

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-4

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

Dated 8th DAY OF DECEMBER 2023

COMPLAINT NO: CMP/221010/0010078

COMPLAINANTS:

1. RAMACHANDRAN VENKATACHALAM
2. SHANTHA VENKATACHALAM
E-7, ADROIT ALTIUS,335-336
CHINNASAMY ROAD
NEW SIDHAPUDUR
COIMBATORE SOUTH
COIMBATORE
TAMIL NADU-641044

(IN PERSON)

V/s

RESPONDENT....

M/S PRISHA PROPERTIES
INDIA PRIVATE LIMITED
NO:12, MPD TOWER,2nd FLOOR
KORAMANGALA 5TH BLOCK
INDUSTRIAL MAIN ROAD
BENGALURU URBAN-560 095

(ABSENT)

PROJECT NAME

HANGING GARDENS

REGISTRATION NO.

PRM/KA/RERA/1251/309/PR/
180227/001973

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project 'HANGING GARDENS' developed by "M/s PRISHA PROPERTIES INDIA PRIVATE LIMITED" for the relief of direction to the respondent for speedy completion of the project and to pay interest on delay period.

6/13/8

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2. This project is situated at Sy.No: 77/2, Nagavara Village, Kasaba Hobli, Bengaluru North, Bengaluru Urban.

3. The gist of the complainant is that the complainants have booked a flat bearing no. A-402, situated on 4th floor, Tower-A in the project "HANGING GARDENS" and entered into an agreement of sale dated 3/9/2015 with the respondent for a total sale consideration of Rs.1,24,55,000/- (Rs. One crore twenty four lakhs fifty five thousand only) inclusive of taxes and other charges. The complainants have paid an amount of Rs.5,00,000/- on 27/6/2015, Rs.75,95,000/- on 26/8/2015, Rs.23,00,000/- on 26/8/2015, Rs.1,25,000/- on 4/9/2015, Rs.25,00,000/- on 15/1/2016 altogether Rs.1,30,00,000/- (Rs. One crore thirty lakhs only) inclusive of TDS to the respondent-developer which has been duly acknowledged by him. The respondent was required to hand over the possession of the said flat to the complainants within 31/3/2016 with a grace period of 6 months i.e. by 30/9/2016. It is contended that the construction works was stopped during June 2016 and the builder was making false promises by giving new dates for commencement of work. Being retired person, he has invested all his life time savings into this project and now staying in a rented house. Therefore, the complainant has approached this forum for the relief of direction to the respondent to for speedy completion of the project and to pay interest on delay period. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent has been continuously remained absent during the hearings held on 23/4/2023, 21/2/2023, 17/3/2023, 20/4/2023, 5/6/2023, 7/8/2023 and on 1/9/2023. Hence, in spite of providing



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sufficient opportunity, it is seen that the respondent had failed to appear before the Authority to put forth his grievances and has not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf but remained absent on all the aforesaid dates of hearings.

5. The complainants in support of their claim, have produced documents such as (1) copy of agreement of sale dated 3/9/2015 (2) Payment receipts (3) memo of calculation.

6. The respondent in support of his claim has not produced any documents.

7. Heard arguments of the complainant.

8. On the above averments, the following points would arise for the consideration of the Authority.

1. Whether the complainants are entitled for the relief claimed?

2. What order?

09. **Findings on the above points are as under:**

10. 1. In the Affirmative.

2. As per final order for the following:

FINDINGS

11. **Findings on point no.1:** The complainants have approached this forum seeking for the relief of completion of the project, to pay interest on delay period and possession of their flat bearing A-402, in the project "HANGING GARDENS" of the respondent /developer. The grounds



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urged are that the respondent has neither executed sale deed in favour of the complainants nor handed over the possession of their flat within the stipulated timeline as agreed. The respondent was required to hand over the possession of the said flat to the complainants within 31/3/2016 with a grace period of 6 months i.e. by 30/9/2016. It is contended that the construction work was stopped during June 2016 and the builder was making false promises by giving new dates for commencement of work. No clarity on when it is going to be completed. Promoters not responding. Staff head have no clue what next.

12. On going through the materials placed on record, it is apparent that the complainants have entered into agreement for sale on 3/9/2015 and paid the entire sale consideration of Rs.1,30,00,000/- (Rs. One crore thirty lakhs only) including TDS to the respondent. The respondent was supposed to complete the said project within 31/3/2016 with a grace period of 6 months i.e. by 30/9/2016 as per agreement of sale dated 3/9/2015. But the respondent has not completed the work as agreed and executed the sale deed of the said flat in favour of the complainants on 30/9/2016 and handed over possession on the same day. From this it is apparent that the respondent has not completed the construction work as agreed and there is a delay of more than 6 years in handing over possession of their unit no.A-402 to the complainants. It is obvious that the complainants have paid the entire sale consideration. Having accepted the said amount and failure to keep up promise to hand over possession of the flat and to register the sale deed, certainly entitles the complainants herein for the relief of interest on delayed period.

Ab

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13. As per decision of the Hon'ble Supreme Court of India in appeal No.6750-57/2021, M/s Netwtech Promoters Vs The State of Uttar Pradesh, it is held as under:

PARA-22. "If we take a conjoint reading of sub sections(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"

The said principle is aptly applicable to the present case on hand.

