

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 14TH DECEMBER 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210129/0007518

COMPLAINANTS.....

**CHETANA PARAMESHWARA &
PARAMESHWARA VAIJINATHAPPA
A-803, CENTURY INDUS APARTMENTS
PATTANAGERE VILLAGE
KENGERI HOBLI, R.R. NAGAR
BANGALORE-560098.**

**(BY MS. SNEHA NAGARAJ,
MR.HARIKRISHNA PRAMOD,
MR.CHETAN CHANDRASHEKAR
ADVOCATES, FRONTIER LEGAL)**

Vs

RESPONDENT.....

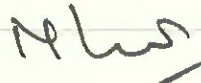
**M/S VINAYAKA BUILDERS & DEVELOPERS
3/1, 4TH FLOOR, JP TECHNO PARK
MILLERS ROAD, VASANT NAGAR
BANGALORE-560052.**

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

*** * * * ***

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



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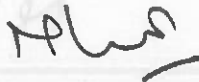
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31/12/2018. The Authority has further extended its registration for a further period of 12 months i.e. till 31/12/2019.

Brief facts of the complaint are as under:-

3. The complainants have purchased a flat bearing No.A-803, A Block, 8th Floor in the project of respondent for a total sale consideration of Rs.51,88,165/- (Rupees Fifty One Lakh Eighty Eight Thousand One Hundred and Sixty Five only) and entered into an agreement of sale on 04/06/2015 and have paid full amount to the respondent on various dates to the respondent. The complainants submit that the project was registered with RERA subsequently and the construction was delayed. The respondent was supposed to hand over the possession of the flat on or before December 2017 but the possession of the flat was handed over to the complainants and sale deed was executed on 04/04/2019 without permanent power supply. The respondent has failed to complete the project and deliver the possession of the flat on time as agreed. The respondent has obtained occupancy certificate from the competent authority on 13/12/2019 and has not adhered to the project specifications and has refused to pay interest on delay period as per RERA. The complainants submit that they have suffered financial stress and mental agony due to the delay in handing over possession of the flat. The complainants submit that the respondent instead of calculating interest on delay period as per RERA, is insisting paying compensation at Rs.2/- per sq.ft for delay.
4. The respondent did not even inform the complainants about the delay in completion of the project. On follow-up, the respondent assured to complete the construction and handover possession by June 2018 which did not happen, fixed new deadline as October 2018, which was



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further postponed to January 2019 and refused to provide proper timeline for completion of construction work.

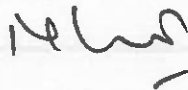
5. The complainants went ahead with the registration of the sale deed dated 4/4/2019 fearing they may never get possession since the respondent had denied payment of any compensation for delay. Even at this point of time, various works remained incomplete viz., lifts, water connection, temporary power connections, STP, WTP, Basketball court, parking slots etc. The permanent power connection was given in December 2019. The promoter had promised Ghana teakwood door frames, but provided inferior quality door frames and doors.
6. The respondent informed them either to accept the compensation offered or to withdraw from the project. The complainants had invested their life savings for the flat accepted the paltry compensation offered by the respondent which was not as per the provisions of RERA. Thus, the complainants have approached this Hon'ble Authority and prays for direction to the respondent to pay delay period interest according to the RERA; compensation of Rs.4,00,000/- for non-adherence to promised project specifications and inferior quality of 6 doors & door frames; Rs.3,00,000/- as compensation for financial duress and mental agony and rectify all the defects in the project and to complete the project as per specifications in the brochure. Hence, this complaint.
7. 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:

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8. The respondent denies the entire allegations made against them by the complainants are 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 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.
9. 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 complainants after fully satisfying themselves voluntarily agreed to purchase the flat and entered into an agreement of sale on 4/6/2015 for a total sale consideration of Rs.51,88,165/- subject to the terms and conditions in the said agreement.
10. The respondent contends that when the validity of the registration was in force, the complainants were 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 complainants.
11. As regards non-adherence to promised project specification and installation of inferior quality doors/door frames, the respondent



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contends that the doors and door frames installed is of the standard quality as certified by various authorities and as such, the respondent has complied with all the specifications and denies the allegations made by the complainants. To substantiate their claim, the respondent has also produced relevant certificates/documents.

