MAHALAKSHMI
NO.12, BASAPPA ROAD
SHANTHINAGAR
BANGALORE-560027.**

**(By MR. KASHYAP N NAIK,
MR.VIVEK B.R. & OTHERS, Advocates)**

*** * * * ***

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**RAJA RITZ AVENUE PHASE-II**" developed by **M/S.RAJA HOUSING LTD** on Sy.No.184 and 185/1, Khata No.1088, Hoodi

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Karnataka Real Estate Regulatory Authority,

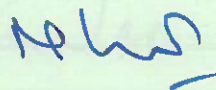
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
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Village, K.R.Puram Hobli, Bangalore East, Bangalore Urban for the relief of interest on delay period.

2. This project has been registered under RERA bearing Registration No.PRM/KA/RERA/1251/446/PR/180524/001816 valid till 31/12/2021. The project was extended due to Covid-19 for a period of 9 months till 30/9/2022. The Authority has further extended the project till 30/9/2023.

Brief facts of the complaint are as under:-

3. The complainants had booked a flat bearing No.301, Third Floor, Block-1 in the project of the respondents for a total sale consideration of Rs.97,11,323/- (Rupees Ninety Seven Lakh Eleven Thousand Three Hundred and Twenty Three only) and entered into an agreement of sale on 14/09/2020. The complainants have paid an amount of Rs.87,50,330/- (Rupees Eighty Seven Lakh Fifty Thousand Three Hundred and Thirty only) to the respondents on various dates. The respondents had agreed to handover the possession of the flat to the complainants within December 2021. The complainants submit that the respondents have not completed the construction and are denying to pay interest for the delay period. Thus, the complainants have approached this Authority to direct the respondents to pay the interest on delay period and to handover the possession of the flat soon with all promised amenities. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through its counsel and have filed statement of objections as under:
5. The respondents contend that they have completed more than 36 projects in Bangalore and Mysore and that there are no complaints raised against any of them except this project. The respondents



submit that they have entered into JDA with the land owner and has developed the property in two phases wherein Phase-I consisting 220 Units and Phase-II consisting of 210 Units. The respondents also submit that they had also obtained all necessary sanctions and approvals from the regulatory authorities. The respondents submit that the complainants have booked flat bearing No.301, Block-1 and entered into agreement for sale dated 14/09/2020.

6. The respondents submit that the delay in completion of the project was due to force majeure conditions such as, scarcity of raw materials, non-availability of skilled labourers, transport disruption or such reasons beyond the control of the respondent, increase in the cost of materials and the respondent cannot be held liable to compensate the complainant under section 18(1) of RERA Act.
7. In addition Covid-19 pandemic and the lockdowns imposed by the State Government have also contributed significantly to the obstacles faced by the respondents. The respondents submit that due to second wave of the pandemic the construction work in the project was stalled for a substantial period and that they were unable to even source the basic construction materials such as sand, cement, bricks, steel etc. The respondents submit that due to mass migration of labour during the pandemic they were unable to undertake speedy construction. The respondents contend that there is no wilful delay or default by the respondent in handing over the possession of the flat to the complainants and continues to remain committed to delivering the possession to its customers.
8. The respondents further submit that 131 units in the project were booked by March 2020 and more than 50% of the allottees defaulted in making scheduled payments including the complainants which has

directly attributed to the delay in completion of the project. The respondents contend that the delay occurred is completely unintentional.

9. The respondents further submit that the complainants themselves have breached the terms of the agreement of sale by not paying the scheduled instalments and are claiming compensation for delay by the respondents. The respondents contend that in the event of extension granted by the Hon'ble Authority till 30/9/2023, the complaint is premature and unfair.
10. The respondents also contend that the calculation worked out by the complainants is not correct and prays the Authority to dismiss the complaint.
11. The complainants in their written submission have submitted that the flat was supposed to be handed over by December 2021 but till date the possession of the flat has not been handed over by the respondents. The complainants submit that the respondents have paid delay period interest to the complainants of Phase-I. The complainants submit that the respondents never sent progress report to the allottees and as such, the allottees were kept in the dark about the progress, any road blocks, number of labour force and other resources deployed for construction and what additional efforts being taken to expedite the project.
12. The complainants submit that the respondents hardly replied to the email communications sent by him and are trying to avoid delay penalties on the pretext of cash flow problem. The complainants submit that they have consistently paid their dues as and when demanded in addition to EMI and exorbitant rent at the same time due to delay in handing over possession of the flat.

