

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 4TH AUGUST 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/221102/0010156

COMPLAINANT.....

**SANJANA SHASHI KUMAR
A-125, SECTOR-2, HMT COLONY
JALAHALLI
2ND ROAD OPPOSITE TO KADAMBA HOTEL
BENGALURU-560013.**

(IN PERSON)

V/S

**RESPONDENTS....
LIMITED**

1.SUVILAS PROPERTIES PRIVATE

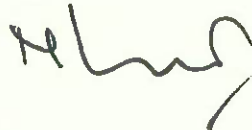
**NO. 100, OLD NO.52
DONNABAS TOWER
RAILWAY PARALLEL ROAD
KUMARA PARK WEST
BANGALORE-560020.**

**2.GLORY J P
SHRIRAM PROPERTIES LIMITED
31 (OLD NO.192), 2ND MAIN ROAD
T. CHOWDAIAH ROAD
(NEAR BHASYAM CIRCLE)
SADASHIVA NAGAR
BANGALORE-560080.**

**(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 SUVILAS GARDEN OF JOY**" developed by



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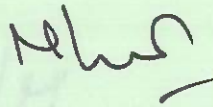
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"SUVILAS PROPERTIES PRIVATE LIMITED" situated at No.15/2, Royal Street, Mydrahalli, Yeshwanthapura Hobli, BBMP Ward No.12, Bangalore-560090, Bengaluru Urban for the relief of refund with interest.

2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/309/PR/180227/001096 valid till 01/07/2020.
3. This project has been taken over by Shriram Properties Limited vide RERA registration No. TOR/PRM/KA/RERA/1251/309/PR/230206/006804 and its registration is valid till 30/04/2025.

Brief facts of the complaint are as under:-

4. The complainant has purchased an apartment in the project of respondent by entering into an agreement for sale on 21/01/2021 and has paid an amount of Rs.33,71,323/- (Rupees Thirty Three Lakh Seventy One Thousand Three Hundred and Twenty Three only) to the respondent till date. The complainant submits that the respondent was supposed to handover the apartment by 15/4/2022 and has failed to handover the apartment as agreed. The complainant submits that the project is stalled for the past six months. The complainant further submits that he would like to withdraw from the project as he is finding it very difficult to pay both EMI and rent. Due to the enormous delay, the complainant has opted for full refund with interest. Thus, the complainant has approached the Hon'ble Authority and prays for directions to the respondent for refund of full amount with interest. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and informed the Hon'ble Authority that Shriram Properties have filed application before the RERA Authority for taking over this project.



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Accordingly, the project has been handed over to Shriram Properties Limited on 06/02/2023.

6. The complainant has produced documents such as copies of Agreement for Sale, payment receipts, Statement of account issued by SBI and memo of calculation as on 23/01/2023.
7. This matter was heard on 21/02/2023, 05/04/2023, 14/06/2023, 11/07/2023 and 26/07/2023. Heard arguments of both sides.
8. **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?
9. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following:-

REASONS

10. **My answer to Point No.1:-**From the materials placed on record, it is apparent that inspite of entering into an agreement to handover the possession of an apartment latest by 15/4/2022 the respondent has failed to abide by the terms of the agreement and has not handed over the possession of the apartment to the complainant till today.

11. The Hon'ble Authority has perused the submission submitted by the complainant. Despite several opportunities were given, the respondent failed to file their written objections. The Hon'ble Authority has viewed it as only a delay tactics adopted by the respondent, which has increased the anxiety and loss to the complainant.

12. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s The State of Uttar Pradesh it is held that:



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"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf."

13. 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 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 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."

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14. In case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, flat, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

15. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

16. The complainant vide her memo of calculation as on 23/01/2023 has claimed an amount of Rs.39,05,927/- (Rupees Thirty Nine Lakh Five Thousand Nine Hundred and Twenty Seven only) as refund with interest. The Respondent No.2 has not filed their memo of calculation despite several opportunities were given.

17. Having regard to all the above aspects, the Authority has concluded that the complainant is entitled for refund with interest as calculated vide her memo of calculation as on 21/06/2023.

18. Therefore, it is incumbent upon the respondent to pay refund with interest determined as under:

Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	0	0	30-04-2017	0
2		0		TOTAL	0
				INTEREST (I1)	

Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
	01/05/2017						

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1	01-05-2017	0	2093	23-01-2023	8.15	10.15 as on 01-05-2017	0
2	27-12-2020	1,00,000	757	23-01-2023	7.3	9.3 as on 10-12-2020	19,287
3	14-01-2021	4,87,862	739	23-01-2023	7.3	9.3 as on 10-01-2021	91,861
4	26-02-2021	12,27,757	696	23-01-2023	7.3	9.3 as on 10-02-2021	2,17,726
5	03-05-2021	5,18,748	630	23-01-2023	7.3	9.3 as on 10-04-2021	83,269
6	24-08-2021	5,18,478	517	23-01-2023	7.3	9.3 as on 15-08-2021	68,298
7	09-12-2021	5,18,478	410	23-01-2023	7.3	9.3 as on 15-11-2021	54,163
8	TOTAL AMOUNT	33,71,323				TOTAL INTEREST (I2)	5,34,604

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 23-01-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
33,71,323	5,34,604	0	39,05,927

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

20. 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/221102/0010156** is hereby allowed.

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Respondent No.2 is directed to pay a sum of **Rs.39,05,927/- (Rupees Thirty Nine Lakh Five Thousand Nine Hundred and Twenty Seven only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 27/12/2020 to 23/01/2023. The interest accruing from 24/01/2023 till the date of final payment will be calculated likewise and paid to the complainant.

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

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