

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 NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220401/0009306

COMPLAINANT.....

**MR. LEANDER MARTIN ANDRADE &
MRS. HAROL HARRY LOBO
B 1013, BRIGADE BUENA VISTA
NEAR BUDIGERE CROSS
BANGALORE-560049.**

(IN PERSON)

Vs

RESPONDENT.....

**SHRIRAM PROPERTIES 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 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

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

31/12/2021. The Authority has further extended its registration for a period of 12 months i.e. till 30/12/2022.

Brief facts of the complaint are as under:-

3. The complainants have purchased an apartment in the project of respondent and entered into an agreement of sale on 27/02/2018 and have paid an amount of Rs.41,42,538/- (Rupees Forty One Lakh Forty Two Thousand Five Hundred and Thirty Eight only) (including Housing Loan and subsequent payments) to the respondent till date. The respondent was supposed to hand over the possession of the flat to the complainants by 31/03/2021 with a grace period of six months i.e. latest by 30/9/2021. The respondent's contention that the delay was due to NGT/SC issue, but it was never informed to the complainant. The issue was informed to the complainant only on 27th December 2019, as such, the respondent failed to deliver the possession of the flat on time as agreed. There is no proper response from the respondent. Thus, the respondent is liable to pay interest on delay period. 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 has filed statement of objections as under:
5. The Respondent contends that the complainant is not entitled for seeking relief sought in light of the Agreement of Sale dated 10/04/2018 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 complainant in respect of the project

Handwritten signature

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

was situated and on conclusion of the cases in Hon'ble NGT and Hon'ble Supreme Court, the construction proceeded.

6. The respondent further contends 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, and the respondent cannot be held liable to compensate the complainants under section 18(1) of RERA Act. In addition COVID-19 pandemic and the lockdown have also contributed significantly to the obstacles faced by the respondent. The respondent contends that there is no willful 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 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 further contends that the impact of the ruling of the NGT, New Delhi was common knowledge as the same had been extensively published in the media and the newspapers as the same was widely covered in public knowledge and prays not to grant the relief sought by the complainants in the interest of justice and equity and to dismiss the complaint.

7. In support of their defence, the respondent has submitted copies of the Occupancy Certificate dtd 7/5/2022, Agreement for Sale dated 10/04/2018, Order dated 4/5/2016 passed by the Hon'ble National Green Tribunal in O.A.No.222/2014, Order dated 5/3/2019 passed by the Hon'ble Supreme Court in Civil Appeal No.5016/2016, Sanctioned Plan demonstrating the location of the project vis-à-vis the tertiary nala flowing

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

through, email communication with complainants, RERA registration certificate and memo of calculation as on 11/11/2022.

8. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Statement of account issued by the respondent in respect of payments received from the complainants and memo of calculation as on 15/07/2022.

9. This matter was heard on 28/7/2022, 30/8/2022, 14/9/2022, 21/9/2022 and 15/11/2022.

10. Heard arguments of both sides.

11. **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?

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

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

REASONS

13. **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 apartment within 31/03/2021 with a grace period of six months i.e. latest by 30/9/2021, the respondent failed to abide by the terms of the agreement and not handed over the possession of the apartment to the complainant till date.

14. During the process of the hearing on 30/8/2022, the complainant submitted that his floor plan has been changed by the respondent without

Handwritten signature

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

his consent. The Authority directed the respondent to give details regarding this and if any such changes are made, complainant will have to be given a flat with pre-agreed floor plan. Accordingly, both the parties visited the office of the Authority, wherein the complainant wanted to swap his existing flat with another flat without the wall. The respondent was directed to look into the request of the complainant. During the hearing on 21/9/2022, the respondent informed the Authority that no such flat was available. The respondent was directed 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 in the Hon'ble Supreme Court, date of sale of apartment to the complainant, 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.

15. 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 larger 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.

16. On 15/11/2022 during the hearing, the complainant submitted that he is ready to keep the existing flat. The respondent made a written



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

submission to the effect that the complainant had given his consent for the change in the floor plan through email dated 11/1/2022. On going through the email, it is evident that the complainant had given clearance to proceed with Option 2 (No change, as per the agreement South Facing) and had not agreed with the change in the floor plan.

