

**PROCEEDINGS OF THE AUTHORITY**

**BEFORE BENCH 5**

**Dated 29<sup>th</sup> SEPTEMBER, 2023**

**PRESIDED BY HON'BLE MEMBER G.R. REDDY**

**COMPLAINT NO.CMP/210211/0007620**

COMPLAINANTS : 1. Mr.Sandep Dubey  
2. Mrs.Manali Dutta Dubey

Both are residing at  
# 10, Aryan Tower, Flat No.301  
V Nagenahalli Main Road  
Bangalore North – 560 032

(Party in Person)

RESPONDENT /  
PROMOTER : 1. M/s.Shriram Properties Pvt Ltd.  
No.40/43, 8<sup>th</sup> Main, 4<sup>th</sup> Cross,  
Sadashiv Nagar, Bengaluru:560080

2. M/s.Shriprop Dwellers Pvt Ltd.  
No.40/43, 8<sup>th</sup> Main, 4<sup>th</sup> Cross,  
Sadashiv Nagar, Bengaluru:560080

By Mr.Bharath &  
Others, JSM Law Partners

PROJECT NAME &  
REGISTRATION NO. : SHRIRAM SUMMITT  
PRM/KA/RERA/1251/308/PR/  
171015/001121

**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 **SHRIRAM SUMMITT** praying for a direction to pay Delay Period Interest.



PROCEEDINGS OF THE AUTHORITY  
BEFORE BENCH 7  
Dated 29<sup>th</sup> SEPTEMBER, 2023

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

1. The Complainants have entered into an agreement of sale with the Respondents on 27.12.2017 for purchase of an apartments. The project completion date as per agreement was 31.12.2019. The complainants have paid an amount of Rs.44,15,524/- (Rupees Forty Four lakhs Fifteen Thousand Five hundred 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 complainants have filed the above complaint before the Authority praying for a Direction to the Respondents to pay Delay Period Interest.
2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 31.12.2019. The promoter-respondent was required to complete the project and hand over possession of the apartment by 31.12.2019. In cases 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 complainants and the Respondents to appear before the Authority. In pursuance of the notice, issued by the Authority, the Complainants have appeared in person and the respondents have appeared before the Authority through their counsel and authorised representative, filed statement of objections. The Respondents in its statement of objection contended that the project has not been completed within stipulated time due to force majeure events such as scarcity of raw materials, non availability of skilled

labours, transport disruption or such reasons beyond the control of the respondent. In addition COVID-19 pandemic and the lockdown have also contributed significantly to the obstacles faced by the respondent. The Respondent further submits that the impact of the ruling of the NGT, New Delhi also caused for the delay in completion of the project. In support of their defence, the Respondent has submitted RERA Registration Certificate, copy of agreement of sale. 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 Respondents have 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 pay the delay period interest.

4. One of the contentions raised by the respondents for delay in completing the project is on account of Covid-19. As stated earlier, the delivery and completion of the project is December, 2019 and the actual Covid-19 pandemic started during the year 2020 and the respondents cannot plead before the Authority Covid-19 pandemic as the reason for delay in completing the project. The Respondents have obtained occupancy certificate on 07.05.2022 with a delay of more than 2 years. Therefore, the exemption sought by the Respondents 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 remain that the amounts paid remained with the respondents and there is a cost associated with it to the complainant recognised by the Act.



5. On a perusal of the documents filed and submissions made before the Authority, it is evident that complainant has paid advance sale consideration amount and admittedly there is a delay of more than two years in receiving the occupancy certificate.

6. During the course of hearing the Respondents have submitted before the Authority that the agreement of sale was registered in the name of both the Complainants namely Mr.Sandeep Dubey being complainant No.1 and his wife Mrs.Manali Dutta Dubey being the complainant No.2. Further the Respondents have submitted that there exists a matrimonial dispute between Complainant No.1 and complainant No.2 and for executing the sale deed both the complainants are required or one of the complainant should give no objection to the other complainant to execute the sale deed in single name i.,e. either complainant No.1 or Complainant No.2. Hence the Respondent is not in a position to execute the sale deed even after getting the occupancy certificate.

7. Further, during the course of hearing the complainants have submitted that after receiving the occupancy certificate by the Respondent, the Respondent sent communication to the complainant for pre inspection of the apartment booked by the Complainants. In response to the communication the complainants visited the apartment and the pre-delivery visit report dated 08.07.2022 was signed by both the Respondent and the Complainants was produced before the Authority. Further, the Complainants also produced email dated 16.8.2022 addressed by the Respondent inviting the complainants for registration of the sale deed within 60 days from the date of pre-registration visit. Hence, the complainants have submitted that the cut-off period for claiming delay period interest payable by the Respondent and the cut-off period for payment of interest on the balance amount

payable by the Claimant to the Respondent may be taken as August, 2022. Based on the submissions made by the Complainants the Authority on 16.02.2023 directed the complainants and the respondents to submit their written comments / submissions on the above issue and the matter was adjourned to 07.03.2023.