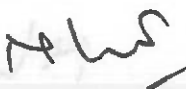
12. The respondent submits that the complainants before taking possession had visited and inspected the flat, signed all check lists and flat handover certificate and found it to be satisfactory, whereas the complainants are now making allegations against the respondent to tarnish the image of the respondent and to reap fruits from the instant complaint.
13. The respondent submits that the construction work was delayed due to the contractor's issue for which the Hon'ble Authority has extended the validity of RERA registration. The respondent submits that they have obtained all necessary approvals from BWSSB, KSPCB, BSNL etc.
14. The respondent submits that the complainants have already settled the compensation amount of Rs.20,994/- as agreed in the agreement of sale and that the respondent has issued credit note in favour of them. The complainants have also given a letter dated 02/04/2019 in confirmation of full and final settlement.
15. The respondent submits that the complainants are not entitled to claim any interest from respondent as the possession of the flat was handedover within the stipulated time as agreed in the agreement for sale and that the occupancy certificate was obtained on 13/12/2019 from the competent authority within the extension period of registration by RERA i.e. 31/12/2019.



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16. The respondent contends that the complainants are not entitled for seeking relief sought in light of the Agreement of Sale dated 04/06/2015 and submits that there was no delay in handing over possession of the flat to the complainant, as the sale deed was executed on 04/04/2019 within the stipulated time. The respondent prays the Hon'ble Authority to dismiss the complaint on the above facts in the interest of justice and equity.
17. The complainants in their rejoinder to the statement of objections filed by the respondent have submitted that the respondent has stated that the flat was handed over on 04/04/2019 instead of agreed date on or before December 2017 and has refused to pay any interest on delay period. The complainants submit that Section 18 of RERA Act does not bar the respondent from paying compensation even if the extension is granted by RERA. The complainants submit that the respondent without obtaining the consent nor informing the complainants have approached RERA for seeking extension and thus unilaterally extended the period of possession.
18. 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.
19. 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 complainants contend that the respondent cannot evade from its promise and should provide as promised or pay compensation of Rs.4,00,000/- towards the defect.



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20. The respondent has not provided several amenities, not rectified the defects in the common areas. The complainant prays the Hon'ble Authority to direct the respondent to undertake necessary repairs/rectifications of the identified defects in the apartment complex.
21. The complainants prays the Hon'ble Authority for compensation of Rs.3,00,000/- towards financial damages and mental agony suffered by them.
22. 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, settlement letter dated 2/4/2019 and apartment handing over manual.
23. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Sale Deed, BBMP sanctioned plan, brochure of the project, occupancy certificate, email correspondences with the respondent, progress report for October and memo of calculation as on 06/08/2022 (calculated from 01/12/2017 till 06/08/2022) which was not accepted by the Hon'ble Authority as the delay period interest should have been calculated from 31/12/2017 till 04/04/2019, the date on which the sale deed was executed.
24. This case was heard on 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.
25. **On the above averments, the following points would arise for my consideration:-**
1. Whether the complainants are entitled for the relief claimed?



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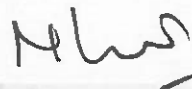
2. What order?

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

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

REASONS

27. **My answer to Point No.1:-** From the materials placed on record, it is apparent that the respondent was supposed to handover the flat to the complainants by December 2017. The respondent has handed over the possession of the flat to the complainants and executed sale deed on 4/4/2019.
28. From the averments of the complaint and the copies of agreement between the parties the flat was supposed to be handed over by December 2017 but the sale deed was executed in favour of the complainants on 04/04/2019, certainly entitles the complainants herein for delay period interest.
29. During the process of the hearing, the Hon'ble Authority has perused the statement of objections filed by the respondent. 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.
30. 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 every month's delay in handing over possession at such rates as may be prescribed.”

