

PROCEEDINGS OF THE AUTHORITY
BEFORE BENCH-5
PRESIDED BY HON'BLE MEMBER G.R. REDDY
COMPLAINT NO.CMP/220223/0009049

Dated 23RD AUGUST, 2023

COMPLAINANTS : Mr.Sunil Surana
C/o Arun Menon
B-304, Purva Whitehall,
Sarjapur Road, Bengaluru:560035

(Through Authorised Rep)

RESPONDENT / : M/s.Inner Spaces
PROMOTER # 102, Leafy Blocks Owners Court
Wet Kasavanahalli Main Road
Bengaluru : 560 035

(By Mr.Prashanth Mirle, Advocate)

PROJECT NAME & : MEADOW IN THE SUN
REGISTRATION NO. PRM/KA/RERA/1251/446/PR/
180131/000544

J U D G E M E N T

This complaint is filed under Sec-18 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project **MEADOW IN THE SUN** praying for a direction to pay Delay Period Interest.



BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. The Complainant has entered into an agreement of sale with the Respondents on 26.09.2018 for purchase of an apartment. The project completion date as per agreement was 30.06.2019. The complainant has paid an amount of Rs.2,17,16,024/- (Rupees Two Crores Seventeen Lakhs Sixteen Thousand Twenty Four only) to the respondent till the date of complaint. Since there was delay of more than two years in handing over the apartment, the complainant has filed the above complaint before the Authority praying for a Direction to the Respondent to pay Delay Period Interest.

2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 30.06.2019. The promoter-respondent was required to complete the project and hand over possession of the apartment by 30.06.2019. In case where the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, the Allottee has a right to file a complaint before the Authority and hence this complaint is admissible for relief in accordance with Section 18 of the Act.

3. After registration of the complaint, notice was issued by the Authority to both complainant and the Respondent to appear before the Authority. In pursuance of the notice, issued by the Authority, the Complainant has appeared in person and the respondents have appeared before the Authority through



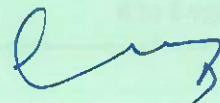
their counsel and filed statement of objections to the memo of calculation submitted by the Complainant. The Respondent in the said statement of objection contended that the project has not been completed within stipulated time due to obtaining various NOCs and other clearances, including fire clearance and CFO released by KSPCB and also due to supply chain interruptions, labour shortages etc. In addition COVID-19 pandemic and the lockdown have also contributed significantly to the obstacles faced by the respondent. The respondent has sought to explain the delay by referring to above issues which are nothing but routine requirements of compliances and construction related issues which are required to be handled by the Promoter of any project who has undertaken to develop the real estate project. None of the reason submitted by the Respondent has any force and legal validity to justify the delay in completion of the project and provide any exception from the application of Section-18 of the Act. Therefore, as per Section 18 of the Act, the promoter is liable to pay the delay period interest.

4. Further, one of the contentions raised by the respondent for delay in completing the project is on account of Covid-19. As stated earlier, the delivery and completion of the project is 30.06.2019 with a grace period of 6 months. The actual Covid-19 pandemic started during the year 2020 and the respondent cannot plead before the Authority Covid-19 pandemic as the reason for delay in completing the project. The Respondent has obtained occupancy certificate on 18.03.2022 and executed the



registered sale deed on 05.01.2022 in favour of the complainant with a delay of more than 2 years. The grace period of 6 months mentioned in the construction agreement will not enure to the benefit of the Respondent as the respondent failed to complete and handover possession even with the extended grace period of 6 months. The project was completed with a delay of more than 2 years and sale deed was executed on 5.1.2022. Therefore, the exemption sought by the Respondent on account of Covid-19 for calculation of delay period interest for 9 months is not tenable and the same is not agreed by the Authority. The fact remains that the amounts paid by the complainant remained with the respondent and there is a cost associated with it to the complainant which is recognised by the Act.

