

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 AUGUST 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:01744/2023

COMPLAINANTS.....

**SAMSHEER NALAKATH VALAPPIL
& RAMISHA SAMSHEER
WING 21, FLAT 804, BLOCK-C
SHRIRAM SUMMITT
BANGALORE-560100.**

**(BY MR.NAGESHA POOJARY Y,
ADVOCATE)**

Vs

RESPONDENT.....

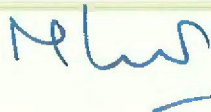
**1.M/S SHRIRAM PROPERTIES PVT LTD
NO.40/43, 8TH MAIN, 4TH CROSS
SADASHIV NAGAR
BANGALORE-560080.**

**(BY MR.J.P. DARSHAN, ADVOCATE
& OTHERS)**

*** * * * ***

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 SUMMIT" developed by SHRIRAM PROPERTIES PVT LTD situated at Sy.No- 80/1, 2, 3, 4, 84/6 & 7, 85/2, 87/2, 89/1 & 2, 121/1, 2, 3, Veerasandra Village & Hebbagodi Village, Anekal Taluk, Attibele, Bangalore - 562107, Bengaluru Urban District for the relief of interest on delay period.
2. This project has been registered under RERA vide registration No. PRM/KA/RERA/1251/308/PR/171015/001121 and is valid till



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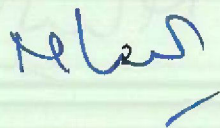
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31/12/2019. The Authority extended its validity till 31/12/2020. Further Covid-19 extension was given for a period of 9 months i.e. till 30/9/2021. The project has been blocked by RERA as the completion date for this project is expired.

Brief facts of the complaint are as under:-

3. The complainants have purchased a flat bearing No.21.08.04, 7TH Floor, 21st Wing, Block-3 in the project of the respondent and had entered into an agreement for sale on 27/04/2019. The complainants have paid Rs.59,25,579/- to the respondent on various dates. The respondent was supposed to handover the possession of the flat by December 2019. The complainants submit that the respondent has received the occupancy certificate dated 7/5/2022 from the competent authority (BDA). The respondent has executed the sale deed on 11/07/2022 in favour of the complainants with a delay of more than two years. The complainants have complied with the terms of the agreement by raising housing loan from HDFC and paying huge interest. Due to the delay the complainants were put to financial hardship and mental harassment. Thus, the complainants have approached this Hon'ble Authority for interest on delay period. Hence, this complaint.
4. 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:
5. The respondent contends that the complainant is not entitled for sought by them as the complaint has been filed by them with an



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1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
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intention to reap profits through instant litigation and thus the complaint is liable to be dismissed.

6. The respondent submit that as per the terms of the JDA, they had agreed to construct a total of 1128 residential flats comprising of three Blocks in the above project and that out of 1128 flats, the respondent has already received occupancy certificate dated 25/9/2020 in respect of 920 flats and for another 216 flats the occupancy certificate was received on 7/5/2022 from the competent authority. The respondent submit that in order to develop the land secured sanctioned plan on 26/2/2014 and Building Construction Plans dated 17/6/2014 from BDA. The Project has also been registered under RERA with the date of completion as December 2019.

7. The respondent submit that the complainants desirous of purchasing a flat in the above project of the respondent purchased a flat bearing No.21.08.04 in Block-3, Wing-21 on 7th Floor and accordingly executed agreement for sale dated 27/4/2019. The respondent as per the terms of the agreement was supposed to deliver the above said flat to the complainants by December 2019. The respondent submit that the project was slightly delayed due to the rocks which were found underneath the area on which Block-3 units were being built. The respondent submit that the excavation of rocks took longer than usual and the same should be considered as force majeure delay. The respondent proceeded with the construction of the project with due compliance to deliver possession of the flat to the complainants and other allottees as per terms of agreement for sale dated 27/4/2019.

8. In addition, the Block-3 of the project was close to the tertiary nala and that there was a suit bearing No.OA 222/2014 going on before

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the Hon'ble National Green Tribunal, New Delhi due to which the construction was stopped. The Hon'ble NGT passed an order dated 4/5/2016. The aggrieved parties filed a Civil Appeal bearing No.5016/2016 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 5/3/2019 overruled the order of the Hon'ble NGT which attributed to further delay in the construction and completion of the project.

