

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

Dated 29th December 2022

Complaint No. CMP/200130/0004909

COMPLAINANT:

1. **D.S. Rudramani**
2. **Geetha M.**
SJM Badavane Layout
Baramasagara
CHITRADURGA-5775 19.

**(By Sri.Vijayakumaraswamy,
Advocate)**

V/s

RESPONDENT....

M/s Shivparvati Constructions
#24, HMT Factory Main Road
Opp: HMT Factory
Bengaluru-560 013.
**(Rep. by Sri.Harish H.V., Hari
Prasad B.U. Advocates)**

JUDGEMENT

1. The aforesaid complainants have filed this complaint under section 31 of the RERA Act, against the project **"The Orchard"** developed by **"Shivparvati Constructions"** and sought for the relief of interest on delay period.

2. The respondent has developed this project in the limits of property bearing corporation No.24, PID No.1-77-24, HMT Factory Main Road, Bengaluru.





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3. This project has been registered in RERA vide registration no. PRM/KA/RERA/1251/309/PR/171201/001530.

4. **The brief facts of the case are as under:** The complainants have entered into an memorandum of sale agreement on 16.4.2015 in respect of immovable properties and residential apartment stated in the memorandum of sale agreement as schedule A,B and C hereinafter called the schedule properties for a sale consideration of Rs.52,07,762/- The complainants have paid substantial amount of Rs.50,11,552/- towards the purchase of the residential apartment bearing no.203 in Farkleberry block, second floor of the residential complex known as "The Orchard". The complainants borrowed a loan for a sum of Rs.25,00,000/- from Canara bank, Basvanagudi, Chamrajpet, Bengaluru. The respondent is required to hand over the possession within 18 months from the date of this agreement with a grace period of 6 months i.e. by 16.4.2017. The respondent even though completed 50 months has not obtained the occupancy certificate from the concerned authority and failed to execute the absolute sale deed in favour of the complainants. The complainants have paid bank interest on the loan to the tune of Rs.12,17,110/- for the delay caused due to non delivery of possession of the apartment and not executing the sale deed in favour of the complainants. The complainants sought for the relief of interest on delay period and handing over possession. Hence, this complaint.





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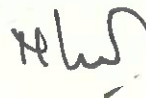
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and has filed Statement of objections as under:

6. The respondent has denied all the allegations made against it by the complainant as false. It is contended that the complainants have not paid the balance amount to the respondent and he has not handed over the flat to the complainants. Further, the residential flat bearing no.203 has been completed and ready for occupation with car parking and all the common amenities. The society has also been formed and registered and started collecting maintenance charges of Rs.30,000/- paid by the respondent on behalf of the complainants towards maintenance which is to be collected from the complainant. It contends that OS No. 1801/2013 was filed and pending before the Additional City Civil Court, Bengaluru which is one of the reason that respondent has not been able to submit application for obtaining occupancy certificate. It is further submitted that issuance of occupancy certificate would be subject to outcome of judgement in OS No.1801/2013, which has been decided in favour of the respondent. In this regard, an appeal is pending before the Hon'ble High Court of Karnataka in RFA.No. 277/2019.

7. Further, the respondent has submitted written arguments as under:

9. It is submitted by the respondent that it has sent email dated 21.11.2019 with attachment of draft sale deed to be executed in favour of the complainants, but they did not respond. Further, on 21.3.2020 he has sent a mail to the complainants to pay the balance sale





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consideration. But the complainants have failed to do so. It is evident from email sent by the respondent on 21.3.2020 that the complainants are due for a sum of Rs.7,00,989/-. Hence, the respondent prays to dismiss the complaint.

8. In support of their claim, the complainant have produced documents such as (1) copy of the memorandum of agreement of sale (2) copy of Canara Bank Statement, Chamrajpet, Bengaluru.(c) Memo of calculation.

9. In support of its defence, the respondent has produced any documents such as emails dated 21.11.2019, 21.03.2020

10. Heard both the parties. The respondent has filed written arguments. This matter was heard on 4.10.2021, 14.12.2021, 02.02.2022, 8.3.2022, 6.4.2022, 18.5.2022, 19.7.2022, 13.10.2022 and on 7.12.2022.

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

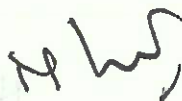
1. Whether the complainant is entitled to the relief claimed?
2. What order?

12. Our findings on the above points are as under:

13. 1. In the Affirmative

2. As per final order for the following:







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FINDINGS

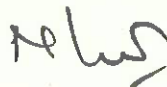
14. Our findings on point no.1: The grievance of the complainant is that the respondent has defaulted and not handed over the possession of their flat as per terms of memorandum of sale agreement. The respondent is required to hand over the possession within 18 months from the date of this agreement with a grace period of 6 months i.e. by 16.4.2017 as was envisaged in the terms and conditions of the memorandum of sale agreement on 16.4.2015.

On perusal of the memorandum of sale agreement, it is seen that the completion date is agreed as 16.4.2017. The respondent-promoter was required to complete the project and hand over the possession of the apartment by 16.4.2017. In cases wherein the respondent-promoter has failed to complete or unable to hand over the possession of the apartment to the allottee, the complainants are admissible for relief in accordance with Section 18 of the RERA Act.

Therefore, as per Section 18 of the Act, the respondent-promoter is liable to pay the interest on delay period.

On a perusal of the documents filed and oral submissions made before the Authority, it is evident that the complainants have paid substantial sale consideration and admittedly there is a delay in handing over the apartment as per the agreement. Hence, the complainants are entitled for interest on delay period under section 18 of the Act. The complainant has furnished memo of calculation for the period from 16.4.2016 till 06/12/2022. The complainant has claimed interest on delay period from 16.4.2016. In fact the complainant is entitled for interest on delay





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period from 16.4.2017 as per the memorandum of agreement of sale dated 16.4.2015.

From the materials available on record, it is apparent that the respondent had sent email dated 21.11.2019 with attachment of draft sale deed to be executed in favour of the complainant. Further, on 21.3.2020 the respondent has sent a mail to the complainant asking them to pay the balance sale consideration and to get execute the sale deed and to take possession of their apartment. But, the complainants have failed to comply with the same and have not responded to the aforesaid mails. Therefore, the complainants are entitled for the interest on delay period till 21.11.2019.

15. Our findings on point no.2: In view of the above discussion, we conclude that the complaint deserves to be allowed. Hence, we 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/200130/0004909** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to pay interest on delay period on the amount of Rs. **50,11,552/-/-** calculated at the rate of 9% per cent from **16.4.2017 to 30.4.2017**. Further, at the rate of SBI MCLR + 2 per cent from **1.5.2017** till **21.11.2019**.

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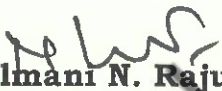
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2. The respondent is hereby directed to register the residential apartment bearing No.203 in the project "The Orchard" to the complainants immediately upon receiving the balance amount, if any. The net balance amount, if any, shall be after deduction 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 directed to register and hand over possession and pay interest on delay period to the complainant within 60 days from the date of this order. The complainants are 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.


(Neelmani N. Raju)
Member
K-RERA


(G.R. Reddy)
Member
K-RERA


(H.C. Kishore Chandra)
Chairman
K-RERA

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