

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 BENCH-6**

**Dated 28<sup>th</sup> DECEMBER 2023**

**PRESIDED BY HON'BLE MEMBER MRS.NEELMANI N RAJU**

**COMPLAINT No: 00218/2023**

**COMPLAINANT....**

**ABHAYA KUMAR NANDA  
HOUSE NO.30  
SHIVANI SUNSHINE  
CHUDASANDRA  
SARJAPUR HOBLI  
ANEKAL TALUK  
BANGALORE-560099.**

**(BY MR. SHRIKAR ALANGAR  
JAYAGOVIND, ADVOCATE)**

**V/S**

**RESPONDENT.....**

**1. SHIVANI DEVELOPERS  
2. MUTHURAYAPPA  
3. NARAYANAMMA  
4. PUSHPA  
5. KODANDA  
6. GANGADHARA  
7. SHIVAPPA  
NO.102, KALANJALI APARTMENTS  
G.M. PALYA  
BANGALORE-560075.**

**(EX-PARTE)**

**J U D G E M E N T**

1. This complaint is filed under section 31 of the RERA Act, against the project '**SHIVANI'S SUNSHINE**' developed by **M/S SHIVANI DEVELOPERS REPRESENTED BY KOTESWARA RAO PODAPATI, MANAGING DIRECTOR** situated at Shivani Sunshine, Chudasandra, Sarjapur Hobli,



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Anekal Taluk, Bangalore-560099 for the relief of interest on delay period and execution of sale deed.

2. This project has not been registered under RERA.

### **3. Brief facts of the complaint:-**

The complainant had booked a Row House bearing No.30 in the project of the respondent by entering into an agreement of sale and construction agreement on 14/03/2019 for a total sale consideration of Rs.88,00,000/- (Rupees Eighty Eight Lakh only). The complainant has paid an amount of Rs.80,48,506/- (Rupees Eighty Lakh Forty Eight Thousand Five Hundred and Six only) to the respondent on various dates. According to the agreement, the respondent was supposed to handover the Row House to the complainant by June 2019 with a grace period of two months i.e. latest by August 2019 and also that the entire project with all amenities will be completed by October 2019 with a grace period of three months i.e. by January 2020.

4. The complainant submits that even after two years of the deadline, the respondent did not complete the row house and handed over the property for occupancy. As such, the complainant was constrained to incur expenses of over Rs.10,48,506/- (Rupees Ten Lakh Forty Eight Thousand Five Hundred and Six only) to complete the interiors of the house including flooring, laying of tiles and bathroom fittings and complete the finishing of the row house. The complainant has occupied the house on 7/2/2021 without registration of the sale deed.

5. The complainant submits that he has put his hard-earned savings with a view to have a house of his own in Bangalore, the dream which has turned into a nightmare due to the respondent's careless and dishonest attitude. The respondent having received the payments has still not executed the sale deed and transferred ownership of the property in favour of the complainant, due to which the complainant has suffered mental agony. Thus, the complainant has approached this Hon'ble Authority and prays for

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directions to the respondent to pay interest for the delay period, execution of sale deed, reimbursement of expenditure of Rs.10,48,506/- incurred by them, obtain occupancy certificate, transfer of revenue documents like Khata, BWSSB, BESCO, completion certificate. Hence, this complaint.

6. After registration of the complaint, several notices and even summons were sent to the respondents at their given address for appearance before the Authority. The respondents failed to appear before the Hon'ble Authority and never attended the hearings. Finally paper publication was issued in local Kannada daily newspaper "**KANNADA PRABHA**" and "**THE NEW INDIAN EXPRESS**" English daily newspaper on 22/08/2023 for the appearance of the respondents. In spite of paper publication, the respondents failed to appear before the Hon'ble Authority and hence, have been placed as **EX-PARTE**.

7. The complainant has submitted payment receipts, newspaper publication published in "Kannada Prabha" Kannada daily dated 22/08/2023, "The New Indian Express" English daily dated 22/8/2023 and memo of calculation for interest on delay period as on 18/12/2023 claiming the interest for the period from 30/9/2019 to 7/2/2021 the date on which the row house was occupied by the complainant.

8. This matter was heard on 15/6/2023, 25/7/2023, 27/9/2023 and 19/12/2023. The case was finally posted for orders on 19/12/2023.

9. On the above averments, the following points would arise for our consideration:

1. Whether the complainant is entitled to the relief claimed?
2. What order?

10. My findings on the above points are as under:

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

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## FINDINGS

### 11. My findings on Point No.1:

From the materials placed on record, it is apparent that in spite of entering into an agreement for sale and construction agreement to hand over possession of the row house and accepting substantial sale consideration, the builder has not completed the project as per agreement and has delayed the project and has not handed over the row house to the complainant. In fact, the complainant has occupied the house on 7/2/2021 after incurring an expenditure of Rs.10,48,506/-. Hence, the builder has failed to abide by the terms of agreement for sale and construction.

12. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid substantial sale consideration amount to the respondent and also has incurred additional expenditure to make the house habitable. Having accepted the said amount and failure to keep up promise to hand over possession of the row house, execute sale deed, transfer revenue documents in favour of the complainant, certainly entitles the complainant herein for interest on delay period.

13. The Hon'ble Authority has perused the written submission submitted by the complainant. The complainant has also produced the receipts for the expenditure of Rs.10,48,506/-incurred towards flooring, tiling, bathroom fittings etc. 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 respondents have not complied with the terms of the said agreement of sale.

14. The respondents have not at all disputed the claim of the complainant in any manner. Therefore, the claim of the complainant remained



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unchallenged and it is corroborated with the cogent evidence. These being the facts, in the absence of any resistance by the respondent, there is no option left to this Authority except to accept the claim of the complainant.

15. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s 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; © 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."*

16. As per section 18(1) of RERA Act, in case the allottee wishes to withdraw from the project, the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

17. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

18. The complainant has submitted his memo of calculation as on 18/12/2023 claiming interest for delay period for Rs.9,25,007/- (Rupees Nine Lakh Twenty Five Thousand and Seven only). Despite several opportunities were given the respondents have not filed their memo of

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calculation. This conduct of the respondent clearly goes to show that he has taken the complainant for a ride and deprived him of owning his own flat.

19. Having regarding to the above aspects, the Authority upholds the refund amount claimed by the complainant vide his memo of calculation as on 02/03/2023.

20. The complainant has requested compensation for mental agony, which does not come under the jurisdiction of this Authority. Hence, the same is not considered.

21. Therefore, it is incumbent upon the respondents to refund the amount with interest which is determined as under:

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION AS PER AGREEMENT	70,00,000	30-09-2019
2	SUBSEQUENT PAYMENT 1	10,48,506	07-02-2021
3	TOTAL PRINCIPLE AMOUNT	80,48,506	
4	TOTAL DELAYED INTEREST as on 07/02/2021	9,25,007	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 70,00,000						
1	30-09-2019	30-10-2019	30	8.35	10.35 as on 10-09-2019	59,547
2	30-10-2019	30-11-2019	31	8.25	10.25 as on 10-10-2019	60,938
3	30-11-2019	30-12-2019	30	8.2	10.2 as on 10-11-2019	58,684
4	30-12-2019	30-01-2020	31	8.2	10.2 as on 10-12-2019	60,641
5	30-01-2020	29-02-2020	30	8.2	10.2 as on 10-01-2020	58,684

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6	29-02-2020	29-03-2020	29	8.15	10.15 as on 10-02-2020	56,450
7	29-03-2020	29-04-2020	31	8.05	10.05 as on 10-03-2020	59,749
8	29-04-2020	29-05-2020	30	7.7	9.7 as on 10-04-2020	55,808
9	29-05-2020	29-06-2020	31	7.55	9.55 as on 10-05-2020	56,776
10	29-06-2020	29-07-2020	30	7.3	9.3 as on 10-06-2020	53,506
11	29-07-2020	29-08-2020	31	7.3	9.3 as on 10-07-2020	55,290
12	29-08-2020	29-09-2020	31	7.3	9.3 as on 10-08-2020	55,290
13	29-09-2020	29-10-2020	30	7.3	9.3 as on 10-09-2020	53,506
14	29-10-2020	29-11-2020	31	7.3	9.3 as on 10-10-2020	55,290
15	29-11-2020	29-12-2020	30	7.3	9.3 as on 10-11-2020	53,506
16	29-12-2020	29-01-2021	31	7.3	9.3 as on 10-12-2020	55,290
17	29-01-2021	07-02-2021	9	7.3	9.3 as on 10-01-2021	16,052
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 10,48,506						
					TOTAL DELAYED INTEREST as on 07/02/2021	9,25,007

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

23. **My findings on Point No.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, the following order is passed:

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/220805/0009854** is hereby allowed.

*(Handwritten Signature)*

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The respondents are directed to pay a sum of **Rs.9,25,007/- (Rupees Nine Lakh Twenty Five Thousand and Seven only)** towards interest on delay period calculated at MCLR + 2% from 30/9/2019 till 07/02/2021 (the date on which the complainant occupied the house) to the complainant within 60 days from the date of this order.

2. Further, the respondents are directed to execute the sale deed in respect of Row House No.30 in the project Shivani's Sunshine in favour of the complainant and furnish all relevant documents such as occupancy certificate, completion certificate, khata, etc. to the complainant immediately.


3. Further, the respondents are directed to adjust the additional expenditure of Rs.10,48,506/- incurred by the complainant towards sale consideration amount.

4. The respondents are directed to register the project under RERA immediately.

5. The complainant is directed to pay the balance amount to the respondents, if any accordingly.

Both parties are at liberty to initiate action against each other in accordance with law, if any party fails to comply with the aforesaid order.

No order as to the costs.

  
(Neelmani N Raju)  
Member, K-RERA