

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 30TH OCTOBER 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/200813/0006281

(Rectified as above vide order dated 24/01/2024)

RECTIFICATION ORDER UNDER SECTION 39 RERA ACT

COMPLAINANT.....

**APARNA K ADIGA
B-605, CENTURY INDUS
KG ROAD, BEML 10TH STAGE
R.R. NAGAR
BANGALORE-560098**

**(BY MS. SHILPA RANI &
ANOTHER, ADVOCATES)**

Vs

RESPONDENT.....

**M/S VINAYAKA BUILDERS & DEVELOPERS
3/1, 4TH FLOOR, JP TECHNO PARK
MILLERS ROAD, VASANT NAGAR
BANGALORE-560052.**

**(BY MR. CHANDAN & MS.MEDHINI
PRUTHVI NARAYAN, ADVOCATES)**

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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**CENTURY INDUS PHASE-2**" developed by **M/S VINAYAKA BUILDERS & DEVELOPERS SITUATED AT Sy.No.62, Pattangere Village, Bangalore South Taluk, Bangalore Urban District** for the relief of interest on delay period.
2. This project has been registered under RERA bearing Registration No.PRM/KA/RERA/1251/310/PR/170905/000135 valid till 31/12/2018. The Authority has further extended its registration for a further period of 12 months i.e. till 31/12/2019.



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Brief facts of the complaint are as under:-

3. The complainant had purchased a flat bearing No.B-605 in the project of respondent and entered into an agreement of sale on 27/06/2017 and has paid an amount of Rs.58,67,363/- (Rupees Fifty Eight Lakh Sixty Seven Thousand Three Hundred and Sixty Three only) on various dates to the respondent till date. The respondent was supposed to hand over the possession of the flat with occupancy certificate to the complainant by June 2018 with a grace period of three months i.e. latest by 30/9/2018 but the respondent has handed over the possession of the flat to the complainant only on 15/02/2019. The respondent has failed to complete the project and deliver the possession of the flat on time as agreed. The complainant submits that the respondent has secured occupancy certificate from the competent authority on 13/12/2019. The complainant submits that the respondent instead of calculating interest on delay period as per RERA, they have calculated at Rs.2/- per sq.ft which is not correct. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent to pay delay period interest according to the link provided by RERA. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its representative/counsel and has filed statement of objections as under:
5. The respondent denies the entire allegations made against them by the complainant as false. The respondent submits that they are the absolute owner of all the piece and parcel of residentially converted land in Sy.No.62 of Pattanagere Village, Kengeri Hobli, Bangalore

Handwritten signature/initials.

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South Taluk measuring 6 acres. The respondent submits that the BDA has sanctioned master plan dated 25/2/2012 and modified work order for all the Towers dated 31/5/2012 for the construction of multi-storeyed residential buildings. The respondent also submits that with an intention of developing the project in a phased manner they have obtained sanction plan dated 01/04/2013 from BBMP.

6. The respondent contends that they have completed the development of the first phase i.e. Block C & D as per sanctioned plan and are now developing Phase-II of the project i.e. Block A & B. The respondent also contends that the project has been registered under RERA. The respondent submits that the complainant after fully satisfying himself voluntarily agreed to purchase the flat and entered into an agreement of sale on 27/6/2017 for purchase of a flat for a total sale consideration of Rs.56,60,857/- subject to the terms and conditions in the said agreement.
7. The respondent submits that the complainant has sought for interest on delay period.
8. The respondent contends that when the validity of the registration was in force, the complainant was requested to get the sale deed registered. The respondent contends that the occupancy certificate was obtained from the competent authority dated 13/12/2019 within the validity of the RERA registration and thereby there was no delay in obtaining occupancy certificate and no delay in handing over the flat to the complainant.
9. As regards non-adherence to promised project specification and installation of inferior quality doors/door frames, the respondent contends that the doors and door frames installed is of the standard quality as certified by various authorities and as such, the respondent

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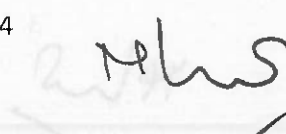
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has complied with all the specifications and denies the allegations made by the complainant. To substantiate their claim, the respondent has also produced relevant certificates/documents.

