

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

Present

HON'BLE MEMBER G.R. REDDY, IRS

Dated 07th October, 2023

COMPLAINT NO: CMP/211219/0008736

COMPLAINANT...

SHAILESH KUMAR

**No. E-2, SMR Vinay Estella, Singapura
Paradise, Near Aveksha Hospital,
Bangalore-560097.**

DISTRICT: Bangalore

STATE: KARNATAKA

(In Person)

Vs

RESPONDENT.....

**SMR Builders Pvt Ltd.,
Singapura Village, Ward No.11,
Kuvempu Nagar, Bangalore North,
BANGALORE.**

(Mr. Aditya Venkata RajKumar, Advocate)

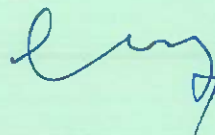
1. This complaint has been filed by the complainant under section 31 of the RERA Act against the project "**SMR Vinay Estella**" developed by M/s SMR Builders Pvt Ltd., seeking for the relief of interest on delay period.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/309/PR/171021/001130.



3. Said project is situated at Singapura Village, Ward No.11, Kuvempu Nagar, Bengaluru North, Bengaluru Urban.

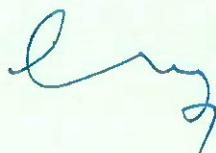
Brief facts of the complaint are as under:-

4. The complainant had purchased a flat bearing No. E2-412, in the project of respondent by entering into a agreement of sale and construction both dated 10/05/2017 for sale consideration of Rs. 59.41.000/- (Rupees Fifty One Lakhs Forty One Thousand only). At the time of entering into agreement of sale and construction agreement, the complainant had paid the sum of Rs.9,00.000/- (Rupees Nine Lakhs only) on the various dates to the respondent. The respondent was supposed to handover the possession of the said flat to the complainant on 12-11-2019, with 6 months grace period. Though more than a year has been lapsed, the respondent has failed to complete the project as agreed and to handover the possession of the said flat to the complainant along with the occupancy certificate. Hence, the complainant had approached this Authority to direct the respondent to pay interest on delay period upto the possession. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notices, the respondent has appeared before the Authority through its counsel and filed statement of objections as under.
6. The respondent has denied the entire allegation made against them by the complainant as false. It is pertinent to note that as per the agreement to sale, it was agreed that the construction of the Schedule flat within 24 months with a grace period of 6 months from the date of the above said sale agreement dated 10/05/2017. It is further submitted that the construction of the



schedule property was completed well within the stipulated time and the Respondent herein was ready to handover the possession of the flat No. E2-412 way back in September 2019 itself, much before the deadline. In fact, the purchasers of the flats which are in the same block as the complainant have all taken possession from 11/09/2019 onwards, but complainant, for reasons best known to him has denied taking possession. The complainant got the sale deed executed in favour of him and wife only on 26/06/2020. The possession letters of Flat E2-709 dated 11/09/2019 and E1-109 dated 08/10/2019 have been issued. Respectively to demonstrate that several flat owners took possession of their respective flats in the same block as the complainant clearly demonstrating that there was no impediment for the complainant to take possession, but it was him who denied taking possession.

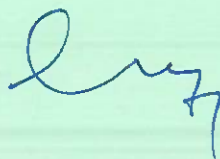
7. There is no delay caused in the construction of the project which can be squarely attributable to the respondent. The complainant duly acknowledged the receiving of the schedule flat in good condition on 27/6/2020. The respondent has offered the complainant to take possession way back in September 2019 much before the deadline. The complainant for reasons best known to him has not taken possession of the same even when other purchasers have taken possession. Thus, the respondent is not liable to pay a rent of INR 7500/- (Rupees Seven Thousand Five Hundred only) to the complainant as the complainant had no grievances at the time of executing the sale deed date 26/6/2020. The respondent has applied for occupancy certificate on 03/03/2021 and intimating the BBMP authority



about the completion of the project, after inspection and verification, the Chief Commissioner, BBMP has issued Occupancy Certificate on 03/03/2022, the delay at the best can be attributed to the BBMP and not the respondent herein. The respondent stated that, there is no delay in possession from his side, in fact, the complainant demanded several modifications for his flat and the respondent being a customer centric developer has, in good faith, complied with all those modification requests even though it was outside the scope of the sale agreement and although it entailed additional cost on the respondent herein. Hence, the respondent requested to dismiss the complaint.

