

ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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 BEFORE THE AUTHORITY

Dated 14th September 2023

CMP/210107/0007414

Present

Hon'ble Chairman Shri. H.C. Kishore Chandra

Hon'ble Member Smt. Neelmani N Raju

Hon'ble Member Shri. G.R.Reddy

COMPLAINANT.....

ARUN MALA JANARDHAN

Shreenilaya, No1360/A,
1st H Main, Girinagar 2nd Phase,
Bangalore -560085.

V/S

RESPONDENTS.....

Sobha Limited

Sarjapur-Marthahalli Outer Ring Road,
Bellandur Post,
Bengaluru - 560103.

(By Sri. Sanjay Nair, Advocate)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Sobha Valley View - Heritage" developed by "Sobha Limited" for the relief of interest on delay period.
2. This project has been registered under RERA vide registration No. PRM/KA/RERA/1251/310/PR/170916/000117.

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3. The said project is situated at Sy. No. 41/1 to 41/10, 42/3 to 42/6, 42/8, 42/9, 42/14 to 42/17, 40/1 to 40/8, Hosakerehalli Village, Uttarahalli Hobli, Bangalore South Taluk.

Brief facts of the complaint are as under:-

4. The complainant had booked a flat bearing No.3G2-2021 in the project 'Sobha Valley view' of the respondent and had entered into an agreement of sale and construction agreement on 14/11/2014. The entire sale consideration of the flat is Rs.1,30,16,584/- (One crore thirty lakh sixteen thousand and five hundred eighty four only). The complainant had received a mail from the respondent on 28/11/2018 stating that the said project is complete and in December 2018 received a mail to take possession of the flat for interiors works pending receipt of occupancy certificate. The respondent had obtained occupancy certificate on 03/10/2019. On 03/03/2020 possession certificate was issued by the respondent giving possession of the said flat. As per construction agreement the respondent was supposed to handover the flat by 31/07/2018 with grace period of 6 months i.e. on 01/02/2019. Further, there are pending works such as BWSSB connection for water supply etc., and not provided all the amenities as agreed. There are pending litigations in respect of said project land. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through their counsel and contested the matter by filing statement of objections as under:
6. He has denied each every allegation made against him by the complainant as false. According to them, the schedule date of completion as on 01/02/2019 and the said project was completed before the agreed

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completion date 01/02/2019 and completion certificate dated 10/01/2019 was issued by the registered architect confirming the completion of the project on 16/11/2018. The occupancy certificate for the said project was applied on 16/01/2019 and obtained on 03/10/2019. After completion of the project the complainant has been intimated through email dated 19/11/2018 along with project photos. As such the respondent has performed and fulfilled all of its obligations under the agreement of sale dated 14/11/2014. The complainant has taken the possession of his flat on 22/03/2019 after inspection and also acknowledge the same vide letter dated 22/03/2019. After taking possession of the said flat the complainant had carried out the interior works. Subsequently the complainant started living in the said flat enjoying all the amenities provided by the respondent as agreed. The complainants flat No.3G2-2021 was available for handed over on 16/11/2018. The delay in issue of OC is not attributable to any act/omissions of the respondent. Hence, the same cannot be construed as delay in completion of the project and handing over possession of the flat. There is no delay in completion of the project. As per construction agreement including grace period of 6 months the date of completion is to be reckoned from 01/02/2019.

7. Further, the said project is developed on the land owned by this respondent measuring 4 acres 24 guntas and also on the land measuring 2 acres 23 guntas owned by one Gowramma totally measuring 7 acres 7 guntas on joint development basis. The Deputy commissioner of Income Tax had initiated proceedings under Prohibition of Benami Property Transaction Act against said Gowramma only in respect of property

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owned by her which is forming part of Sobha Valley view project in terms of the joint development agreement. Subsequently, the Deputy Commissioner of income tax had passed a provisional attachment order dated 09/04/2019 attaching the property belongs to the said Gowramma and she has challenged the said order in W.P.No.27322/2019 connected with W.P. No.25851/2019 and Hon'ble High court was pleased to stay the further proceedings. This respondent had initiated appropriate proceedings before the Adjudicating Authority at New Delhi under the provisions of PBPT Act to vacate the order of attachment and to permit the registration of sale deeds in favour of allottees including the complainant. In addition, the respondent has also challenged the action of income tax authorities by filing W.P.No.36321/2019 before the Hon'ble High court of Karnataka. However the said petition was withdrawn by the respondent on 11/01/2021 with a liberty to file fresh W.P. on different grounds. Thereafter, the respondent had filed a fresh W.P. 1429/2021 on 21/01/2021 which is pending for adjudication.

8. Further, they contended that the aforesaid provisional attachment order passed by DC of income tax a direction had been issued to sub registrar Banashankari, Bengaluru prohibiting it from allowing the owner of the property to transfer, convert, dispose or deal with the property in any manner whatsoever until and unless specifically ordered to do so by the Initiating Officer under PBPT Act. Therefore, this respondent was prevented from executing the sale deeds in favour of allottees including the complainants which was beyond the control of the respondent. In fact the respondent is also an equally affected party as much as the complainant, despite having completed the construction and obtaining

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the occupancy certificate from BBMP in respect of the project. The subject matter is now pending before Adjudicating Officer at New Delhi and also before Hon'ble High Court of Karnataka. The non registration of the sale deed is not due to any default of respondent, but for the reasons of the proceedings initiated by the income tax authorities under PBPT Act. The respondent was unable to execute the sale deed in favour of the complainant only on account of provisional attachment order passed by the Deputy Commissioner of Income Tax which is beyond the control of the respondent. Hence, the respondent is not liable to pay any interest on delay period and prayed to dismiss the complaint.

