

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 22nd AUGUST 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/221220/0010486

COMPLAINANT.....

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

(IN PERSON)

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)**

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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 Village, K.R.Puram Hobli, Bangalore East, Bangalore Urban for the relief of interest on delay period.

MWS

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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 complainant had initially booked a flat bearing No.102, First Floor, Block-3 and later swapped to Flat bearing No.105, First Floor, Block-1 in the project of the respondents for a total sale consideration of Rs.78,00,786/- (Rupees Seventy Eight Lakh and Seven Hundred and Eighty Six only) and entered into an agreement of sale on 27/11/2021. The complainant has paid an amount of Rs.70,08,925/- (Rupees Seventy Lakh Eight Thousand and Nine Hundred and Twenty Five only) to the respondents on various dates. The respondents had agreed to handover the possession of the flat to the complainant within September 2022. The complainant submits that the respondents have not sent any communication regarding possession update of the unit and are not responding to any mail/phone calls. Instead the respondents are demanding for further payments without proper development in the project. The complainant further submits that he has learnt that the respondents have sent communication to few buyers regarding fresh possession date as 01/10/2023 and requesting for giving consent in applying for RERA extension. The complainant submits that he is paying EMIs and rent simultaneously due to which his financial position has suffered a lot. Thus, the complainant has approached this Authority to direct the respondents to pay the interest on delay period and to

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handover the possession of the flat soon with all promised amenities.
Hence, this complaint.

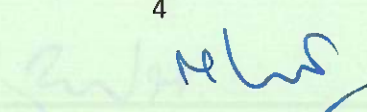
4. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through its counsel and have filed statement of objections as under:
5. The respondents contend that they have completed more than 36 projects in Bangalore and Mysore and that there are no complaints raised against any of them except this project. The respondents submit that they had 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 complainant had initially booked flat bearing No.102, Ist Floor, Block-3 and entered into agreement for sale dated 01/01/2020. As the complainant expressed to go for another flat in place of the above, cancellation cum swapping agreement dated 27/11/2021 was executed and both the parties entered into fresh agreement for sale on 27/11/2021 for Flat No.105, First Floor, Block-I cancelling the earlier agreement and with an understanding to adjust the amount paid by the complainant towards Flat No.105. The date of handing over possession remains the same.
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.

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7. In addition Covid-19 pandemic and the lockdowns imposed by the State Government have also contributed significantly to the obstacles faced by the respondent. The respondents submit that due to mass migration of labour during the pandemic they were unable to undertake speedy construction. The respondent contends that there is no wilful delay or default by the respondent in handing over the possession of the flat to the complainant 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 complainant 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 complainant has himself 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 made by the complainant is incorrect and prays the Authority to dismiss the complaint.
11. The complainant in his written arguments has submitted that the flat was supposed to be handed over by September 2022 but till date the possession of the flat has not been handed over by the respondents. The complainant submits that the respondents have paid delay period interest to the complainants of Phase-I. The



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complainant submits 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 complainant submits 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 complainant submits that there is no breach of agreement from his side and that as per the terms of agreement penalties can be levied.
13. The complainant further submits 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 respondents will get full payment and it would be hard to get the mandatory occupancy certificate, which will make the allottees occupy an illegal property.
14. The complainant also submits that the respondents are 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.
15. The complainant contends 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 generated and thereby the respondents do not have any ground to object the calculation part.
16. The complainant prays 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.

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17. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, payment receipts, e-mail correspondences with the respondent sand memo of calculation as on 16/03/2023.

18. This case was heard on 15/3/2023, 6/6/2023, 13/7/2023 and 16/8/2023. Heard arguments of both sides.

19. 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?

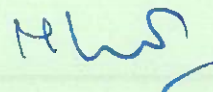
20. My answer to the above points are as under:-

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

REASONS

21. **My answer to Point No.1:-** It is undisputed that the respondents have failed to handover possession of the flat to the complainant herein within agreed time even after receiving substantial sale consideration amount from the complainant. As per the terms of agreement of sale between the parties, the possession of the flat was supposed to be handed over before September 2022.

22. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has 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, certainly entitles the complainant herein for delay period interest.



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23. The Hon'ble Authority has perused the statement of objections and written submissions filed by the respondent and the complainant. The Hon'ble Authority has not agreed with the contentions of the respondents made in their statement of objections.
24. During the process of the hearing, the respondents also verbally said that the handing over possession of the flats will happen shortly.
25. The complainant vide his memo of calculation as on 16/3/2023 has claimed an amount of Rs.3,13,026/- (Rupees Three Lakh Thirteen Thousand and Twenty Six only) calculated from 30/09/2022 to 16/03/2023 as delay period interest. Despite several opportunities were given, the respondents have not filed their memo of calculation.
26. Having regard to all these aspects, this Authority concludes that the complainant is entitled for delay period interest from 30/09/2022 to until respondents handing over possession of the flat to the complainant.
27. 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	62,22,781	30-09-2022
2	SUBSEQUENT PAYMENT 1	7,86,144	31-12-2022
3	TOTAL PRINCIPLE AMOUNT	70,08,925	
4	TOTAL DELAYED INTEREST as on 16/03/2023	3,13,026	

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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 6,222,781						
1	30-09-2022	30-10-2022	30	8	10.0 as on 15-09-2022	51,146
2	30-10-2022	30-11-2022	31	8.25	10.25 as on 15-10-2022	54,172
3	30-11-2022	30-12-2022	30	8.35	10.35 as on 15-11-2022	52,936
4	30-12-2022	30-01-2023	31	8.6	10.6 as on 15-12-2022	56,022
5	30-01-2023	28-02-2023	29	8.6	10.6 as on 15-01-2023	52,407
6	28-02-2023	16-03-2023	16	8.7	10.7 as on 15-02-2023	29,187
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 786,144						
1	31-12-2022	31-01-2023	31	8.6	10.6 as on 15-12-2022	7,077
2	31-01-2023	28-02-2023	28	8.6	10.6 as on 15-01-2023	6,392
3	28-02-2023	16-03-2023	16	8.7	10.7 as on 15-02-2023	3,687
					TOTAL DELAYED INTEREST as on 16/03/2023	3,13,026

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 complaint bearing No. **CMP/221220/0010486** is hereby allowed.

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The respondents are directed to pay a sum of **Rs.3,13,026/- (Rupees Three Lakh Thirteen Thousand and Twenty Six only)** towards delay period interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 30/9/2022 till 16/03/2023.

The interest due from 16/03/2023 till the handing over of possession of the flat by the respondents 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 respondents fail 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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