10. The respondent submits that the complainant before taking possession had visited and inspected the flat, signed all check lists and flat handover certificate and found it to be satisfactory, whereas the complainant is now making allegations against the respondent to tarnish the image of the respondent and to reap fruits from the instant complaint. The respondent submits that the construction work was delayed due to the contractors issue for which the Hon'ble Authority extended validity of registration. The respondent submits that they have obtained all necessary approvals from BWSSB, BESCPO, BSNL etc.
11. The respondent submits that the complainant has already settled the compensation amount of Rs.12,746/- as agreed in the agreement of sale.
12. The respondent submits that they have continuously communicated to the complainant through emails regarding progress of the project and about time period to deliver possession, etc. The respondent submits that the complainant is not entitled to claim any interest from respondent as the possession of the flat was handed over within the extension period and hence the complaint deserves to be dismissed.
13. The respondent contends that the project is completed and occupancy certificate has been obtained well within the extension period of registration by RERA i.e. 31/12/2019 and hence they are not liable to pay compensation for delay period and prays the Hon'ble Authority to dismiss the complaint.




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14. The complainant in his rejoinder to the statement of objections filed by the respondent has submitted that the respondent's contention that the complainant was having complete knowledge of the pros and cons is false and the respondent has not complied with the terms and conditions of the agreement for sale despite repeated requests by the complainant and as such the complainant was forced to file this complaint before the Authority. The complainant further submits that the respondent's contention that the project has been completed within the extension time and flat handed over to the complainant is false. The complainant further submits that the respondent has agreed that the actual date of handover of the flat was June 2018 with a grace period of 3 months i.e. by the end of September 2018 and, as such, the respondent is liable to pay interest for the delay period.
15. The complainant further submits that the respondent has taken contention of force majeure events on the ground that the contractors delayed the construction work. The delay is solely attributed to the respondent and is liable to pay interest for delay period.
16. The complainant also submits that the respondent has contended that they had not agreed to provide Ghana teakwood doors and door frames and in Schedule 'D' of the agreement to sell the specification of doors clearly indicate that the respondent had promised Ghana teakwood doors and door frames. Thus the complainant contends that the respondent cannot evade from its promise and should provide as promised.
17. The complainant submits that the respondent has submitted that the delay was due to the factors beyond their control which is false and never communicated to the complainant. As regards the



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communication regarding progress of the apartment and delivery date of possession, the complainant denies having received any communication from the respondent. The complainant also submits that he has made all the payments as agreed.

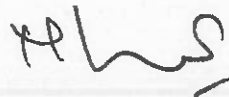
18. The complainant prays the Hon'ble Authority for the following relief:

- a) To pay Rs.16,34,334/- as interest on delay period in handing over possession;
- b) Compensation of Rs.3,00,000/- for financial duress and mental agony;
- c) Compensation of Rs.1,20,000/- towards rent paid by the complainant;
- d) Rs.25,000/- towards the cost of the instant litigation.

19. The complainant submits that the respondent has unilaterally decided and issued a credit note for an amount of Rs.12,746/- as compensation for delay without adhering to the provisions of RERA and has issued credit note.

20. In support of their defence, the respondent has submitted copies of the Sanctioned Plan, Agreement of Sale, Sale Deed, Occupancy Certificate, RERA registration & extension certificates, certificate of standard quality and report of NTH and apartment handing over manual.

21. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, Sale Deed, Purported Settlement Memo dated 6/7/2023, BBMP sanctioned plan, brochure of the project, occupancy certificate, email correspondences with the respondent, progress report for October, email regarding compensation and memo of calculation as on 14/2/2023 (calculated



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from 01/06/2018 to 13/12/2019) which was not accepted by the Hon'ble Authority as the delay period interest should have been calculated from 30/09/2018 till 15/02/2019, the date on which the sale deed was executed.

22. This case was heard on 25/8/2022, 20/10/2022, 10/1/2023, 14/2/2023, 11/4/2023, 31/5/2023, 6/7/2023, 17/8/2023 and 11/10/2023. Heard arguments of both sides.

23. **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?

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

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

REASONS

1. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the flat by June 2018 with a grace period of three months i.e. latest by 30/09/2018, the respondent has failed to abide by the terms of the agreement and not handed over the possession of the flat to the complainant till 15/02/2019. When the respondent has failed to handover possession of the flat as agreed, the complainant has approached this Hon'ble Authority for directions to the respondent for payment of interest on delay period, compensation for mental agony and costs of the proceedings of the instant complaint.

25. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid



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entire sale consideration amount to the respondent. 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.

26. During the process of the hearing, the Hon'ble Authority has perused the statement of objections filed by the respondent and written submission/rejoinder submitted by 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 Authority has not accepted the contentions of the respondent made in their statement of objections.

27. During the process of the hearing, the respondent submitted that he does not want to file memo of calculation as he contends that there is no delay in the handing over of the flat to the complainant.

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

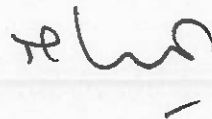
"Para No.22: If we take a conjoint reading of subsections

(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 under sections 18(2) & 18(3) of the Act;



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(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."

29. The complainant vide her memo of calculation as on 14/02/2023 has claimed an amount of Rs.9,53,154/- as delay period interest calculated from 01/06/2018 to 13/12/2019. The Authority did not accept the memo of calculation filed by the complainant, as the interest on delay period should have been calculated from 30/09/2018 till 15/02/2019, the date on which the sale deed was executed.

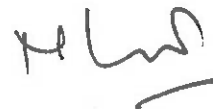
30. Despite several opportunities were given, the respondent has not filed their memo of calculation.

31. Having regard to all these aspects, this Authority concludes that the complainant is entitled for delay period interest from 30/09/2018 to 15/02/2019 the date on which the sale deed was executed. The Authority did not accept the contention of the respondent that the complainant has signed letter of settlement as regards compensation for delay.

32. Further the complainant has prayed compensation of Rs.3,00,000/- for mental agony and financial distress, which does not come under the jurisdiction of this Authority. Hence, the same is not considered.

33. 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 AS PER AGREEMENT	58,67,363	30/09/2018



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2	TOTAL DELAYED INTEREST as on 15/12/2019	2,37,496
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Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 58,67,363						
1	30-09-2018	30-10-2018	30	8.65	10.65 as on 01-09-2018	51,359
2	30-10-2018	30-11-2018	31	8.7	10.7 as on 01-10-2018	53,320
3	30-11-2018	30-12-2018	30	8.7	10.7 as on 01-11-2018	51,600
4	30-12-2018	30-01-2019	31	8.75	10.75 as on 10-12-2018	53,569
5	30-01-2019	15-02-2019	16	8.75	10.75 as on 10-01-2019	27,648
					TOTAL DELAYED INTEREST as on 15/02/2019	2,37,496
					LESS: Credit note issued by the respondent	12,746
					TOTAL	2,24,750

34. Accordingly, the point raised above is answered in the Affirmative.

35. 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

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bearing No.**CMP/200813/0006281** is hereby allowed. Respondent is directed to pay a sum of **Rs.2,24,750/- (Rupees Two Lakh Twenty Four Thousand Seven Hundred and Fifty only)** towards delay period interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 30/09/2018 till 15/02/2019, the date on which the sale deed was executed in favour of the complainant.

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.

The respondent is directed to complete the project as per specifications and rectify the defects, if any.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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