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13. The complainants further submit that the respondents have not yet received the Occupancy Certificate and that there is no clarity when it will be received. The complainant apprehension is that once the registration is done, the respondent will get full payment and it would be hard to get the mandatory occupancy certificate, which will make the home buyers occupy an illegal property. The complainants also submit that the respondent is misreading the extension granted, which is only for extending the validity of the project so that balance registration can take place and occupancy certificate can be obtained.
14. The complainants contend that the formula for the memo of calculation was provided by the Hon'ble Authority through a link and the calculation arrived at is system calculated and thereby the respondents do not have any ground to object the calculation part. The complainants pray this Hon'ble Authority to issue directions to the respondents to pay interest for delay period until handing over possession of the flat and to complete the project with all promised amenities without further delay.
15. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, payment receipts, email correspondences with the respondents and memo of calculation as on 17/03/2023.
16. This case was heard on 15/3/2023, 6/6/2023, 13/7/2023 and 16/8/2023. Heard arguments of both sides.
17. **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?
18. **My answer to the above points are as under:-**

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

REASONS

19. **My answer to Point No.1:-** It is undisputed that the respondents have failed to handover possession of the flat to the complainants herein within agreed time even after receiving substantial sale consideration amount from the complainants. As per the terms of agreement of sale between the parties, the possession of the flat was supposed to be handed over by December 2021.
20. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have paid substantial sale consideration amount to the respondents. Having accepted the said amount and failure to keep up promise to handover possession of the flat within stipulated time, certainly entitles the complainants herein for delay period interest.
21. The Hon'ble Authority has perused the statement of objections and written submissions filed by the respondents and the complainants. The Hon'ble Authority has not agreed with the contentions of the respondents made in their statement of objections.
22. During the process of the hearing, the respondents verbally said that they are ready to handover possession of the flat after 15 days.
23. The complainants vide their memo of calculation as on 17/3/2023 have claimed an amount of Rs.3,78,696/- (Rupees Three Lakh Seventy Eight Thousand Six Hundred and Ninety Six only) calculated from 30/09/2022 to 17/03/2023 as delay period interest, whereas

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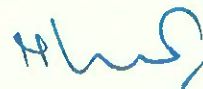
the delay period interest should have been calculated from 01/01/2022. Despite several opportunities were given, the respondents have not filed their memo of calculation.

24. Having regard to all these aspects, this Authority concludes that the complainants are entitled for delay period interest from 01/01/2022 to until respondents handing over possession of the flat to the complainants.

25. Therefore, it is incumbent upon the respondents to pay interest for the delay period which is determined as under:

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	38,94,678	01-01-2022
2	SUBSEQUENT PAYMENT 1	19,42,256	12-01-2022
3	SUBSEQUENT PAYMENT 2	19,42,264	19-09-2022
4	SUBSEQUENT PAYMENT 3	9,71,132	01-03-2023
5	TOTAL PRINCIPLE AMOUNT	87,50,330	
6	TOTAL DELAYED INTEREST as on 16/08/2023	11,81,247	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 3,894,678						
1	01-01-2022	01-02-2022	31	7.3	9.3 as on 15-12-2021	30,762
2	01-02-2022	01-03-2022	28	7.3	9.3 as on 15-01-2022	27,785
3	01-03-2022	01-04-2022	31	7.3	9.3 as on 15-02-2022	30,762
4	01-04-2022	01-05-2022	30	7.3	9.3 as on 15-03-2022	29,770



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5	01-05-2022	01-06-2022	31	7.4	9.4 as on 15-04-2022	31,093
6	01-06-2022	01-07-2022	30	7.5	9.5 as on 15-05-2022	30,410
7	01-07-2022	01-08-2022	31	7.7	9.7 as on 15-06-2022	32,085
8	01-08-2022	01-09-2022	31	7.8	9.8 as on 15-07-2022	32,416
9	01-09-2022	01-10-2022	30	8	10.0 as on 15-08-2022	32,011
10	01-10-2022	01-11-2022	31	8	10.0 as on 15-09-2022	33,078
11	01-11-2022	01-12-2022	30	8.25	10.25 as on 15-10-2022	32,811
12	01-12-2022	01-01-2023	31	8.35	10.35 as on 15-11-2022	34,235
13	01-01-2023	01-02-2023	31	8.75	10.75 as on 15-07-2023	35,558
14	01-02-2023	01-03-2023	28	8.6	10.6 as on 15-01-2023	31,669
15	01-03-2023	01-04-2023	31	8.7	10.7 as on 15-02-2023	35,393
16	01-04-2023	01-05-2023	30	8.7	10.7 as on 15-03-2023	34,251
17	01-05-2023	01-06-2023	31	8.7	10.7 as on 15-04-2023	35,393
18	01-06-2023	01-07-2023	30	8.7	10.7 as on 15-05-2023	34,251
19	01-07-2023	01-08-2023	31	8.7	10.7 as on 15-06-2023	35,393
20	01-08-2023	16-08-2023	15	8.75	10.75 as on 15-07-2023	17,205
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 1,942,256						
1	12-01-2022	12-02-2022	31	7.3	9.3 as on 15-12-2021	15,341
2	12-02-2022	12-03-2022	28	7.3	9.3 as on 15-01-2022	13,856
3	12-03-2022	12-04-2022	31	7.3	9.3 as on 15-02-2022	15,341