14. As per Section 18 of RERA Act, the respondent is liable to pay interest for delay period. Since the claim of the complainant is supported with cogent materials, the delay in handing over possession being apparent, this Authority see no legal impediment in allowing the complaint as prayed. The complainants have paid an amount of Rs.1,30,00,000/- (Rs. One crore thirty lakhs only) to the respondent and have furnished memo of calculation dated 28/11/2023 claiming an amount of Rs.92,69,013/- (Rs. Ninety two lakhs sixty nine thousand thirteen only) from 30/9/2016 to 28/11/2023. But the respondent has not submitted any memo of calculation on its behalf in spite of several opportunities given to him.

15. Therefore, it is incumbent upon the respondent to pay the interest on delayed period to the complainants which is determined as below:

Sl.No.	Period	Amount	Date
1.	Total payment till possession as per agreement	1,30,00,000	30/9/2016
2.	Total delayed interest as on 28/11/2023	92,69,013	



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16. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for the interest on delay period.

17. Sum and substance of the case is as under:

Date of agreement of sale/MOU	3/9/2015
Date of construction agreement	Nil
Sale consideration	Rs. 1,24,55,000/- (Rs. One crore twenty four lakhs fifty five thousand only)
Amount paid	Rs.1,30,00,000 (Rs. One crore thrity lakhs only) including TDS
Promised date of possession as per agreement of sale	30/3/2016 + 6 months grace period i.e. by 30/9/2016
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Interest on delay period and possession.

18. Though the notice was served on the respondent, he has neither appeared before this Authority during the hearings nor contested the matter by filing statement of objections and furnishing documents in support of its defence. Therefore, the claim of the complainant remained unchallenged. The complainant has established his claim by producing cogent documentary evidence.

19. It is pertinent to note that the "**HANGING GARDENS NAGWARA FLAT OWNERS' CO-OPERATIVE SOCIETY LIMITED**" (Erstwhile Association: **NAGWARA HANDING GARDENS BUYERS' WELFARE ASSOCIATION**) has filed a complaint in CMP/201224/0007319 against "M/s **ORCHID ELITE DEVELOPERS PRIVATE LIMITED**" (Erstwhile company: **PRISHA PROPERTIES INDIA PRIVATE LIMITED**) for the relief of handing over of the project "**HANGING GARDENS**" to complainants' association of allottees as per section 8 of the RERA Act for completion. During the proceedings of the said complaint, this Authority has passed an interim order dated 3/8/2023

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permitting the Association of Allottees under section 8 of the RERA Act to take over the project and to achieve completion of the project within a period of 18 months with a grace period of 6 months, commencing from the date of take over of the project and the said order shall effect immediately after expiry of the period of appeal of 60 days. In the said order, it is also directed by the Authority that any liability on the sold units including the title transfer of the project shall be the responsibility of the respondent/promoter i.e. M/s PRISHA PROPERTIES INDIA PRIVATE LIMITED. Therefore, though the said project is taken over by the Association of Allottees to complete the project, erstwhile company M/s M/s PRISHA PROPERTIES INDIA PRIVATE LIMITED who is the respondent herein is liable to pay the interest on delay period and to execute sale deed in favour of the complainants after completion of the project by the Association of Allottees. The Association of Allottees of "HANGING GARDENS" shall handover possession of flat no. A-302 in favour of the complainants.

In addition to this, the complainants have paid entire sale consideration to the respondent herein. Therefore the respondent herein i.e. M/S PRISHA PRISHA PROPERTIES INDIA PRIVATE LIMITED is liable to pay interest on delay period.

20. Considering all these aspects, the point raised above is answered in the Affirmative.

21. **Findings on point no.2:** In view of the above findings, I conclude that the complaint deserves to be allowed. Hence, I proceed to pass the following order:

ORDER

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 No: **CMP/221010/0010078** is hereby allowed as under:

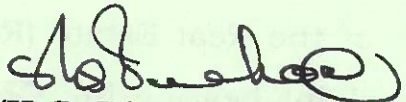


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1. The respondent i.e. M/s PRISHA PROPERTIES INDIA PRIVATE LIMITED is hereby directed to pay a sum of Rs.92,69,013/- (Rs. Ninety two lakhs sixty nine thousand one hundred thirteen only) towards interest on delay period to the complainants within 60 days from the date of this order calculated at the rate of 9% from 30/9/2016 to 30/4/2017. Further, at the rate of SBI MCLR + 2 % from 1/5/2017 till 23/11/2023.
2. The interest due from 24/11/2023 shall be calculated likewise and paid to the complainants till the date of handing over possession.
3. The respondent/builder M/s PRISHA PROPERTIES INDIA PRIVATE LIMITED is directed to execute sale deed in favour of the complainants in respect of flat no. A-402, in the project "HANGING GARDENS" after completion of the project by Association of Allottees within 60 days from the date of this order.
4. The Association of Allottees i.e. HANGING GARDENS NAGWARA FLAT OWNERS COOPERATIVE SOCIETY LIMITED is hereby directed to handover flat no. A-402 in the project "HANGING GARDENS" after completion of the project within 60 days from the date of this order.
5. The complainants are at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
K-RERA