

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 4TH DECEMBER 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/221020/0010122

COMPLAINANTS.....

**SUDHIR S &
ARCHANA N
FLAT NO.405, SHRAVANTHI RESIDENCY
4 A MAIN, NS PALYA
BANGALORE-560076.**

(IN PERSON)

Vs

RESPONDENT.....

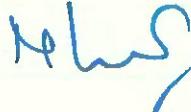
**SHRIPROP PROJECTS PVT LTD
40/43, 8TH MAIN, 4TH CROSS
SADASHIV NAGAR
BANGALORE-560080.**

**(By Mr.Joseph Anthony, Advocate
& others, JSM Law Partners)**

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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 "**SHRIRAM SOUTHERN CREST**" developed by **SHRIPROP PROJECTS PVT LTD** on Sy.Nos.39, 40, 41 & 42/3A, Municipal No.243/254/41, 1 to 9/83/93 to 101 of Jaraganahalli Village, Uttarahalli Hobli, 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/1250/310/PR/171014/000364 valid till 30/06/2021.



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3. Brief facts of the complaint are as under:-

The complainants have purchased a flat bearing No.B.13.01, 13th Floor, Block/Tower B in the project of the respondent and entered into an agreement of sale on 27/12/2017. The complainants have paid an amount of Rs.1,19,86,977/- (Rupees One Crore Nineteen Lakh Eight Six Thousand Nine Hundred and Seventy Seven only) to the respondent on various dates. The respondent was supposed to hand over the possession of the flat to the complainants by December 2020 with a grace period of six months i.e. by June 2021, but the respondent handed over the possession of the flat to the complainants on 26/09/2022. The complainants submit that the respondent has obtained Partial Occupancy Certificate from the competent authority dated 26/09/2022 and that the sale deed was executed on 28/09/2022. The complainants submit that they have complied with the terms of the agreement and have claimed interest for delay period. The respondent has not responded to their emails. When the complainants have contacted the CRM Team of the respondent's company it was told that no compensation would be paid for the delay as they have got an extension from RERA till March 2023. The respondent has failed to complete the project and deliver the possession of the flat on time as agreed. Thus the complainants have approached this Hon'ble Authority and pray for direction to the respondent to pay interest for the delay period. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its

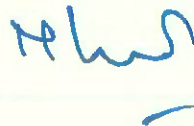
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representative/counsel and has filed statement of objections as under:

5. The Respondent contends that the complainants are not entitled for seeking relief sought in light of the Agreement of Sale dated 27/12/2017. The respondent has obtained Partial Occupancy Certificate on 26/09/2022 and thereafter have executed Sale Deed in favour of the complainants on 28/09/2022. The Plan sanction for the project was issued by BBMP dated 21/12/2016.
6. The respondent submits 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, and the respondent cannot be held liable to compensate the complainant under section 18(1) of RERA Act.
7. In addition COVID-19 pandemic and the lockdown have also contributed significantly to the obstacles faced by the respondent. The respondent contends that there is no willful delay or default by the respondent in handing over the possession of the flat to the complainants and continues to remain committed to delivering the possession to its customers. The respondent denies the allegations of the complainants and submits that the delay has been caused as a result of factors beyond the control of the respondent.
8. Though the project has been completed and the sale deed has been executed in favour of the complainants on 28/09/2022, the complainants have approached the Hon'ble Authority for interest on delay period with an intention to reap fruits of the instant litigation.



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9. The respondent prays the Hon'ble Authority not to consider the relief sought by the complainants and to dismiss the complaint.
10. The complainants in their rejoinder have submitted that the respondent is aware that housing loan was availed from SBI and most of the disbursement was done directly to the respondent and raise objection to the respondent's contention that the instant complaint has been filed for reaping fruits. The commencement certificate was obtained from BBMP dated 21/12/2016 and when the complainants booked the flat, the construction work had already started and the respondent was obligated to complete and handover the flat by June 2021. The respondent has obtained occupancy certificate on 26/9/2022 and executed the sale deed on 28/9/2022, as such, they are liable to pay interest on delay period.
11. The complainants submit that they have purchased flat to make their dream of owning their own house and not with the motive of making any profit out of it and pray the Authority to accept their claim for interest on delay period.
12. The complainants have contended that the respondent has taken more than 5 years to complete the project and obtain occupancy certificate whereas the respondent was supposed to complete the project much before Covid pandemic. The complainants submit that the respondent
13. In support of their defence, the respondent has submitted copies of the Partial Occupancy Certificate dtd 26/9/2022, Agreement for Sale dated 27/12/2017, Sale Deed dated 28/09/2022, RERA registration



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and extension certificates and memo of calculation as on 05/08/2023.

14. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Statement of Account dated 22/9/2022 issued by the respondent company regarding payments received from the complainants and memo of calculation as on 17/2/2023 (calculated from 30/6/2021 till 28/9/2022) the date on which the sale deed was executed.

15. This case was heard on 21/2/2023, 5/4/2023, 14/6/2023, 20/7/2023, 10/8/2023 and 29/11/2023. Heard arguments of both sides.

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

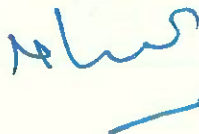
1. Whether the complainants are entitled for the relief claimed?
2. What order?

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

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

REASONS

18. **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 apartment within December 2020 with a grace period of six months i.e. by June 2021, the respondent has failed to abide by the terms of the agreement and has failed to handover possession of the flat as agreed. On receipt of the occupancy certificate from the competent authority, the respondent has executed the Sale Deed on



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28/09/2022 in favour of the complainants, certainly entitles the complainants herein for interest on delay period.

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

20. As per decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, Newtech Promoters Vs the State of UP and other, it is held as under:

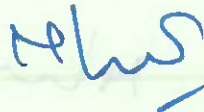
"Para No.22:- If we take a conjoint reading of subsections (1), (2) and (3) of section 18 of the Act, the different contingencies spelt out therein -

(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



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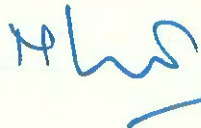
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every month's delay in handing over possession at such rates as may be prescribed."

21. The complainants vide their memo of calculation as on 17/02/2023 have claimed an amount of Rs.14,08,839/- as interest on delay from 30/06/2021 to 28/09/2022 the date on which the sale deed was executed by the respondent.
22. The respondent in their memo of calculation as on 05/08/2023 have claimed that the interest on delay period payable to the complainants amounts to Rs.12,49,708/- calculated from 30/6/2021 till 26/09/2022. The authority noticed that there is a difference in the principal amount paid and received by both the parties.
23. The complainants have submitted the statement of account dated 22/9/2022 issued by the respondent company to substantiate their claim towards principal amount.
24. Having regard to all these aspects, this Authority concludes that the complainants are entitled for delay period interest from 30/06/2021 to 28/09/2022 the date on which the sale deed was executed by the respondent.
25. 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	1,19,86,977	30/06/2021
3	TOTAL DELAYED INTEREST as on 28/09/2022	14,08,839	



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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 1,19,86,977						
1	30/06/2021	30/07/2021	30	7.3	9.3 as on 15-06-2021	91,626
2	30/07/2021	30/08/2021	31	7.3	9.3 as on 15-07-2021	94,680
3	30/08/2021	30/09/2021	31	7.3	9.3 as on 15-08-2021	94,680
4	30/09/2021	30/10/2021	30	7.3	9.3 as on 15-09-2021	91,626
5	30/10/2021	30/11/2021	31	7.3	9.3 as on 15-10-2021	94,680
6	30/11/2021	30/12/2021	30	7.3	9.3 as on 15-11-2021	91,626
7	30/12/2021	30/01/2022	31	7.3	9.3 as on 15-12-2021	94,680
8	30/01/2022	28/02/2022	29	7.3	9.3 as on 15-01-2022	88,572
9	28/02/2022	28/03/2022	28	7.3	9.3 as on 15-02-2022	85,518
10	28/03/2022	28/04/2022	31	7.3	9.3 as on 15-03-2022	94,680
11	28/04/2022	28/05/2022	30	7.4	9.4 as on 15-04-2022	92,611
12	28/05/2022	28/06/2022	31	7.5	9.5 as on 15-05-2022	96,716
13	28/06/2022	28/07/2022	30	7.7	9.7 as on 15-06-2022	95,567
14	28/07/2022	28/08/2022	31	7.8	9.8 as on 15-07-2022	99,771
15	28/08/2022	28/09/2022	31	8	10.0 as on 15-08-2022	1,01,806
					TOTAL DELAYED INTEREST as on 28/09/2022	14,08,839

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

27. **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 bearing No.**CMP/221020/0010122** is hereby allowed.

Respondent is directed to pay a sum of **Rs.14,08,839/- (Rupees Fourteen Lakh Eight Thousand Eight Hundred and Thirty Nine only)** towards delay period interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 30/06/2021 till 28/09/2022 the date on which the sale deed was executed by the respondent.

The complainants are 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.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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