8. During the course of hearing on 07.03.2023 the Complainants have submitted that he will not claim any pre-EMI in lieu of that the complainants requested the Respondents to waive off delay period interest in respect of balance payment payable to the respondents and holding charges charged by the respondents and prayed for passing an award for delay period interest. The Authorised representative of the Respondent has prayed for time to negotiate and arrive at an amicable settlement before Lok Adalat for which the complainants also agreed and the matter was adjourned to 28.03.2023. On 28.03.2023 the matter was posted for orders. The complainants also produced the email communication dated 28.3.2023 that he ready to pay the balance sale consideration payable by him and requested to exclude the holding charges and delay payment charges on the balance amount payable by him.

9. When the matter was posted for orders, the Authorised Representative of the Respondent has submitted before the Authority that further negotiations are underway for an amicable settlement before the Lok Adalat in respect of all the Complaints pertaining to project SHRIRAM SUMMITT, including this complaint and prayed for time. It is relevant to mention that during the hearing on 01.06.2023 in respect of other Complaint No.8291, the Respondents have submitted before the Authority that they could not arrive at amicable settlement between the parties in respect of all

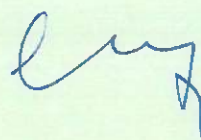


the complaints pertaining to SHRIRAM SUMMITT Projects in spite of taking sufficient time and prayed that the matter may be posted for orders.

10. The Respondents were given more than four months time for arriving at amicable settlement. Since, there was no information / submissions from the Respondents even after taking 4 months time, notice was given from the Authority to both Complainant and Respondents to appear before the Authority on 04.07.2023 to submit their versions, if any.

11. During the hearing on 4.7.2023, the Authorised representative of the respondent was present and submitted before the Authority that they are ready to settle the claims made by the complainants by paying 40% of the delay period interest due and payable by the Respondent to the complainants and prayed for time to arrive at an amicable settlement. The Complainants have not agreed for the offer of 40% made by the Respondents. The complainants have objected for granting further time in the matter as the Respondents are adopting a delay tactics in settling the issue before this Authority and prayed for passing an award based on the MOC filed by the Complainant.

12. The Promoter-Respondent had submitted memo of calculation claiming exemption in payment of delay period interest to the complainants on account of NGT Order, Covid-19. The exemption claimed by the Respondent is not acceptable as per the reasons mentioned above at para no.4. Further, the Respondent has calculated the delay period interest taking into account the possession date as May, 2022. As stated earlier when the pre-inspection of the apartment itself was carried out in the month of July, 2022 and the claim of Respondents taking possession date as May,



2022 is not tenable and as such the claim of the complainants for delay period interest from the month of August, 2022 is allowed.

13. Based on the above submissions made by the Complainants and the documents produced by both the Respondents and the complainants, the cut-off date is taken as August, 2022 for calculation of Delay Period Interest payable by the Respondent and Interest payable by the Complainant on the balance payment payable to the Respondents.

Hence, the Authority passes 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/210211/0007620 is hereby allowed.
2. Respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 31.12.2019 till the date of assumed possession i.e., August, 2022. The promoter shall pay the interest for the delay period as arrived at by the complainants amounting to Rs.10,92,596/- (Rupees Ten Lakhs Ninety Two Thousand Five hundred ninety six only).
3. The Promoter-Respondent is also directed to pay interest on Rs.10,92,596/- (being the delay period interest awarded on the assumed date of possession as August, 2022) for the subsequent period of delay in payment of the delay period interest to the Complainants at the rate of SBI MCLR + 2% up to the date of payment/realisation.
4. The Promoter-Respondent is also directed to Execute the Sale Deed in favour of the Complainants/Complainant who are/is legally entitled, after



collecting the balance amount of sale consideration payable by the Complainants and after adjusting the PRE-EMI, if any, paid by the complainants.

5. The Promoter-Respondent is also entitled to collect the interest on the balance sale consideration payable by the complainant at similar rate of interest i.e., SBI MCLR + 2% from August, 2022 up to the date of payment/realisation. Since the Promoter-Respondent is permitted to collect interest for the delay in payment of balance sale consideration, the promoter-respondent is restrained from collecting any other fees like holding charges etc., from the complainant as it amounts to double payment of interest on the balance sale consideration payable by the complainant.

6. The Complainant and the Promoter-Respondent are hereby directed to comply the orders of the Authority within 60 days from the date of this order.

  
(G.R. REDDY)

MEMBER

FIFTH ADDITIONAL BENCH

K-RERA