

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 16th November 2023

COMPLAINT NO: CMP/UR/220304/0009074

COMPLAINANTS...

**1. NUNE PRASAD BABU
2. VALLAMKONDU VIJAYA LAKSHMI
No. D-104, 1st Floor, Cedar Block,
BM Magnolia Park,
Bangalore-560066.
DISTRICT: Bengaluru.
STATE: KARNATAKA**

(In Person)

Vs

RESPONDENT.....

**BM Developers
BM Road,
Immadihalli Main Road,
Nagondanahalli, BENGALURU-560066.**

(Ex-parte)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "**BM Magnolia Park**" developed by M/s B M Developers, seeking for the relief of interest on delay period.
2. This project is not registered under RERA.
3. Said project is situated at BM Road, Immadihalli Main Road, Nagondanahalli, Bengaluru-560066.

Brief facts of the complaint are as under:-

4. The complainants had purchased a flat bearing No.104, in the project of respondent by entering into an agreement of sale dated 22/06/2017 for a total sale consideration of Rs. 56.00.000/-

(Rupees Fifty Six Lakhs only). At the time of entering into an agreement of sale agreement, the complainant had paid the sum of Rs.7,00,000/- (Rupees Seven Lakhs only) on the various dates to the respondent. The respondent was supposed to handover the possession of the said flat to the complainants on 30-04-2018. Though more than two years have been lapsed, the respondent has failed to complete the project as agreed and to handover the possession of the said flat to the complainants along with the occupancy certificate. Thereafter, the respondent has executed a sale deed in favour of the complainants on 26-11-2020. The respondent has agreed to hand over the said flat with all the amenities specified in Schedule "C" as per the sale agreement and he didn't do the same. The complainants are seeking for interest on delay period and refund of the amount which is already paid by the complainants towards floor tiles, TDS, Property Tax etc., to this Authority. Hence, this complaint.

5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainants have appeared before the Authority and filed memo of calculation, agreements of sale, payment receipts and copies of email conversation between both the parties etc. The respondent did not appear before this Authority and remained absent. Hence, the respondent was placed as ex-parte.
6. In support of their claim, the complainants have produced documents such as copies of agreement of construction and sale, payment receipts and memo of calculation as on 08-11-2023.
7. This matter was heard on 01-08-2023 and 06-09-2023.

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

1. Whether the complainants are 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:-** The complainants have approached this forum seeking for the relief of interest on delay period and refund of the amount paid by the complainants for Scheduled 'C'. The grounds urged are that the complainants have booked a flat bearing No.104 in the project of the respondent by entering into an agreement of sale on 22/06/2017. As per the said agreement, the respondent was supposed to handover possession of the said flat to the complainant on or before 30/04/2018. But the respondent has not handed over possession of the said flat to the complainants as on agreed.

11. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 29/06/2017. 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 April 2018.



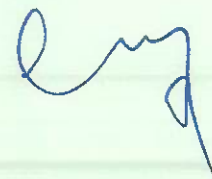
12. As per decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters vs The State Of Uttar Pradesh it is held as under

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'.

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

14. 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 complainants have paid Rs. 52,00,000/- (Rupees Fifty Two Lakhs only) to the respondent towards entire sale consideration.

15. The complainants have claimed Rs.13,72,112/- (Rupees Thirteen Lakhs Seventy Two Thousand One Hundred and Twelve only) as delay period interest vide their memo of calculation as on 08/11/2023 calculated from 30/04/2018 to 28/10/2020. Despite opportunities were given, the respondent has not filed his memo of calculation. Having regard to all these aspects, this Authority concludes that the complainants are entitled for delay period interest from 30/04/2018 to 26/11/2020.



16. With regard to claim of the complainant regarding refund of amount which they have already spent towards replacing of floor tiles, paying TDS and property tax, they have not produced a single iota of evidence before this Authority such as email communication, any further agreement or contract between the parties etc. Nothing is coming forth that the complainants have replaced the floor tiles at their own cost and have paid property tax and TDS etc. Hence, they are not entitled for the said relief.