5. The further contention of the Respondent that the sale consideration agreed as per the agreement of sale is Rs.3,63,00,000/-. The complainant has paid only a sum of Rs.2,60,93,087/- and the complainant still owes Rs.1,02,06,913/- to the Respondent. In this context the Complainant has produced email communication dated 20.09.2018 received from the Respondent wherein the Respondent has attached the break up of total sale consideration payable by the Complainant and the payment schedule. In the said attachment, it is clearly mentioned that the total sale consideration agreed and payable is only Rs.2.62 crores. The complainant also produced email communication



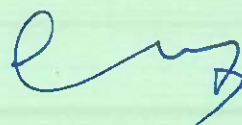
dated 29.7.2021 addressed to the Respondent Accountant, confirming the total sale consideration payable is Rs.2.62 crores only. The excess amount of Rs.1,01,34,774/- paid by the complainant is refunded by the Respondent spread over a period of 3 years. The Respondent failed to produce any documentary evidence on what account the refund of sum of Rs.1,01,34,774/- is made by the Respondent to the complainant over a period of 3 years i.e., from December, 2018 to August, 2021. On the contrary the Complainant has produced the email communication sent by the Respondent dated 20.09.2018 to the Complainant confirming the total sale consideration payable by the Complainant is Rs.2.62 crores only along with payment schedule. However, the Complainant is claiming the Delay Period Interest only on Rs.2,17,16,024/- and not on the total sale consideration of Rs.3,63,00,000/- mentioned in the agreement of sale. The Complainant also produced copies of two more sale agreements entered into between the Respondent and other allottees wherein the agreed price per sft is Rs.6192/- & Rs.6367/- and in respect of Complainant it is Rs.5908/- to establish that the sale consideration agreed and payable by the Complainant is Rs.2.62 crores only. The Respondent having received the total sale consideration payable by the Complainant as per the email communication dated 20.09.2018 has executed the sale deed on 5.1.2022 without there being any dispute on the total amount payable by the complainant before execution of the Sale Deed and accepted the total sale consideration as Rs.2.62



crores. However, it is open to the Respondent to take appropriate action against the complainant separately, if there are any dispute with regard to the total sale consideration due and payable by the complainant. The present complaint is restricted only to the extent of delay period interest payable by the Respondent for the delay in handing over possession to the Complainant and not on the total sale consideration payable by the complainant.

5. On a perusal of the documents filed and submissions made before the Authority, admittedly the Respondent has not disputed with regard to amount paid by the complainant till the date of complaint and also delay in completion of the project. It is evident that complainant has paid advance sale consideration amount and admittedly there is a delay of more than two years in handing over the apartment as per the agreement. Hence the complainant is entitled to delay period interest u/s 18 of the Act and accordingly a memo of calculation is submitted by the Complainant.

6. The Complainant has submitted before the Authority that the Respondents have executed the sale deed on 05.01.2022 with lot of pending works and the complainant has incurred additional sum of Rs.5.0 lakhs in completing all the pending works and the Complainant is not making any claim towards the same with the Respondent. The Respondent obtained Occupancy certificate on 18.3.2022. The complainant is claiming delay period interest only till the date of execution of

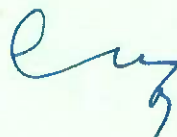


the sale deed i.e., 5.1.2022 and not till the date of occupancy certificate. Possession was taken over by the Complainant with a delay of more than two years. The Respondent has not submitted any documents in support of its contention and made only oral submissions. On the other hand, the Complainant has submitted various documents such as copy of the sale deed, sale agreement, construction agreement, email correspondence, bank statement for having paid the sale consideration, refund made by the respondent, copies of construction agreement and sale agreement entered into between the Respondent with two other allottees etc. The Complainant has submitted the MOC for delay period interest and served on the Respondent. The Respondent did not dispute the MOC for delay period interest filed by the Complainant. From the documents referred to above, submitted by the complainant, it clearly establishes that there is a delay in handing over possession of the apartment and the Complainant is entitled to Delay Period Interest as per the Act.

HENCE, the Authority orders the following:

ORDER

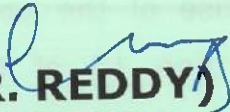
1. In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing CMP/220223/0009049 is hereby allowed.



2. The Respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 30.06.2019 till the date of possession i.e., 05.01.2022. The promoter shall pay the interest for the delay period as arrived at by the complainant amounting to Rs.54,65,215/- (Rupees Fifty Four Lakhs Sixty Five Thousand Two hundred fifteen only).

3. The Promoter-Respondent is also directed to pay interest on Rs. 54,65,215/- (being the delay period interest awarded up to the date of possession i.e., 05.01.2022) for the subsequent period of delay in payment of the delay period interest to the Complainant at the rate of SBI MCLR + 2% up to the date of payment/realisation.

4. The Promoter-Respondent is directed to pay the amounts awarded at Sl.No.2 & 3 of the operative portion of the order within 60 days from the date of this order. 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 orders of this Authority.


(G.R. REDDY)
MEMBER
FIFTH ADDITIONAL BENCH
K-RERA