

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 19<sup>TH</sup> SEPTEMBER 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/221226/0010520**

**COMPLAINANT.....**

**MR. KULDEEP VIJAY SHINDE  
ARTHA CITRINE  
NO.15C2, BEHIND TVS  
THATTANAHALLI  
ATTIBELE-ANEKAL ROAD  
ANEKAL-562106  
BENGALURU URBAN DISTRICT**

**(IN PERSON)**

**Vs**

**RESPONDENT.....**

**ASWANI PROPERTIES INDIA PVT LTD  
NO.50/7, 3RD FLOOR  
16TH MAIN, 39TH CROSS  
JAYANAGAR 4TH 'T' BLOCK  
BANGALORE-560041.**

**(EX-PARTE)**

**\*\*\*\*\***

**J U D G E M E N T**

1. This complaint is filed under section 31 of the RERA Act against the project "**ASWANI SUNSHINE**" developed by **ASWANI PROPERTIES INDIA PRIVATE LIMITED** situated at Aswani Sunshine, Sy.No.16/3, Kotaganahalli, Attibele-Sarjapura Road, Sarjapura, Anekal Taluk, Bengaluru Urban for the relief of interest on delay period, completion of pending works, provide all amenities and project completion as agreed.

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2. This project has been registered under RERA bearing Registration No.PRM/KA/RERA/1251/308/PR/171014/000896 valid till 31/7/2019.

**BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-**

3. The complainant has purchased a flat bearing No.C/3/204, 2<sup>nd</sup> Floor, Block-3 by entering into agreement of sale and construction agreement on 7/9/2017 in the project of the respondent and has paid an amount of Rs.25,24,950/- (Rupees Twenty Five Lakh Twenty Four Thousand Nine Hundred and Fifty only) on various dates to the respondent. As per the agreement, the respondent was supposed to handover the possession of the flat on 7/3/2020 i.e. 24 months from the date of execution of construction agreement with a grace period of six months.

4. The complainant submits that the respondent vide their letter dated 24/9/2018 offered occupying the flat on temporary basis, but the complainant did not accept the offer as the flat was incomplete and lacking amenities. The complainant submits that after approaching the builder several times, the sale deed was executed by the respondent on 26/08/2021 in favour of the complainant. The complainant submits that he has not taken physical possession of the flat neither living there as the respondent has not provided basic amenities as promised. The complainant also submits that his aged mother cannot climb the staircase and as such never made any attempt to go and look what is going on with the status of the project. The respondent has stopped answering phone calls. Thus, the complainant has approached this Authority and prays for direction to the respondent to complete the pending work, provide all amenities as agreed and pay interest for the delay period from March 2018 to 21/12/2022. Hence, this complaint.

5. After registration of the complaint, several notices were sent to the respondent at his given address for appearance before the Hon'ble Authority at



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the time of hearing. As the respondent did not appear for the hearing, summons was sent to them. Though the summons was received, the respondent failed to appear before the Authority and never attended the hearings. Finally paper publication was issued in local Kannada daily newspaper "HOSA DIGANTHA" on 15/07/2023 for the appearance of the respondent. In spite of paper publication, the respondent did not appear before the Authority and hence, has been placed as **EX-PARTE**.

6. In support of his claim, the complainant has produced documents such as copies of agreement of sale, agreement of construction, sale deed, payment receipts, email correspondence, photographs of the apartment showing pending works/amenities, newspaper publication published in "Hosa Digantha" Kannada daily dated 15/07/2023 and memo of calculation as on 20/02/2023.

7. This matter was heard on 15/3/2023, 6/6/2023, 13/7/2023 and 7/9/2023. Heard arguments of complainant side.

8. On the above averments, the following points would arise for my consideration:-

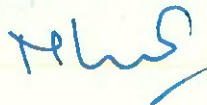
1. Whether the complainant is entitled for the relief claimed?
2. What order?

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

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

**REASONS**

10. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale and construction



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agreement to handover the flat by 07/03/2020 i.e. within 24 months from the date of execution of construction agreement with a grace period of six months and accepting substantial sale consideration amount from the complainant, the respondent has failed to abide by the terms of the agreement. The respondent has also failed to complete pending works and providing amenities like Lift, STP, proper entrance gate, installation of DG, swimming pool. The respondent has executed the sale deed on 26/08/2021 in favour of the complainant.

11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid total sale consideration amount to the respondent. During the process of the hearing, the Authority also noticed that the respondent has informed generally that they are going to pay outstanding tax on Aswani Sunshine. The respondents vide their communication dated 28/9/2019 have also confirmed that the project will be completed by 31/1/2020 and that the registration of flat is scheduled from 2<sup>nd</sup> Week of November 2019. But the respondent has failed to keep up their promise. Having accepted the said amount and failure to keep up promise to handover possession of the flat as agreed, certainly entitles the complainant herein for delay period interest.