17. The complainants vide their memo of calculation as on 15/07/2022 have claimed an amount of Rs.4,50,042/- as delay period interest calculated from 31/03/2021 to 15/07/2022. The respondent vide its memo of calculation as on 11/11/2022 has submitted that the delay period interest payable to the complainants is Rs.2,97,747/- (calculated from 31/12/2021 till 11/11/2022). Having regard to all these aspects, this Authority concludes that the complainants are entitled for delay period interest from 30/09/2021 to 15/07/2022 and later on.
18. Therefore, it is incumbent upon the respondent to pay interest on delay as determined as under

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	36,86,888	30-09-2021
2	SUBSEQUENT PAYMENT 1	3,45,650	07-03-2022
3	SUBSEQUENT PAYMENT 2	10,000	11-05-2022
4	SUBSEQUENT PAYMENT 3	1,00,000	31-05-2022
5	TOTAL PRINCIPLE AMOUNT	41,42,538	

Handwritten signature/initials.

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

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 36,86,888						
1	30-09-2021	30-10-2021	30	7.3	9.3 as on 15-09-2021	28,181
2	30-10-2021	30-11-2021	31	7.3	9.3 as on 15-10-2021	29,121
3	30-11-2021	30-12-2021	30	7.3	9.3 as on 15-11-2021	28,181
4	30-12-2021	30-01-2022	31	7.3	9.3 as on 15-12-2021	29,121
5	30-01-2022	28-02-2022	29	7.3	9.3 as on 15-01-2022	27,242
6	28-02-2022	28-03-2022	28	7.3	9.3 as on 15-02-2022	26,303
7	28-03-2022	28-04-2022	31	7.3	9.3 as on 15-03-2022	29,121
8	28-04-2022	28-05-2022	30	7.4	9.4 as on 15-04-2022	28,484
9	28-05-2022	28-06-2022	31	7.5	9.5 as on 15-05-2022	29,747
10	28-06-2022	28-07-2022	30	7.7	9.7 as on 15-06-2022	29,394
11	28-07-2022	28-08-2022	31	7.8	9.8 as on 15-07-2022	30,687
12	28-08-2022	28-09-2022	31	8	10.0 as on 15-08-2022	31,313
13	28-09-2022	28-10-2022	30	8	10.0 as on 15-08-2022	30,303
14	28-10-2022	31-10-2022	3	8	10.0 as on 15-08-2022	3,030
INTEREST CALCULATION FOR 1 SUBSEQUENT PAYMENT 3,45,650						
1	07-03-2022	07-04-2022	31	7.3	9.3 as on 15-02-2022	2,730
2	07-04-2022	07-05-2022	30	7.3	9.3 as on 15-03-2022	2,642
3	07-05-2022	07-06-2022	31	7.4	9.4 as on 15-04-2022	2,759
4	07-06-2022	07-07-2022	30	7.5	9.5 as on 15-05-2022	2,698
5	07-07-2022	07-08-2022	31	7.7	9.7 as on 15-06-2022	2,847
6	07-08-2022	07-09-2022	31	7.8	9.8 as on 15-07-2022	2,876
7	07-09-2022	07-10-2022	30	8	10.0 as on 15-08-2022	2,840
8	07-10-2022	31-10-2022	24	8	10.0 as on 15-08-2022	2,272
INTEREST CALCULATION FOR 2 SUBSEQUENT PAYMENT 10,000						
1	11-05-2022	11-06-2022	31	7.4	9.4 as on 15-04-2022	79
2	11-06-2022	11-07-2022	30	7.5	9.5 as on 15-05-2022	78
3	11-07-2022	11-08-2022	31	7.7	9.7 as on 15-06-2022	82
4	11-08-2022	11-09-2022	31	7.8	9.8 as on 15-07-2022	83
5	11-09-2022	11-10-2022	30	8	10.0 as on 15-08-2022	82
6	11-10-2022	31-10-2022	20	8	10.0 as on 15-08-2022	54
INTEREST CALCULATION FOR 3 SUBSEQUENT PAYMENT 1,00,000						
1	31-05-2022	30-06-2022	30	7.5	9.5 as on 15-05-2022	780
2	30-06-2022	30-07-2022	30	7.7	9.7 as on 15-06-2022	797
3	30-07-2022	30-08-2022	31	7.8	9.8 as on 15-07-2022	832

Handwritten signature

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


4	30-08-2022	30-09-2022	31	8	10.0 as on 15-08-2022	849
5	30-09-2022	30-10-2022	30	8	10.0 as on 15-08-2022	821
6	30-10-2022	31-10-2022	1	8	10.0 as on 15-08-2022	27
					TOTAL DELAYED INTEREST as on 31/10/2022	4,06,456

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

20. **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/220401/0009306** is hereby allowed. Respondent is directed to pay a sum of **Rs.4,06,456/- (Rupees Four Lakh Six Thousand Four Hundred and Fifty Six 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 till 31/10/2022. The interest due from 01/11/2022 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 respondent fails to pay the amount as per the order of this Authority.


(Neelmani N Raju)
Member-2, K-RERA