31. The complainants vide their memo of calculation as on 06/08/2022 have claimed an amount of Rs.24,08,867/- as delay period interest calculated from 01/12/2017 to 06/08/2022. The Authority did not accept the memo of calculation filed by the complainants, as the calculation should have been made from 31/12/2017 to 04/04/2019, the date on which the sale deed was executed.

32. Having regard to all these aspects, this Authority concludes that the complainants are entitled for delay period interest from 31/12/2017 till 04/04/2019.

33. 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.

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34. 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 | 51,88,165 | 31/12/2017 |
| 3 | TOTAL DELAYED INTEREST as on 04/04/2019 | 6,83,302 | |

| INTEREST CALCULATION | | | | | | |
|--|------------|------------|-------------|-----------|------------------------|----------|
| S.NO | FROM DATE | TO DATE | NO. OF DAYS | MCLR RATE | INTEREST RATE | INTEREST |
| INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 51,88,165 | | | | | | |
| 1 | 31-12-2017 | 31-01-2018 | 31 | 8.1 | 10.1 as on 01-12-2017 | 44,504 |
| 2 | 31-01-2018 | 28-02-2018 | 28 | 8.1 | 10.1 as on 01-01-2018 | 40,197 |
| 3 | 28-02-2018 | 28-03-2018 | 28 | 8.1 | 10.1 as on 01-02-2018 | 40,197 |
| 4 | 28-03-2018 | 28-04-2018 | 31 | 8.35 | 10.35 as on 01-03-2018 | 45,606 |
| 5 | 28-04-2018 | 28-05-2018 | 30 | 8.35 | 10.35 as on 01-04-2018 | 44,134 |
| 6 | 28-05-2018 | 28-06-2018 | 31 | 8.35 | 10.35 as on 01-05-2018 | 45,606 |
| 7 | 28-06-2018 | 28-07-2018 | 30 | 8.45 | 10.45 as on 01-06-2018 | 44,561 |
| 8 | 28-07-2018 | 28-08-2018 | 31 | 8.45 | 10.45 as on 01-07-2018 | 46,046 |
| 9 | 28-08-2018 | 28-09-2018 | 31 | 8.45 | 10.45 as on 01-08-2018 | 46,046 |
| 10 | 28-09-2018 | 28-10-2018 | 30 | 8.65 | 10.65 as on 01-09-2018 | 45,414 |
| 11 | 28-10-2018 | 28-11-2018 | 31 | 8.7 | 10.7 as on 01-10-2018 | 47,148 |
| 12 | 28-11-2018 | 28-12-2018 | 30 | 8.7 | 10.7 as on 01-11-2018 | 45,627 |

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| | | | | | | |
|----|------------|------------|----|------|--|----------|
| 13 | 28-12-2018 | 28-01-2019 | 31 | 8.75 | 10.75 as on 10-12-2018 | 47,368 |
| 14 | 28-01-2019 | 28-02-2019 | 31 | 8.75 | 10.75 as on 10-01-2019 | 47,368 |
| 15 | 28-02-2019 | 28-03-2019 | 28 | 8.75 | 10.75 as on 10-02-2019 | 42,784 |
| 16 | 28-03-2019 | 04-04-2019 | 7 | 8.75 | 10.75 as on 10-03-2019 | 10,696 |
| | | | | | TOTAL DELAYED INTEREST as on 04/04/2019 | 6,83,302 |
| | | | | | Less: Credit note adjusted by the respondent | 20,994 |
| | | | | | TOTAL TO BE PAID | 6,62,308 |

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

36. **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/210129/0007518** is hereby allowed.

Respondent is directed to pay a sum of **Rs.6,62,308/- (Rupees Six Lakh Sixty Two Thousand Three Hundred and Eight only)** towards delay period interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2%

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from 31/12/2017 till 04/04/2019, the date on which the sale deed was executed in favour of the complainants.

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.

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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