9. In support of her claim, the complainant has produced the documents such as the copy of agreement of sale, construction agreement and possession certificate dated 03/03/2020.
10. On the other hand, in support of his defense, the respondent has furnished the documents such as copies of form for completion certificate, occupancy certificate, email conversation, photographs, and acknowledgement of possession certificate.
11. This matter was heard on 13/11/2020, 26/11/2020, 01/02/2021, 16/03/2021, 20/04/2021, 02/12/2021, 18/01/2022, 15/02/2022, 15/03/2022, 19/04/2022, 01/06/2022, 08/06/2022, 10/08/2022, 26/08/2022, 13/12/2022, 17/01/2023, 18/04/2023 and 25/04/2023.
15. Heard Arguments.

16. Based on the above averments, the following points would arise for our consideration:-

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

17. Findings on the above points are as under:-

- 1) In the Affirmative
- 2) As per final order for the following

REASONS

18. **Findings on Point No.1:-** The complainant has approached this forum seeking for the relief of interest on delay period. The grounds urged are that the complainant has booked a flat bearing No. 3G2-2021 in the project of the respondent by entering into an agreement of sale on 14/11/2014. As per the said agreement, the respondent was supposed to handover possession of the said flat to the complainant before 31/07/2018. But the respondent has handed over possession of the said flat to the complainant on 03/03/2020.

19. Contention of the respondent is that he had completed the project and the flat of the complainant was ready to handover on time as agreed in the said agreement of sale. But due to proceedings initiated in writ petitions before the Hon'ble High court of Karnataka by the third parties against the land owners and respondent herein, on account of provisional attachment order passed by the Deputy Commissioner of Income Tax and proceedings before the income authorities the respondent couldn't execute and register the sale deed and handover possession as agreed.

20. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 14/11/2014. 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, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale, the respondent was supposed to handover the possession of said flat to the complainant in July 2018. In addition as

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per clause 5.2 of construction agreement, in the event of delay, the respondent had agreed to pay interest on delay period from 01/02/2019. But the respondent had handed over the possession of the said flat to the complainant on 03/03/2020.

21. As per decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters vs 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; (C) 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 months' delay in handing over possession at such rates as may be prescribed'.

The said principle laid down in the above decision is aptly applicable to the present case on hand.

22. As per sec.18 of RERA Act, the respondent is liable to pay interest for delay period. Considering the entire materials available on record, the delay in handing over possession being apparent, this Authority see no legal impediment in allowing the complaint as prayed. The complainant had paid Rs. 1,30,87,651/- (One crore thirty lakh eighty seven thousand and six fifty one only) to the respondent towards entire sale consideration.

23. Therefore, it is incumbent upon the respondent to pay interest on delay period to the complainant. The complainant has furnished memo of calculation till 15/05/2023. But as per possession certificate produced by the complainant, he was given possession of said flat on 03/03/2020. Hence, he is entitled for interest on delay period only till 03/03/2020.

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INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 13,087,651						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
1	1/2/2019	1/3/2019	28	8.75	10.75 as on 10-01-2019	107,928
2	1/3/2019	1/4/2019	31	8.75	10.75 as on 10-02-2019	119,492
3	1/4/2019	1/5/2019	30	8.75	10.75 as on 10-03-2019	115,637
4	1/5/2019	1/6/2019	31	8.7	10.7 as on 10-04-2019	118,936
5	1/6/2019	1/7/2019	30	8.65	10.65 as on 10-05-2019	114,561
6	1/7/2019	1/8/2019	31	8.65	10.65 as on 10-06-2019	118,380
7	1/8/2019	1/9/2019	31	8.6	10.6 as on 10-07-2019	117,824
8	1/9/2019	1/10/2019	30	8.45	10.45 as on 10-08-2019	112,410
9	1/10/2019	1/11/2019	31	8.35	10.35 as on 10-09-2019	115,045
10	1/11/2019	1/12/2019	30	8.25	10.25 as on 10-10-2019	110,258
11	1/12/2019	1/1/2020	31	8.2	10.2 as on 10-11-2019	113,378
12	1/1/2020	1/2/2020	31	8.2	10.2 as on 10-12-2019	113,378
13	1/2/2020	1/3/2020	29	8.2	10.2 as on 10-01-2020	106,063

S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	13,087,651	1/2/2019
3	TOTAL DELAYED INTEREST as on 03/03/2020	1483290	

Sum and substance of the case is as under.

Date of agreement of sale	14/11/2014
Date of construction agreement	14/11/2014

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Sale consideration	Rs. 1,29,98,523/-(one crore twenty nine lakh ninety eight thousand and five hundred twenty three only).
Amount paid	Rs. 1,30,87,651/-(one crore thirty lakh eighty seven thousand and six hundred fifty one only).
Promised date of possession as per AOS	01-02-2019
Date of sale deed	Not yet executed
Date of occupancy certificate	03/10/2019
Whether the possession has been handed over	03/03/2020
Prayer	Refund with interest

24. In spite of providing sufficient opportunity, the respondent has not furnished memo of calculation on his behalf. Accordingly, the point raised above is answered in the Affirmative.

25. **Findings on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/210107/0007414** is hereby allowed as under.

1. The respondent is directed to pay an amount of Rs. 14,83,290/-(Fourteen lakh eighty three thousand and two hundred ninety only) towards the interest on delay period calculated at the rate of SBI MCLR+2% from 01/02/2019 upto 03/03/2020 to the complainant within 60 days from the date of this order.

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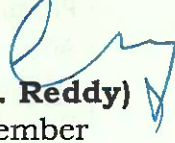
2. The complainant is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to costs.




(Neelmani N Raju)

Member
K-RERA



(G.R. Reddy)

Member
K-RERA



(H.C. Kishore Chandra)

Chairman
K-RERA