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4	12-04-2022	12-05-2022	30	7.3	9.3 as on 15-03-2022	14,846
5	12-05-2022	12-06-2022	31	7.4	9.4 as on 15-04-2022	15,506
6	12-06-2022	12-07-2022	30	7.5	9.5 as on 15-05-2022	15,165
7	12-07-2022	12-08-2022	31	7.7	9.7 as on 15-06-2022	16,000
8	12-08-2022	12-09-2022	31	7.8	9.8 as on 15-07-2022	16,165
9	12-09-2022	12-10-2022	30	8	10.0 as on 15-08-2022	15,963
10	12-10-2022	12-11-2022	31	8	10.0 as on 15-09-2022	16,495
11	12-11-2022	12-12-2022	30	8.25	10.25 as on 15-10-2022	16,362
12	12-12-2022	12-01-2023	31	8.35	10.35 as on 15-11-2022	17,073
13	12-01-2023	12-02-2023	31	8.75	10.75 as on 15-07-2023	17,733
14	12-02-2023	12-03-2023	28	8.6	10.6 as on 15-01-2023	15,793
15	12-03-2023	12-04-2023	31	8.7	10.7 as on 15-02-2023	17,650
16	12-04-2023	12-05-2023	30	8.7	10.7 as on 15-03-2023	17,081
17	12-05-2023	12-06-2023	31	8.7	10.7 as on 15-04-2023	17,650
18	12-06-2023	12-07-2023	30	8.7	10.7 as on 15-05-2023	17,081
19	12-07-2023	12-08-2023	31	8.7	10.7 as on 15-06-2023	17,650
20	12-08-2023	16-08-2023	4	8.75	10.75 as on 15-07-2023	2,288
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 1,942,264						
1	19-09-2022	19-10-2022	30	8	10.0 as on 15-09-2022	15,963
2	19-10-2022	19-11-2022	31	8.25	10.25 as on 15-10-2022	16,908

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3	19-11-2022	19-12-2022	30	8.35	10.35 as on 15-11-2022	16,522
4	19-12-2022	19-01-2023	31	8.75	10.75 as on 15-07-2023	17,733
5	19-01-2023	19-02-2023	31	8.6	10.6 as on 15-01-2023	17,485
6	19-02-2023	19-03-2023	28	8.7	10.7 as on 15-02-2023	15,942
7	19-03-2023	19-04-2023	31	8.7	10.7 as on 15-03-2023	17,650
8	19-04-2023	19-05-2023	30	8.7	10.7 as on 15-04-2023	17,081
9	19-05-2023	19-06-2023	31	8.7	10.7 as on 15-05-2023	17,650
10	19-06-2023	19-07-2023	30	8.7	10.7 as on 15-06-2023	17,081
11	19-07-2023	16-08-2023	28	8.75	10.75 as on 15-07-2023	16,017
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 971,132						
1	01-03-2023	01-04-2023	31	8.7	10.7 as on 15-02-2023	8,825
2	01-04-2023	01-05-2023	30	8.7	10.7 as on 15-03-2023	8,540
3	01-05-2023	01-06-2023	31	8.7	10.7 as on 15-04-2023	8,825
4	01-06-2023	01-07-2023	30	8.7	10.7 as on 15-05-2023	8,540
5	01-07-2023	01-08-2023	31	8.7	10.7 as on 15-06-2023	8,825
6	01-08-2023	16-08-2023	15	8.75	10.75 as on 15-07-2023	4,290
					TOTAL DELAYED INTEREST as on 16/08/2023	11,81,247

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

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27. **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 complaint bearing No.**CMP/221221/0010507** is hereby allowed.

The respondents are directed to pay a sum of **Rs.11,81,247/- (Rupees Eleven Lakh Eighty One Thousand Two Hundred and Forty Seven only)** towards delay period interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 01/01/2022 till 16/08/2023.

The interest due from 17/08/2023 till the handing over of possession of the flat by the respondents will be calculated likewise and paid to the complainants.

The complainants are at liberty to initiate action for recovery in accordance with law if the respondents fail to pay the amount as per the order of this Authority.


(Neelmani N Raju)
Member, K-RERA

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