12. Though several notices were sent, summons was received by the respondent and newspaper publication was published in local Kannada daily newspaper "HOSA DIGANTHA" on 15/7/2023, the respondent failed to appear before the Authority to participate in the proceedings by filing statement of objections and producing documents on his behalf. The respondent has not at all disputed the claim of the complainant in any manner. Therefore, the claim of the complainant remained unchallenged and it is corroborated with the cogent evidence.

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13. The Hon'ble Authority has perused the written submission submitted by the the complainant. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, and hence, it is necessary that it shall be free from any ambiguity and vagueness. Here in this case, the respondent has not complied with the terms of the said agreement of sale. Therefore, the Hon'ble Authority in the absence of any resistance by the respondent accepts the claim of the complainant.

14. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s The State of Uttar Pradesh it is held as under:

*"Para No.22:- If we take a conjoint reading of subsections (1), (2) and (3) of section 18 of the Act, the different Contingencies spelt out therein, (A) the allottee can either Seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; © in addition, can also claim compensation payable under sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every month's delay in handing over possession at such rates as may be prescribed."*

15. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at Para No.23 between M/s Imperia Structures Ltd v/s Anil Patni and another by the Hon'ble Supreme Court it is held that:

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*"In terms of section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himanshu Giri came under the later category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment."*

The said principle is aptly applicable to the present case.

16. The complainant vide his memo of calculation as on 20/2/2023 has claimed an amount of Rs.12,49,423/- as interest on delay period calculated from 01/03/2018 to 20/2/2023. The respondent has not filed its memo of calculation despite several opportunities were given.

17. Having regard to all these aspects, this Authority concludes that the complainant is entitled for delay period interest of Rs.3,50,222/- (Rupees Three Lakh Fifty Thousand Two Hundred and Twenty Two only) from 7/3/2020 to 26/8/2021, the date on which the sale deed was executed.

*Handwritten signature*

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18. Therefore, it is incumbent upon the respondent to pay interest on delay period determined as under:

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	25,24,950	07-03-2020
3	TOTAL DELAYED INTEREST as on 02/08/2021	3,50,222	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 25,24,950						
1	07-03-2020	07-04-2020	31	8.15	10.15 as on 10-02-2020	21,766
2	07-04-2020	07-05-2020	30	8.05	10.05 as on 10-03-2020	20,856
3	07-05-2020	07-06-2020	31	7.7	9.7 as on 10-04-2020	20,801
4	07-06-2020	07-07-2020	30	7.55	9.55 as on 10-05-2020	19,819
5	07-07-2020	07-08-2020	31	7.3	9.3 as on 10-06-2020	19,943
6	07-08-2020	07-09-2020	31	7.3	9.3 as on 10-07-2020	19,943
7	07-09-2020	07-10-2020	30	7.3	9.3 as on 10-08-2020	19,300
8	07-10-2020	07-11-2020	31	7.3	9.3 as on 10-09-2020	19,943
9	07-11-2020	07-12-2020	30	7.3	9.3 as on 10-10-2020	19,300
10	07-12-2020	07-01-2021	31	7.3	9.3 as on 10-11-2020	19,943
11	07-01-2021	07-02-2021	31	7.3	9.3 as on 10-12-2020	19,943
12	07-02-2021	07-03-2021	28	7.3	9.3 as on 10-01-2021	18,013

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13	07-03-2021	07-04-2021	31	7.3	9.3 as on 10-02-2021	19,943
14	07-04-2021	07-05-2021	30	7.3	9.3 as on 10-03-2021	19,300
15	07-05-2021	07-06-2021	31	7.3	9.3 as on 10-04-2021	19,943
16	07-06-2021	07-07-2021	30	7.3	9.3 as on 15-05-2021	19,300
17	07-07-2021	07-08-2021	31	7.3	9.3 as on 15-06-2021	19,943
18	07-08-2021	26-08-2021	19	7.3	9.3 as on 15-07-2021	12,223
					TOTAL DELAYED INTEREST as on 26/08/2021	3,50,222

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/221226/0010520** is hereby allowed.

The respondent is hereby directed to pay a sum of **Rs.3,50,222/- (Rupees Three Lakh Fifty Thousand Two Hundred and Twenty Two only)** towards delay period interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from

*[Handwritten signature]*



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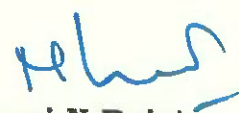
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7/3/2020 till 26/08/2021, the date on which the sale deed was executed.

Further, the respondent is directed to complete all the pending works immediately and provide amenities as agreed.

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 order of this Authority.

No order as to the costs.

  
(Neelmani N Raju)  
MEMBER, K-RERA

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*[Handwritten signature]*

MEMBER, R. R. R. A.