8. The complainant had replied for the objections of respondent, that the builder was in a hurry to allot the car parking to the house owners. The allotment of car park led to a proposal of finalizing the sale deed and hence the sale deed was executed on 26-06-2020. The sale deed contains the details of the complete amount of property paid i.e. Rs.59,41,000/-(). A letter from SMR Holdings for final handover of flat was issued on 27-06-2020 and it was acknowledged on the same day to ensure that the flat was in his possession. A meeting was held on 06-02-2021 between the house owners and the builder regarding various outstanding pending works and that would be supposed to complete on 31-03-2021, the builder agreed to provide occupancy certificate to the end of March 2021 but it was not executed. The complainant occupied a flat on 21-03-2021 and he got occupancy certificate on 03-03-2022.

9. In support of his claim, the complainant has produced documents such as copies of agreement of construction, email



conversation with the respondent, payment receipts and memo of calculation as on 21-03-2023.

10. On the other hand, the respondent has furnished the statement of objection, copy of final handing over letter and photo copies of the apartment.
11. This matter is heard on 27-06-2023 and 25-07-2023.
12. **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?
13. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following.

REASONS

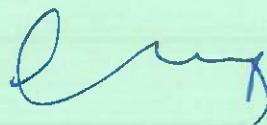
14. **My answer to Point No. 1:-** The complainant has approached this forum seeking for the relief of interest on delay period. The grounds urged are that the complainant has booked a flat bearing No. E-2-412 in the project of the respondent by entering into an agreement of sale on 10/05/2017. As per the said agreement, the respondent was supposed to handover possession of the said flat to the complainant before 12/05/2019. But the respondent has handed over possession of the said flat to the complainant on 21/03/2022.
15. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 10/05/2017. 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 May 2019. In addition as per clause 2 of construction agreement, in the event of delay, the respondent had agreed to pay rent of Rs.7500/- (Rupees Seven Thousand Five Hundred only) from 12/05/2019 to the complainant. But the respondent had handed over the possession of the said flat to the complainant on 21/03/2021 and occupancy certificate on 03-03-2022. Even the application for occupancy certificate filed on 03-03-2021. Hence, the allegation of respondent that delay is on BBMP does not carry much water'.

16. 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'.

17. The said principle laid down in the above decision is aptly applicable to the present case on hand.
18. 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. 49,90,340/- (Rupees Forty Nine Lakhs Ninty Thousand Three Hundred and Forty Four only) to the respondent towards entire sale consideration.

19. The complainant has claimed Rs.15,68,344/- (Rupees Fifteen Lakhs Sixty Eight Thousand Three Hundred and Forty Four only) as delay period interest vide their memo of calculation as on 21/03/2023 calculated from 12/05/2019 to 21/03/2022. Despite opportunities were given, the respondent has not filed his memo of calculation. Having regard to all these aspects, this Authority concludes that the complainant is entitled for delay period interest from 12/05/2019 to 21/03/2022 and later on.

20. The complainant has established his claim by producing cogent evidence i.e. agreement of sale and construction dated 10/05/2017, payment receipts and memo of calculation etc.,.

21. A thorough verification of the documentary evidence placed by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for interest on delay period as submitted vides his memo of calculation as on 21/03/2022.

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	4,990,340	12/05/2019
2	SUBSEQUENT PAYMENT 1	15,000	31/12/2019
3	SUBSEQUENT PAYMENT 2	594,200	17/02/2020
4	SUBSEQUENT PAYMENT 3	356,460	15/06/2020



5	SUBSEQUENT PAYMENT 4	90,000	31/12/2020
6	SUBSEQUENT PAYMENT 5	90,000	31/12/2021
7	SUBSEQUENT PAYMENT 6	15,000	03/03/2022
8	TOTAL PRINCIPLE AMOUNT	6,151,000	
9	TOTAL DELAYED INTEREST as on 21/03/2022	1,568,344	

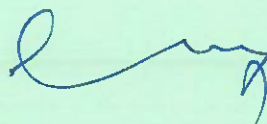
22. Accordingly the point raised above is answered in the Affirmative.

23. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I proceed to pass the following:

ORDER

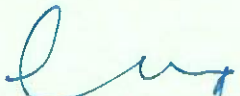
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/211219/0008736** is hereby allowed. Respondent is directed to pay a sum of **Rs.15,68,344/- (Rupees Fifteen Lakhs Sixty Eight Thousand Three Hundred and Forty Four only)** towards delay period interest as on 21/3/2022 to the complainant within 60 days from the date of this order.

The interest due from 22/03/2023 up to the date of final payment will be calculated as per MCLR + 2% from 12/05/2019 till 21/03/2022 and paid to the complainant.



The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to comply with the order of this Authority.

No order as to costs.


(G R REDDY, IRS)
Member, K-RERA

