

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 FEBRUARY 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00227/2023

COMPLAINANT.....

**ASHISH RASTOGI
94, CIRCULAR ROAD
SHAHDARA
DELHI-110032**

**DISTRICT: EAST DELHI
STATE: DELHI**

(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), Seeghalli 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.

Brief facts of the complaint are as under:-

3. The complainant had booked a flat bearing No.K.09.02, 9th Floor, Tower K in Building-2 of the project of the respondent and entered into an agreement for sale on 7/12/2018 and has paid Rs.79,23,559/- (Rupees Seventy Nine Lakh Twenty Three Thousand Five Hundred and Fifty Nine only) to the respondent on various dates. The respondent was supposed to hand over the possession of the flat to the complainant by 20/10/2021 with six months grace period i.e. latest by 20/04/2022. **However, the respondent has executed the sale deed on 07/06/2023 in favour of the complainant.**
4. The complainant has fulfilled all obligations by making timely payments and adhering to the terms and conditions of the agreement. The respondent has failed to fulfill their obligations within the stipulated time as agreed. The delay has caused financial stress and mental agony on the complainant. The complainant is paying rent as well as loan instalment for the flat and has disrupted the dream of settling in his own house. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent to pay interest for delay period and Rs.5,00,000/- compensation for

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mental agony and legal expenses incurred on the present complaint.
Hence, this complaint.

5. 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:
6. 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.
7. 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 07/06/2023. 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).

H/S

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8. 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.
9. The complainant in his rejoinder to the statement of objections filed by the respondent have submitted that he has requested for payment of delay period interest and not requested relief of immediate release of accrued compensation due to loss of potential income. The respondent has claimed that the presence of rock in the lower strata is a reason for the delay, the complainant cannot bear the brunt of their inefficiency to detect the same earlier. The issue between the respondent and politicians are nowhere related to customers.
10. The complainant has submitted that he do not agree with the claim of the respondent that the project was delayed due to non-availability of skilled labour, etc., as he had received a demand note dated 13/8/2020 from the respondent towards commencement of 12th Floor Slab. The respondent was unable to deliver the flat even after the extension granted by RERA.
11. Hence, the complainant prays the Hon'ble Authority to allow the complaint and seek interest for delay period from the respondent.
12. In support of their defence, the respondent has submitted copies of the Agreement for Sale, final occupancy certificate issued by BBMP, Sale Deed dated 7/6/2023, RERA registration/extension certificates. Despite opportunities were given, the respondent has failed to submit their memo of calculation.
13. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, payment receipts, Loan disbursement advice issued by HDFC, statement of accounts dated

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4/1/2023 issued by the respondent company and memo of calculation as on 28/6/2023 (calculated from 19/10/2021 to 28/6/2023).

14. 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.

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

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

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

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

REASONS

17. **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 20/10/2021 with a grace period of six months i.e. by 20/04/2022, the respondent has failed to abide by the terms of the agreement and not handed over the possession of the flat to the complainant as agreed. However, he has executed registration of sale deed in favour of the complainant on 7/6/2023, certainly entitles the complainant herein for interest on delay period.

18. The Authority has perused the statement of objections filed by the respondent and written submission/rejoinder filed by the complainant. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in

M/S

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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.

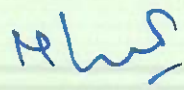
19. As per decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, Newtech Promoters Vs the State of UP and other, it is held as under:

"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."

20. The complainant vide his memo of calculation as on 28/6/2023 has claimed an amount of Rs.12,52,101/- as interest on delay period calculated from 19/10/2021 till 7/6/2023.

21. The Hon'ble Authority has noticed that in the agreement for sale actual date of possession is 20/10/2021 with a grace period of six months i.e. 20/4/2022. As such, the calculation for the delay period



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interest should have been done from 20/04/2022 to 07/06/2023, the date on which the sale deed was executed. The Hon'ble Authority has not accepted the memo of calculation submitted by the complainant as on 28/6/2023. A thorough verification of the proof submitted by the complainants to substantiate the principal amount paid them to the respondent has been found genuine.

