

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

Cmp. No. 8769

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

Dated 13th September 2022

PRESENT:

SRI. H. C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT No: CMP/220106/0008769

COMPLAINANT.....

DR. AVINASH D B,
Shanthala, 1st Cross,
Gandhi Nagar,
Shivamogga – 577201.

(In person)

V/S

RESPONDENT.....

**BHARTIYA URBAN PRIVATE
LIMITED,**
100/1, Anchorage 1,
Richmond Road,
Bengaluru - 560025.

(Rep. by S.V. Giridhar, Adv)

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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the respondent with regard to the project "Bhartiya Leela Residences" developed by Bhartiya Urban Private Limited registered as PRM/KA/RERA/1251/309/PR/171015/000184 for the relief of refund with interest.



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Brief facts of the complaint are as under:-

2. The complainant has entered into an agreement of sale dated 09/03/2016 and construction agreement dated 10/03/2016 with the respondent in the project Bhartiya Leela Residences in respect of Flat bearing No. 2021 situated at Bhartiya Leela Residences, Bhartiya City, Khata No. 6/2, Chokkanahalli Village, Yelahanka Zone, Bengaluru North by paying advance amount of Rs.1,67,04,000/- out of total sale consideration of Rs.2,41,35,600/-. The respondent was supposed to handover the possession of the apartment to the complainant on or before 09/03/2020 or with grace period by 09/09/2020. The Respondent sought an extension to complete the project for a period of 9 months which was extended till 30/06/2021. Even then, the respondent has not completed the project and handover the possession of an apartment to the complainant. Hence, this complaint.

3. After registering the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and filed statement of objections as under:-

4. They have denied the entire allegations made against it by the complainant as false. It contends that the apartment was supposed to handover within 48 months with a grace period of 6 months from the date of execution of agreement for sale which comes to 09/09/2020. Further, as per agreement of sale respondent is not liable for delay in completion of the project on account of any reason of non-availability of building materials, an act of god, any rule notification of the Government, any act of the Government prohibiting development or construction activities. In such situation the respondent is entitled to extent the time

Ans

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for delivery of possession. As per registration certificate the project was supposed to be completed till 30/09/2020.

5. Further, respondent contends that, in March 2020 the central Government issued a direction for Lockdown due to COVID-19 as a pandemic. In pursuant to a circular issued on 19/05/2020 the validity of the registration of the project was extended for a period of 6 months for the reason of force-majeure. Subsequently, the respondent got extended the period till 30/06/2021, 27/08/2021, 01/10/2021 and finally extended till 30/06/2022. The respondent has obtained occupancy certificate for the entire project on 20/01/2022 after completion of the project.
6. There is a Tri-partite agreement entered into on 08/07/2016 and the respondent has received money directly from the bank. The complainant sent a mail on 16/09/2021 to cancel the booking and after discussion another e-mail was issued on 21/09/2021. The complainant sought for cancellation at his convenience and not on account of any delay on the part of the respondent. The respondent had already indicated that as per the terms of contract, cancellation at the convenience of the complainant would be at the cost of complainant and terms of contract. In fact, the apartment is ready and the complainant is refusing to take possession of the same and committed breach of contract and seeking cancellation at his convenience. Hence, prayed to dismiss the complaint with costs.

7. **The complainant has filed rejoinder on 17/08/2022 as under:-**

The complainant contends that the respondent is attempting to shift the blame on him stating that he has sought cancellation at his convenience by denying the delay attributable to it with an intention to escape from the liability to refund the amount. The respondent had agreed to execute



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the sale deed in favour of the complainant on receiving the complete loan amount. In the tri-partite agreement from the project, requested for cancellation of Agreement of sale, the entire loan amount advanced by the bank shall be refunded by the respondent. The complainant has spent huge amount towards purchase of said apartment. Having received 10 instalments till the date of request for cancellation the respondent neither completed the construction nor has handed over possession of the apartment as agreed. Now, the respondent is attempting to claim that the delay was on account of covid-19 pandemic. As per section 18 of the Act the complainant is entitled for refund of amount if a promoter fails to complete and handover possession of an apartment in the agreed time. The respondent vide e-mail dated 04/10/2021 informed regarding the procedure for cancellation of the said agreement / withdrawal from the project and also informed the complainant that a sum of Rs.48,19,073/- is to be paid by the complainant towards cancellation charges. Having said so, now the respondent cannot say that the complainant is seeking cancellation as per his convenience. The complainant has waited for nearly 5 years for the execution of sale deed. The occupancy certificate obtained by the respondent is only a partial one and the project is not yet completed entirely. Hence, prayed to allow the complaint.

8. In support of his claim, the complainant has produced in all 10 documents such as copy of

1. Agreement of sale dated 09/03/2016
2. Construction agreement dated 10/03/2016
3. Tripartite Agreement dated 06/07/2016
4. Loan sanction memorandum dated 01/07/2016
5. Statement of accounts as on 09/09/2021
6. Demand letter dated 08/09/2021

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7. Cancellation e-mails dated 21/09/2021 and 04/10/2021
 8. Canara Bank Letter dated 13/10/2021
 9. Cancellation letter dated 16/11/2021
 10. Allotment letter 04/10/2015
9. This matter was heard on 18/07/2022, 01/08/2022, 08/08/2022 and 02/09/2022.
10. On the other hand, the Respondent has produced in all 2 documents such as copy of
1. RERA Registration certificates of project
 2. Occupancy certificate (partial) dated 20/01/2022
11. 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?
12. Our findings to the above points are as under:-
1. In the Affirmative
 2. As per final order for the following

REASONS

13. **My answer to Point No.1:** On perusal of the contentions of both the parties, there is consensus that the amount may be refunded. But, the point of dispute is that whether it is to be refunded in full or with admissible deductions. According to the complainant, there is a delay in handing over the possession of the apartment as per the agreed terms. Therefore, the amount has to be refunded in full.



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14. As against this, the contention of respondent is that he has been prevented from completing the construction in time by circumstances beyond this control like non-availability of building materials, an act of god, rule, notification and Act of the Government prohibiting development or construction activities. That is why this Authority has granted extension for completion of project from time to time until 30/06/2022, whereas, the complainant has approached this Authority with this complaint on 06/01/2022.
15. Looking to the materials available on record, it is clear that there is a delay in handing over possession of the apartment for 16 months. According to the terms of agreement of sale respondent was supposed to handover the possession of apartment in favour of the complainant 09/03/2020 with grace period of 6 months which comes to 09/09/2020. Respondent has assigned reasons for such delay as aforesaid.
16. 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

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that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter 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."

17. Taking into consideration of all these facts and circumstances of the case, this Authority is of the view that the complainant is entitled to seek entire refund of amount with interest. Accordingly, the point raised above is answered in the Affirmative.
18. **My answer to Point No.2:** In view of the above discussion, I proceed to pass the following

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/220106/0008769 is hereby allowed.

1. The respondent is hereby directed to refund the amount of Rs.3,57,91,053/- with interest @ 9% p.a. from 04/10/2015 till 31/04/2017.
2. The respondent is also hereby directed to refund the amount of Rs.3,57,91,053/- with interest at the rate of SBI MCLR + 2%

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p.a. commencing from 01/05/2017 till the
date of realization.

3. Failing which the complainant is at liberty
to enforce this order in accordance with
law.

No order as to costs.


(H.C. Kishore Chandra) 13/09/22
Chairman
K-RERA