17. The complainants have established their claim by producing cogent evidence i.e. agreement of sale dated 26/11/2020, payment receipts and memo of calculation etc.,.

18. A thorough verification of the documentary evidence placed by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for interest on delay period as submitted vide their memo of calculation as on 08/11/2023.

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	52,00,000	30-04-2018
3	TOTAL DELAYED INTEREST as on 26/11/2020	13,72,112	

S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 52,00,000						
1	30-04-2018	30-05-2018	30	8.35	10.35 as on 01-04-2018	44,235
2	30-05-2018	30-06-2018	31	8.35	10.35 as on 01-05-2018	45,710
3	30-06-2018	30-07-2018	30	8.45	10.45 as on 01-06-2018	44,663

4	30-07-2018	30-08-2018	31	8.45	10.45 as on 01-07-2018	46,151
5	30-08-2018	30-09-2018	31	8.45	10.45 as on 01-08-2018	46,151
6	30-09-2018	30-10-2018	30	8.65	10.65 as on 01-09-2018	45,517
7	30-10-2018	30-11-2018	31	8.7	10.7 as on 01-10-2018	47,255
8	30-11-2018	30-12-2018	30	8.7	10.7 as on 01-11-2018	45,731
9	30-12-2018	30-01-2019	31	8.75	10.75 as on 10-12-2018	47,476
10	30-01-2019	28-02-2019	29	8.75	10.75 as on 10-01-2019	44,413
11	28-02-2019	28-03-2019	28	8.75	10.75 as on 10-02-2019	42,882
12	28-03-2019	28-04-2019	31	8.75	10.75 as on 10-03-2019	47,476
13	28-04-2019	28-05-2019	30	8.7	10.7 as on 10-04-2019	45,731
14	28-05-2019	28-06-2019	31	8.65	10.65 as on 10-05-2019	47,035
15	28-06-2019	28-07-2019	30	8.65	10.65 as on 10-06-2019	45,517
16	28-07-2019	28-08-2019	31	8.6	10.6 as on 10-07-2019	46,814
17	28-08-2019	28-09-2019	31	8.45	10.45 as on 10-08-2019	46,151
18	28-09-2019	28-10-2019	30	8.35	10.35 as on 10-09-2019	44,235
19	28-10-2019	28-11-2019	31	8.25	10.25 as on 10-10-2019	45,268
20	28-11-2019	28-12-2019	30	8.2	10.2 as on 10-11-2019	43,594
21	28-12-2019	28-01-2020	31	8.2	10.2 as on 10-12-2019	45,047
22	28-01-2020	28-02-2020	31	8.2	10.2 as on 10-01-2020	45,047
23	28-02-2020	28-03-2020	29	8.15	10.15 as on 10-02-2020	41,934
24	28-03-2020	28-04-2020	31	8.05	10.05 as on 10-03-2020	44,385
25	28-04-2020	28-05-2020	30	7.7	9.7 as on 10-04-2020	41,457
26	28-05-2020	28-06-2020	31	7.55	9.55 as on 10-05-2020	42,176
27	28-06-2020	28-07-2020	30	7.3	9.3 as on 10-06-2020	39,747
28	28-07-2020	28-08-2020	31	7.3	9.3 as on 10-07-2020	41,072
29	28-08-2020	28-09-2020	31	7.3	9.3 as on 10-08-2020	41,072
30	28-09-2020	28-10-2020	30	7.3	9.3 as on 10-09-2020	39,747
31	28-10-2020	26-11-2020	29	7.3	9.3 as on 10-10-2020	38,423
					TOTAL DELAYED INTEREST as on 26/11/2020	13,72,112

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 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/UR/220304/0009074** is hereby allowed.

1. Respondent is directed to pay a sum of **Rs. 13,72,112/- (Rupees Thirteen Lakhs Seventy Two Thousand One Hundred and Twelve only)** towards delay period interest as on 30/04/2018 to 26-11-2020 the complainant within 60 days from the date of this order.
2. 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

19. Accordingly, the joint report above is submitted to the
Alternative

20. 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. CAR/UR/230304/0009074 is hereby

NOT AN OFFICIAL COPY


IG R REDDY, IRR
Member, K-REDA