9. Further when the construction work pertaining to Block-3 was started, Covid-19 pandemic and lockdowns throughout the country the completion of the project could not take place and the respondent is not responsible for the said delays which were beyond their control. The respondent submit that in spite of the hurdles, they have completed the construction with great difficulty by hiring more manpower and also secured occupancy certificates. As such, the delay in completing the project was not due to any negligence on the part of the respondent.

10. The respondent submit that a substantial number of homebuyers have come forward, executed the sale deed and have been living in their respective flats with the common facilities and amenities. The respondent also submit that they have acquired all necessary NOCs and approvals from various competent authorities as per law and the residents in the above project are living without any difficulties.

11. The respondent submit that the complainants came forward and executed sale deed on 11/7/2022 in respect of their flat and are enjoying peaceful possession with all amenities in the residential complex. The complainants with an intention of making rich themselves, harass the respondent have filed this complaint before

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1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
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this Hon'ble Authority seeking interest on delay period and pray the Hon'ble Authority not to grant the relief sought by the complainants.

12. The respondent submit that the reading of section 18(1) proviso and section 19(4) the right to claim compensation by an allottee in case they do not wish to withdraw from the project only available till handing over possession and execution of sale deed and that the complainants cannot claim interest on delay period after handing over possession of their flat. The respondent contends that after discharging their obligations under the agreement for sale, after execution of sale deed and taking possession of the flat, the complainants are estopped from claiming any compensation from them.
13. The respondent submits that the complainants are estopped from claiming any compensation from them in accordance with Section 62 of the Contract Act which reads as "if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed".
14. The respondent prays the Hon'ble Authority to dismiss the complaint in the interest of justice and equity.
15. The complainants in their rejoinder to the objections filed by the respondent, submit that the respondent had assured that the above said flat will be delivered by 31/12/2019 upon which they have paid Rs.59,25,579/- to the respondent on various dates. But the possession of the flat was given on 11/7/2022 and sale deed was executed.

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1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
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16. The complainants submit that as the respondent failed to handover possession of the above said flat, they approached the Hon'ble Authority seeking interest for delay period. The complainants submit that they have taken housing loan from HDFC and are paying huge interest to the Bank. The complainants submit that the respondent cannot take defence under Covid-19 and deny interest on delay period to the allottees, as also the presence of rock underneath the area on which Block-3 units were built and pending litigation before the Hon'ble NGT is not sustainable in law to deny the interest on delay.
17. The complainants submit that the RERA Act is a special statute which has nothing to do with Contract Act and not applicable over RERA Act and is intended to protect the interest of home buyers. The complainants pray the Hon'ble Authority to consider their prayer and grant relief of interest on delay period.
18. In support of their defence, the respondent has submitted copies of documents such as Agreement of Sale, order dated 4/5/2016 passed by the Hon'ble NGT in O.A.No.222/2014, order dated 5/3/2019 passed by the Hon'ble Supreme Court in C.A.No.5016/2016, RERA registration & extension certificates, occupancy certificate dated 7/5/2022 and sale deed dated 11/7/2022.
19. In support of their claim, the complainants have produced copies of documents such as agreement for sale, payment receipts, Sale Deed, occupancy certificate dated 7/5/2022, statement of account issued by HDFC pertaining to housing loan and memo of calculation

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as on 21/01/2024 for delay period interest (calculated from 31/12/2019 till 11/07/2022).

20. This case was heard on 01/02/2024, 27/3/2024, 5/6/2024 and 8/8/2024. Heard arguments of both sides.

21. **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?

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

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

REASONS

23. **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 31/12/2019, the respondent has failed to abide by the terms of the agreement and has handed over the possession of the flat and executed sale deed in favour of the complainants on 11/07/2022 with a delay of more than two years.

24. From the averments of the complaint and the copies of agreement and sale deed executed between the parties, it is obvious that the complainants have got possession of the flat on 11/07/2022 after a delay of more than two years. Having accepted the total sale consideration amount and delay in handing over possession of the flat as agreed, certainly entitles the complainants herein for delay period interest.

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25. During the process of the hearing, the Hon'ble Authority has perused the statement of objections filed by the respondent and written submissions/rejoinder filed by the complainants.

26. 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 for sale. Therefore, the Authority has not accepted the contentions of the respondent made in their statement of objections, as they have failed to handover the above said flat to the complainants within stipulated time as agreed. The Hon'ble Authority has also reiterate that the extension given to the respondent by RERA is to complete the project and it cannot be taken as date of handing over possession of the flat to the allottees.

