

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-5

PRESIDED BY HON'BLE MEMBER G. R. REDDY

COMPLAINT NO.: CMP/220908/0009993

DATED THIS 18TH DAY OF JUNE, 2024

COMPLAINANTS.....

**SUDIPTA MAJUMDER &
SREYASHI MAJUMDAR,
8/2, Jessore Road (s),
Hatkholra More,
West Bengal - 700124**

(Rep. by Smt. Vaishnavi, Advocate)

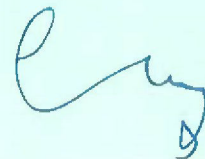
V/S

RESPONDENT.....

**M/S. GULAM MUSTAFA ENTERPRISES
PVT. LTD.,
No.6, GM Pearl, 1st Stage,
1st Phase, BTM Layout,
Bengaluru - 560068.**

(Absent)

1. This complaint is filed under section 31 of the RERA Act against the project "GM Global Techies Town Tower C" developed by "M/s. Gulam Mustafa Enterprises Pvt. Ltd.," situated at Electronic City, Thirupalya, Jigani Hobli, Anekal, Bengaluru Urban for the relief of interest on delay period, handing over possession of the flat bearing No.C0734 and to obtain occupancy certificate.
2. This project is registered under RERA vide registration No. PRM/KA/RERA/1251/308/PR/170928/001289 valid till 18/08/2021. Due to Covid-19 pandemic, Authority had extended its registration for 9 months i.e., upto 18/05/2022. The Authority has extended its registration under section 6 of the Act for the period of 12 months i.e., till 18/05/2023.



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

Brief facts of the complaint is as under:-

3. The complainants have booked a flat bearing No.C0734 in the project known as 'GM Global Techies Town Tower C', wherein the complainants have entered into agreement of sale dated 10/03/2017 and construction agreement dated 10/04/2017 with the respondent for total sale consideration of Rs.43,27,000/- (Rupees Forty Three Lakh Twenty Seven Thousand Only) and the complainants have paid sum of Rs.40,67,677/- (Rupees Forty Lakh Sixty Seven Thousand Six Hundred and Seventy Seven Only). The balance remaining amount is to be paid by the complainant to the respondent at the time of handing over possession. The respondent was supposed to complete the project and handover possession of the said flat by 10/10/2021 along with additional grace period of 6 months. The complainants have already paid 95% of consideration value to the respondent. However, till date the respondent has not handed over possession of the flat and amenities as agreed to the complainants. Further, the respondent had issued legal notice dated 25/01/2024 through their communicating the complainants that the agreement of sale dated 10/03/2017 and construction agreement dated 10/04/2017 has been utterly cancelled by the promoter owing to the fact that complainant has instituted the present RERA complaint against them. In response to the legal notice, complainant has sent a reply cum legal notice dated 06/02/2024 requesting them to revoke their unilateral decision of cancellation of the allotted unit. However, till date the respondent has not revoked its unilateral decision of cancellation of the allotted unit. Instead of revoking their decision of unilateral cancellation of the allotted unit, the respondent had sent another email dated 16/02/2024 to the complainants stating that the promoter has decided to cancel the unit and the refund will be processed after resale of the allotted unit. Therefore, the complainants have prayed for the relief of interest on delay period, handing over possession and to obtain occupancy certificate. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and undertakes to file

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

vakalat and statement of objections on next date of hearing. However, the respondent was absent on next date of hearing and failed to produce statement of objections, written submissions and documents on its behalf etc.,

5. In support of their claim, the complainants have produced documents such as allotment letter dated 07/11/2016, agreement of sale dated 10/03/2017, construction agreement dated 10/04/2017, customer ledger for the period of 01/04/2017 to 06/10/2021, legal notice dated 25/01/2024, reply cum legal notice dated 06/02/2024, email dated 16/02/2024 and payment receipts.
6. Respondent has not filed any documents in support of its defence.
7. This matter was heard on 12/12/2023 and 12/03/2024.
8. Heard both parties.
9. **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?

10. **My answer to the above points is as under:-**
 1. In the Affirmative.
 2. As per final order for the following

REASONS

11. **My finding on point No. 1:-** The complainants have approached this Authority seeking for the relief of interest on delay period, handing over possession of the flat and to obtain occupancy certificate on the grounds that, the complainants have booked a flat bearing No.C0734 in the project of respondent. As per the agreement for sale dated 10/03/2017 and construction agreement dated 10/04/2017, the respondent was supposed to handover the said flat to the complainants on or before 10/10/2021 along



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

with additional grace period of 6 months. However, till date the respondent has not handed over possession of the said flat. Hence, the complainants are prayed for the relief interest on delay period, obtain occupancy certificate and handing over possession of their flat.

12. The respondent though appeared before this Authority through its counsel to participate in the proceedings, has not filed vakalath, statement of objections nor produced any documents on its behalf. The respondent has not at all disputed the claim of the complainants in any manner. The claim of the complainants remained unchallenged and it is corroborated with the cogent evidence.
13. Looking to the averments of the agreements, parties herein have entered into agreement for sale dated 10/03/2017 and construction agreement dated 10/04/2017. The agreement is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement for sale dated 10/03/2017 and construction agreement dated 10/04/2017, the respondent was supposed to handover possession of the said flat to the complainants on or before 10/10/2021. However, the respondent has failed to handover the same as agreed.
14. As per decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s. Newtech Promoters V/s. 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

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

not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed'.

15. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme Court it is held that:

"In terms of section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made 'without prejudice to any other remedy available to him'. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himashu Giri came under the later category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment".

The said principle is aptly applicable to the present case on hand.

16. As per section 18 of RERA Act, the respondent is liable to pay interest for delay period to the complainants. Considering the entire materials available on record, the delay in handing over possession is being apparent, this Authority sees no legal impediment in allowing the complaint as prayed. The

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

complainants have already paid substantial sale consideration amount to the respondent towards purchase of the said flat. Therefore, the complainants are entitled for interest on delay period till the date of handing over possession.

17. From the averments made in the complaint, it is obvious that the complainants have paid substantial sale consideration amount to the respondent towards purchase of the said flat and failure in the part of the respondent to deliver the said flat as agreed, certainly entitles the complainants for the relief claimed. The complainants have filed their memo of calculation as on 06/03/2024 and have claimed an amount of Rs.9,92,465/- (Rupees Nine Lakh Ninety Two Thousand Four Hundred and Sixty Five Only) towards interest on delay period calculated from 10/10/2021 to 06/03/2024.
18. Despite of several opportunities were given, the respondent has not filed their memo of calculation. A thorough verification of documentary evidence submitted by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for interest on delay period till the date of handing over possession.
19. 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	40,67,677	10-10-2021
3	TOTAL DELAYED INTEREST as on 06/03/2024	9,92,465	

INTEREST CALCULATION

S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 40,67,677						
1	10/10/21	10/11/21	31	7.3	9.3 as on 15-09-2021	32,129

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

2	10/11/21	10/12/21	30	7.3	9.3 as on 15-10-2021	31,092
3	10/12/21	10/01/22	31	7.3	9.3 as on 15-11-2021	32,129
4	10/01/22	10/02/22	31	7.3	9.3 as on 15-12-2021	32,129
5	10/02/22	10/03/22	28	7.3	9.3 as on 15-01-2022	29,019
6	10/03/22	10/04/22	31	7.3	9.3 as on 15-02-2022	32,129
7	10/04/22	10/05/22	30	7.3	9.3 as on 15-03-2022	31,092
8	10/05/22	10/06/22	31	7.4	9.4 as on 15-04-2022	32,474
9	10/06/22	10/07/22	30	7.5	9.5 as on 15-05-2022	31,761
10	10/07/22	10/08/22	31	7.7	9.7 as on 15-06-2022	33,510
11	10/08/22	10/09/22	31	7.8	9.8 as on 15-07-2022	33,856
12	10/09/22	10/10/22	30	8	10.0 as on 15-08-2022	33,432
13	10/10/22	10/11/22	31	8	10.0 as on 15-09-2022	34,547
14	10/11/22	10/12/22	30	8.25	10.25 as on 15-10-2022	34,268
15	10/12/22	10/01/23	31	8.35	10.35 as on 15-11-2022	35,756
16	10/01/23	10/02/23	31	8.6	10.6 as on 15-12-2022	36,620
17	10/02/23	10/03/23	28	8.6	10.6 as on 15-01-2023	33,076
18	10/03/23	10/04/23	31	8.7	10.7 as on 15-02-2023	36,965
19	10/04/23	10/05/23	30	8.7	10.7 as on 15-03-2023	35,773
20	10/05/23	10/06/23	31	8.7	10.7 as on 15-04-2023	36,965
21	10/06/23	10/07/23	30	8.7	10.7 as on 15-05-2023	35,773
22	10/07/23	10/08/23	31	8.7	10.7 as on 15-06-2023	36,965
23	10/08/23	10/09/23	31	8.75	10.75 as on 15-07-2023	37,138
24	10/09/23	10/10/23	30	8.75	10.75 as on 15-08-2023	35,940
25	10/10/23	10/11/23	31	8.75	10.75 as on 15-09-2023	37,138
26	10/11/23	10/12/23	30	8.75	10.75 as on 15-10-2023	35,940
27	10/12/23	10/01/24	31	8.75	10.75 as on 15-11-2023	37,138
28	10/01/24	10/02/24	31	8.85	10.85 as on 15-12-2023	37,483
29	10/02/24	06/03/24	25	8.85	10.85 as on 15-01-2024	30,228
					TOTAL DELAYED INTEREST as on 06/03/2024	9,92,465

20. Having regard to all these aspects, it would be just and appropriate to direct the respondent to pay interest on delay period to the complainants, handover possession of the said flat and to obtain occupancy certificate. Accordingly, the point raised above is answered in the Affirmative.

21. **My findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, I proceed to pass the following order.

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

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/220908/0009993 is hereby allowed

1. The respondent is hereby directed to pay a sum of Rs.9,92,465/- (Rupees Nine Lakh Ninety Two Thousand Four Hundred and Sixty Five Only) towards interest on delay period to the complainants within 60 days from the date of this order, calculated at the rate of SBI MCLR + 2% from 10/10/2021 to 06/03/2024.
2. Respondent is directed to complete all the work in the project and to obtain occupancy certificate within 60 days from the date of this order.
3. Further, the respondent is directed to handover possession of the flat bearing No.C0734 in the project 'GM Global Techies Town Tower C' to the complainants within 60 days from the date of this order.
4. The complainants are at liberty to enforce the said order in accordance with law if the respondent fails to comply with this order.

No order as to costs.

(G.R. REDDY)

Member
K-RERA