

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 13TH FEBRUARY 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00173/2023

COMPLAINANTS.....

**MOHIT RAJ &
GUNJAN SAXENA
D-3321, PRANAVAS BSR GITAAAR
RAILWAY STATION ROAD
PANATHUR
BANGALORE-560087
BANGALORE URBAN DISTRICT**

(IN PERSON)

Vs

RESPONDENT.....

**MAARS INFRA DEVELOPERS
PRIVATE LIMITED
NO.3, 12TH CROSS, 6TH MAIN
MALLESHWARAM
BANGALORE-560003.**

**(BY MR. JOSEPH ANTHONY, ADVOCATE
& OTHERS, JSM LAW PARTNERS)**

*** * * * ***

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 BLUE**" developed by **MAARS INFRA DEVELOPERS PRIVATE LIMITED** on Sy.No.11(P), Seegehalli Village, K.R. Puram Hobli, Bangalore East, Bangalore Urban District for the relief of interest on delay period.

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2. This project has been registered under RERA bearing Registration No.PRM/KA/RERA/1251/446/PR/180728/001966 valid till 16/7/2021. The project was extended due to Covid-19 for a period of 9 months till 16/4/2022. The Authority has extended its registration for a further period of 12 months i.e. till 16/4/2023. The Authority has further permitted to continue the development work and obtain occupancy certificate till 30/11/2023.
3. Mrs. Gunjan Saxena vide her memo of authorization dated 27/06/2023 has authorized her husband Mr. Mohit Raj to appear on behalf of her for the hearings in the above complaint. Accordingly, the Hon'ble Authority has accepted the same.

Brief facts of the complaint are as under:-

4. The complainants have booked a flat bearing No.K.08.03, 8th Floor, Tower K in Building-2 of the project of the respondent and entered into an agreement for sale on 25/04/2019 for a total sale consideration of Rs.1,00,47,834/- (Rupees One Crore Forty Seven Thousand Eight Hundred and Thirty Four only) and have paid the full sale consideration amount to the respondent on various dates. The respondent was supposed to hand over the possession of the flat to the complainants by 14/3/2022 with six months grace period i.e. latest by 14/9/2022. However, the respondent has executed the sale deed on 31/5/2023 **and handed over the possession of the flat on 15/7/2023 with all works completed.**
5. The complainants demanded interest for the delay but there was no response from the respondent instead the complainants were told that the cost of the materials has doubled since covid time which has not

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been passed on to the home buyers as additional charges. In spite of multiple requests for interest on delay period, the respondent has declined to pay citing that there is no delay as they have received extension from RERA. The complainants are demanding interest for delay since May 2022 but the respondent is denying.

6. The complainants submit that they were kept in the dark about the respondent applying for RERA extension, but in the Affidavit submitted by them, it has been falsely mentioned that allottees had been informed about obtaining extension from RERA for completion of the project. The respondent vide their Affidavit dated 31/3/2022 have clearly declared that for those who wants to withdraw from the project the amount received from such customers will be returned with interest and for those who does not want to withdraw, they will pay interest for every month of delay till handing over the possession at the prescribed rate. The respondent has slowed down the construction work after receiving extension from RERA. Even the work was stalled for considerable duration and resumed on 26/11/2022.
7. The respondent as per subvention agreement had agreed to pay PEMI till handing over possession of the flat.
8. The respondent has applied for occupancy certificate in July 2022 but still it has not been received. The complainants submit that the respondent had agreed to provide interest on delay, but it was not in line with the RERA guidelines and thus their proposal was rejected. The complainants also tried to reach the respondent for revising the delay interest proposed by them, but there is no response from the respondent. Thus, the complainants have approached this Hon'ble



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Authority and pray for direction to the respondent to pay interest for delay period, project work shall not be stalled for any reason, handover possession of the flat by 16/04/2023 and to communicate progress every week till the completion of the project. Hence, this complaint.

9. 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:

10. The Respondent submits that they had agreed to deliver the apartment on 21st April 2021 but was delayed due to unforeseeable circumstances which led to delay in the development of the project. The respondent submits that the issue relating to presence of rock embedded 6 – 8 meters in the ground took 5 months for excavation. The project was further delayed due to Covid-19 pandemic and lockdown imposed through-out the country and force majeure events such as, scarcity of raw materials, non-availability of skilled labours, transport disruption or such other reasons beyond the control of the respondent.

11. The respondent submits that there was threat from the local political elements in the vicinity of the construction place due to which the project was further delayed. The respondent contends that the customers were aware of the fact and difficulties faced in entering the premises of the project. The respondent submits that with all these hurdles faced by them, they have completed the project and the complainants have registered the sale deed dated 31/5/2023 and possession of the flat has been handed over to the complainants with

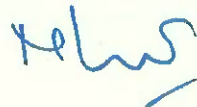
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all the work completed on 15/7/2023. The respondent has also obtained Final Occupancy Certificate from the competent authority dated 2/6/2023 (signed by the JD, Town Planning-North, BBMP dated 2/6/2023).