22. Despite opportunities was given to the respondent, they have not filed their memo of calculation.
23. Having regard to all these aspects, the Hon'ble Authority concludes that the complainant is entitled for delay period interest from 20/04/2022 to 07/06/2023, the date on which the sale deed was executed.
24. 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	73,61,855	20-04-2022
2	SUBSEQUENT PAYMENT 1	5,56,584	17-05-2022
3	SUBSEQUENT PAYMENT 2	5,120	29-12-2022
4	TOTAL PRINCIPLE AMOUNT	79,23,559	
5	TOTAL DELAYED INTEREST as on 07/06/2023	9,11,785	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 73,61,855						

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1	20-04-2022	20-05-2022	30	7.4	9.4 as on 15-04-2022	56,877
2	20-05-2022	20-06-2022	31	7.5	9.5 as on 15-05-2022	59,399
3	20-06-2022	20-07-2022	30	7.7	9.7 as on 15-06-2022	58,693
4	20-07-2022	20-08-2022	31	7.8	9.8 as on 15-07-2022	61,274
5	20-08-2022	20-09-2022	31	8	10.0 as on 15-08-2022	62,525
6	20-09-2022	20-10-2022	30	8	10.0 as on 15-09-2022	60,508
7	20-10-2022	20-11-2022	31	8.25	10.25 as on 15-10-2022	64,088
8	20-11-2022	20-12-2022	30	8.35	10.35 as on 15-11-2022	62,626
9	20-12-2022	20-01-2023	31	8.85	10.85 as on 15-12-2023	67,839
10	20-01-2023	20-02-2023	31	8.6	10.6 as on 15-01-2023	66,276
11	20-02-2023	20-03-2023	28	8.7	10.7 as on 15-02-2023	60,427
12	20-03-2023	20-04-2023	31	8.7	10.7 as on 15-03-2023	66,902
13	20-04-2023	20-05-2023	30	8.7	10.7 as on 15-04-2023	64,743
14	20-05-2023	07-06-2023	18	8.7	10.7 as on 15-05-2023	38,846
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 5,56,584						
1	17-05-2022	17-06-2022	31	7.5	9.5 as on 15-05-2022	4,490
2	17-06-2022	17-07-2022	30	7.7	9.7 as on 15-06-2022	4,437
3	17-07-2022	17-08-2022	31	7.8	9.8 as on 15-07-2022	4,632
4	17-08-2022	17-09-2022	31	8	10.0 as on 15-08-2022	4,727
5	17-09-2022	17-10-2022	30	8	10.0 as on 15-09-2022	4,574

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6	17-10-2022	17-11-2022	31	8.25	10.25 as on 15-10-2022	4,845
7	17-11-2022	17-12-2022	30	8.35	10.35 as on 15-11-2022	4,734
8	17-12-2022	17-01-2023	31	8.85	10.85 as on 15-12-2022	5,128
9	17-01-2023	17-02-2023	31	8.6	10.6 as on 15-01-2023	5,010
10	17-02-2023	17-03-2023	28	8.7	10.7 as on 15-02-2023	4,568
11	17-03-2023	17-04-2023	31	8.7	10.7 as on 15-03-2023	5,058
12	17-04-2023	17-05-2023	30	8.7	10.7 as on 15-04-2023	4,894
13	17-05-2023	07-06-2023	21	8.7	10.7 as on 15-05-2023	3,426
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 5,120						
1	29-12-2022	29-01-2023	31	8.85	10.85 as on 15-12-2022	47
2	29-01-2023	28-02-2023	30	8.6	10.6 as on 15-01-2023	44
3	28-02-2023	28-03-2023	28	8.7	10.7 as on 15-02-2023	42
4	28-03-2023	28-04-2023	31	8.7	10.7 as on 15-03-2023	46
5	28-04-2023	28-05-2023	30	8.7	10.7 as on 15-04-2023	45
6	28-05-2023	07-06-2023	10	8.7	10.7 as on 15-05-2023	15
					TOTAL DELAYED INTEREST as on 07/06/2023	9,11,785

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25. Accordingly, the point raised above is answered in the Affirmative.
26. **My answer to Point No.2:-** In view of the above observation, I proceed to pass the following order –

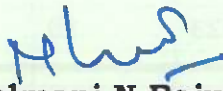
ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.**00227/2023** is hereby allowed.

Respondent is directed to pay a sum of **Rs.9,11,785/- (Rupees Nine Lakh Eleven Thousand Seven Hundred and Eighty Five only)** towards delay period interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 20/04/2022 till 07/06/2023, the date on which the sale deed was executed by the respondent.

The complainant is 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