27. At this juncture, my attention is drawn towards the decision of the Hon'ble Supreme Court in Appeal No.6750-57/2021 M/s Newtech Promoters v/s The State of Uttar Pradesh which 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 under sections 18(2) & 18(3) of the Act;

(D) the allottee has the liberty, if he does not intend to

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1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
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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."

28. The complainants vide their memo of calculation as on 24/07/2022 have claimed an amount of Rs.10,72,956/- as delay period interest calculated from 31/12/2019 to 24/07/2022 whereas the calculation should have been from 31/12/2019 to 11/07/2022, the date on which the sale deed was executed by the respondents in favour of the complainants. The Hon'ble Authority has not accepted the claim calculated by the complainants.
29. Despite many opportunities were given, the respondent has not filed their memo of calculation.
30. Having regard to all these aspects, this Authority concludes that the complainants are entitled for delay period interest of Rs.10,71,794/- from 31/12/2019 till 11/07/2022, the date on which the sale deed was executed by the respondent in favour of the complainants.
31. 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	39,30,663	31/12/2019
2	SUBSEQUENT PAYMENT 1	8,42,288	30/03/2021
3	SUBSEQUENT PAYMENT 2	2,80,761	15/11/2021
4	SUBSEQUENT PAYMENT 3	2,14,955	28/12/2021
5	SUBSEQUENT PAYMENT 4	5,21,500	16/06/2022

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1/14, 2nd Floor, Silver Jubilee Block, Urity Building Backside, CSI Compound,
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6	SUBSEQUENT PAYMENT 5	1,35,412	24/06/2022
7	TOTAL PRINCIPLE AMOUNT	59,25,579	
8	TOTAL DELAYED INTEREST as on 11/07/2022	10,71,794	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 39,30,663						
1	31/12/2019	31/01/2020	31	8.2	10.2 as on 10-12-2019	34,051
2	31/01/2020	29/02/2020	29	8.2	10.2 as on 10-01-2020	31,854
3	29/02/2020	29/03/2020	29	8.15	10.15 as on 10-02-2020	31,698
4	29/03/2020	29/04/2020	31	8.05	10.05 as on 10-03-2020	33,550
5	29/04/2020	29/05/2020	30	7.7	9.7 as on 10-04-2020	31,337
6	29/05/2020	29/06/2020	31	7.55	9.55 as on 10-05-2020	31,881
7	29/06/2020	29/07/2020	30	7.3	9.3 as on 10-06-2020	30,045
8	29/07/2020	29/08/2020	31	7.3	9.3 as on 10-07-2020	31,046
9	29/08/2020	29/09/2020	31	7.3	9.3 as on 10-08-2020	31,046
10	29/09/2020	29/10/2020	30	7.3	9.3 as on 10-09-2020	30,045

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

11	29/10/2020	29/11/2020	31	7.3	9.3 as on 10-10-2020	31,046
12	29/11/2020	29/12/2020	30	7.3	9.3 as on 10-11-2020	30,045
13	29/12/2020	29/01/2021	31	7.3	9.3 as on 10-12-2020	31,046
14	29/01/2021	28/02/2021	30	7.3	9.3 as on 10-01-2021	30,045
15	28/02/2021	28/03/2021	28	7.3	9.3 as on 10-02-2021	28,042
16	28/03/2021	28/04/2021	31	7.3	9.3 as on 10-03-2021	31,046
17	28/04/2021	28/05/2021	30	7.3	9.3 as on 10-04-2021	30,045
18	28/05/2021	28/06/2021	31	7.3	9.3 as on 15-05-2021	31,046
19	28/06/2021	28/07/2021	30	7.3	9.3 as on 15-06-2021	30,045
20	28/07/2021	28/08/2021	31	7.3	9.3 as on 15-07-2021	31,046
21	28/08/2021	28/09/2021	31	7.3	9.3 as on 15-08-2021	31,046
22	28/09/2021	28/10/2021	30	7.3	9.3 as on 15-09-2021	30,045
23	28/10/2021	28/11/2021	31	7.3	9.3 as on 15-10-2021	31,046
24	28/11/2021	28/12/2021	30	7.3	9.3 as on 15-11-2021	30,045
25	28/12/2021	28/01/2022	31	7.3	9.3 as on 15-12-2021	31,046