12. The respondent submits that with all the above hindrances, they have completed the project and issued occupancy certificate to the customers and prays the Hon'ble Authority not to grant the relief sought for by the complainants and dismiss the complaint.
13. The complainants in their rejoinder to the statement of objections filed by the respondent have submitted that the respondent has wrongly accused them of immediate release of accrued compensation due to loss of potential income but have instead requested for payment of delay period interest. The respondent has failed to disclose the facts to the complainants. The respondent had agreed to complete the construction and handover the flat by 21st April, 2021 and went on changing it several times. Finally the flat was registered in May 2023, but the possession of the flat was taken on 15/7/2023 only after all the work were completed.
14. In support of their defence, the respondent has submitted copies of the Agreement for Sale, final occupancy certificate issued by BBMP, Sale Deed dated 31/5/2023, RERA registration/extension certificates and memo of calculation as on 31/1/2024 (calculated from 31/10/2022 to 29/6/2023).
15. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, payment receipts, statement of account dated 13/8/2020 issued by the respondent company for having received payments from the complainants, email



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correspondence with the respondent and memo of calculation as on 31/1/2024 (calculated from 14/4/2022 to 15/7/2023).

16. This case was heard on 28/6/2023, 8/8/2023, 27/9/2023, 19/12/2023 and 01/02/2024. Heard arguments of both sides.

17. **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?

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

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

REASONS

19. **My answer to Point No.1:-** From the materials placed on record, it is apparent that in spite of entering into an agreement for sale to handover the flat within 14/3/2022 with a grace period of six months i.e. by 14/9/2022, the respondent has failed to abide by the terms of the agreement and not handed over the possession of the flat to the complainants as agreed, but has executed registration of sale deed in favour of the complainants on 31/5/2023, certainly entitles the complainants herein for interest on delay period.

20. 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

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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.

21. 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."

22. The complainants vide their memo of calculation as on 31/1/2024 have claimed an amount of Rs.11,89,252/- as interest on delay period calculated from 14/4/2022 to 15/7/2023.

23. The Hon'ble Authority has noticed that in the agreement for sale actual date of possession is 14/3/2022 with a grace period of six months i.e. 14/9/2022. As such, the calculation for delay period



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interest should have been done from 14/9/2022 to 31/5/2023, the date on which the sale deed was executed.

24. The respondent in their memo of calculation as on 31/1/2024 have claimed that the complainants are entitled for Rs.4,98,061/- as interest on delay period calculated from 31/10/2022 to 29/6/2023. There is also difference in the principal amount mentioned by both the parties and as such, the Hon'ble Authority did not accept the memo of calculation submitted by the respondent. A thorough verification of the proof submitted by the complainants to substantiate the principal amount paid to the respondent have been found genuine.

25. Having regard to all these aspects, the Hon'ble Authority concludes that the complainants are entitled for delay period interest from 14/9/2022 to 31/5/2023, the date on which the sale deed was executed.

26. 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	93,01,909	14-09-2022
2	SUBSEQUENT PAYMENT 1	1,10,020	28-01-2023
3	SUBSEQUENT PAYMENT 2	1,111	14-03-2023
4	SUBSEQUENT PAYMENT 3	6,348	18-05-2023
5	SUBSEQUENT PAYMENT 4	4,53,973	24-05-2023
6	SUBSEQUENT PAYMENT 5	1,74,473	26-05-2023

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7	TOTAL PRINCIPLE AMOUNT	1,00,47,834	
8	TOTAL DELAYED INTEREST as on 31/05/2023	6,99,382	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 93,01,909						
1	14-09-2022	14-10-2022	30	8	10.0 as on 15-08-2022	76,454
2	14-10-2022	14-11-2022	31	8	10.0 as on 15-09-2022	79,002
3	14-11-2022	14-12-2022	30	8.25	10.25 as on 15-10-2022	78,365
4	14-12-2022	14-01-2023	31	8.35	10.35 as on 15-11-2022	81,767
5	14-01-2023	14-02-2023	31	8.85	10.85 as on 15-12-2022	85,717
6	14-02-2023	14-03-2023	28	8.6	10.6 as on 15-01-2023	75,638
7	14-03-2023	14-04-2023	31	8.7	10.7 as on 15-02-2023	84,532
8	14-04-2023	14-05-2023	30	8.7	10.7 as on 15-03-2023	81,805
9	14-05-2023	31-05-2023	17	8.7	10.7 as on 15-04-2023	46,356
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 1,10,020						
1	28-01-2023	28-02-2023	31	8.6	10.6 as on 15-01-2023	990

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2	28-02-2023	28-03-2023	28	8.7	10.7 as on 15-02-2023	903
3	28-03-2023	28-04-2023	31	8.7	10.7 as on 15-03-2023	999
4	28-04-2023	28-05-2023	30	8.7	10.7 as on 15-04-2023	967
5	28-05-2023	31-05-2023	3	8.7	10.7 as on 15-05-2023	96
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 1,111						
1	14-03-2023	14-04-2023	31	8.7	10.7 as on 15-02-2023	10
2	14-04-2023	14-05-2023	30	8.7	10.7 as on 15-03-2023	9
3	14-05-2023	31-05-2023	17	8.7	10.7 as on 15-04-2023	5
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 6,348						
1	18-05-2023	31-05-2023	13	8.7	10.7 as on 15-05-2023	24
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 4,53,973						
1	24-05-2023	31-05-2023	07	8.7	10.7 as on 15-05-2023	931
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 1,74,473						
1	26-05-2023	31-05-2023	05	8.7	10.7 as on 15-05-2023	255
					TOTAL DELAYED INTEREST as on 31/05/2023	6,94,825

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

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28. **My answer to Point No.2:-** In view of the above observation, 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.**00173/2023** is hereby allowed.

Respondent is directed to pay a sum of **Rs.6,94,825/- (Rupees Six Lakh Ninety Four Thousand Eight Hundred and Twenty Five only)** towards delay period interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 14/9/2022 till 31/5/2023, 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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Member, KIRRA