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26	28/01/2022	28/02/2022	31	7.3	9.3 as on 15-01-2022	31,046
27	28/02/2022	28/03/2022	28	7.3	9.3 as on 15-02-2022	28,042
28	28/03/2022	28/04/2022	31	7.3	9.3 as on 15-03-2022	31,046
29	28/04/2022	28/05/2022	30	7.4	9.4 as on 15-04-2022	30,368
30	28/05/2022	28/06/2022	31	7.5	9.5 as on 15-05-2022	31,714
31	28/06/2022	11/07/2022	13	7.7	9.7 as on 15-06-2022	13,579
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 8,42,288						
1	30/03/2021	30/04/2021	31	7.3	9.3 as on 10-03-2021	6,652
2	30/04/2021	30/05/2021	30	7.3	9.3 as on 10-04-2021	6,438
3	30/05/2021	30/06/2021	31	7.3	9.3 as on 15-05-2021	6,652
4	30/06/2021	30/07/2021	30	7.3	9.3 as on 15-06-2021	6,438
5	30/07/2021	30/08/2021	31	7.3	9.3 as on 15-07-2021	6,652
6	30/08/2021	30/09/2021	31	7.3	9.3 as on 15-08-2021	6,652
7	30/09/2021	30/10/2021	30	7.3	9.3 as on 15-09-2021	6,438
8	30/10/2021	30/11/2021	31	7.3	9.3 as on 15-10-2021	6,652

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1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
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9	30/11/2021	30/12/2021	30	7.3	9.3 as on 15-11-2021	6,438
10	30/12/2021	30/01/2022	31	7.3	9.3 as on 15-12-2021	6,652
11	30/01/2022	28/02/2022	29	7.3	9.3 as on 15-01-2022	6,223
12	28/02/2022	28/03/2022	28	7.3	9.3 as on 15-02-2022	6,009
13	28/03/2022	28/04/2022	31	7.3	9.3 as on 15-03-2022	6,652
14	28/04/2022	28/05/2022	30	7.4	9.4 as on 15-04-2022	6,507
15	28/05/2022	28/06/2022	31	7.5	9.5 as on 15-05-2022	6,795
16	28/06/2022	11/07/2022	13	7.7	9.7 as on 15-06-2022	2,909
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 2,80,761						
1	15/11/2021	15/12/2021	30	7.3	9.3 as on 15-11-2021	2,146
2	15/12/2021	15/01/2022	31	7.3	9.3 as on 15-12-2021	2,217
3	15/01/2022	15/02/2022	31	7.3	9.3 as on 15-01-2022	2,217
4	15/02/2022	15/03/2022	28	7.3	9.3 as on 15-02-2022	2,003
5	15/03/2022	15/04/2022	31	7.3	9.3 as on 15-03-2022	2,217
6	15/04/2022	15/05/2022	30	7.4	9.4 as on 15-04-2022	2,169

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7	15/05/2022	15/06/2022	31	7.5	9.5 as on 15-05-2022	2,265
8	15/06/2022	11/07/2022	26	7.7	9.7 as on 15-06-2022	1,939
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 2,14,955						
1	28/12/2021	28/01/2022	31	7.3	9.3 as on 15-12-2021	1,697
2	28/01/2022	28/02/2022	31	7.3	9.3 as on 15-01-2022	1,697
3	28/02/2022	28/03/2022	28	7.3	9.3 as on 15-02-2022	1,533
4	28/03/2022	28/04/2022	31	7.3	9.3 as on 15-03-2022	1,697
5	28/04/2022	28/05/2022	30	7.4	9.4 as on 15-04-2022	1,660
6	28/05/2022	28/06/2022	31	7.5	9.5 as on 15-05-2022	1,734
7	28/06/2022	11/07/2022	13	7.7	9.7 as on 15-06-2022	742
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 5,21,500						
1	16/06/2022	11/07/2022	25	7.7	9.7 as on 15-06-2022	3,463
INTEREST CALCULATION FOR SUBSEQUENT PAYMENT 1,35,412						
1	24/06/2022	11/07/2022	17	7.7	9.7 as on 15-06-2022	611
					TOTAL DELAYED INTEREST as on 11/07/2022	10,71,794

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

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33. **My answer to Point No.2:-** In view of the above discussion, the above complaint deserves to be allowed. Hence, 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.**01744/2023** is hereby allowed.

Respondents are directed to pay a sum of **Rs.10,71,794/- (Rupees Ten Lakh Seventy One Thousand Seven Hundred and Ninety Four only)** towards delay period interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 31/12/2019 till 11/07/2022, the date on which the sale deed was executed by the respondent 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.

No order as to costs.


(Neelmani N Raju)
Member, K-RERA

NOT AN OFFICIAL COPY

[Handwritten Signature]
(Member, W. S. S. S.)
Member, W. S. S. S.