

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 8TH AUGUST 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/220223/0009046

COMPLAINANT.....

**MANISH PANDEY
201, 2ND FLOOR,
GOLDEN PEARL APARTMENT
CHIKAMARANHALLI
MATHIKERE, NEW BEL ROAD
BANGALORE-560054.**

(IN PERSON)

V/S

RESPONDENTS....

**1.M/S.SUVILAS PROPERTIES
PRIVATE LIMITED
NO. 100, OLD NO.52
DONNABAS TOWER
RAILWAY PARALLEL ROAD
KUMARA PARK WEST
BANGALORE-560020.**

**2.M/S. SHRIRAM PROPERTIES LIMITED
NO.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 "**SUVILAS PROPERTIES PRIVATE LIMITED**" situated at No.15/2,

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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; which has been
taken over by Shriram Properties Limited and its registration is valid
till 30/04/2025.

Brief facts of the complaint are as under:-

3. The complainant has purchased a flat bearing No.02.07.04, 7th Floor,
Tower 2 in the project of respondents by entering into an agreement
for sale on 03/08/2019 and has paid an amount of Rs.3,62,000/-
(Rupees Three Lakh Sixty Two Thousand only) to the respondents on
various dates. The complainant submits that the respondents were
supposed to handover the apartment by 15/4/2021 and have failed to
handover the flat as agreed. The complainant submits that he had
faced problem in securing housing loan from the bank due to some
issues and the bank did not clear the legal aspect. The complainant
also submits that in the meantime he also came to know that there
was so much delay in the project and decided to cancel the booking,
but the respondents did not support. Thus, the complainant has
approached the Hon'ble Authority and prays for directions to the
respondents for refund of full amount with interest. Hence, this
complaint.
4. After registration of the complaint, in pursuance of the notice, the
respondents 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.
Accordingly, the project has been taken over by Shriram Properties
Limited. The respondents have not filed any statement of objections
nor produced documents on its behalf.

14/10/2021

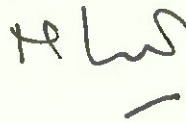
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5. The complainant has produced documents such as copies of Agreement for Sale, payment receipt (acknowledged by the respondent vide his letter dated 5/8/2019), email correspondences from the respondent and memo of calculation as on 31/08/2022.
6. This matter was heard on 18/10/2022, 17/11/2022, 19/1/2023, 14/3/2023, 13/4/2023, 22/6/2023 and 2/8/2023. Heard arguments of both sides.
7. **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?
8. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following:-

REASONS

9. **My answer to Point No.1:-**From the materials placed on record, it is apparent that inspite of the complainant requesting the respondents to cancel the booking and refund the amount due to legal hurdles faced by the complainant from the Bank in getting clearance for sanction of housing loan, the respondents have not refunded the amount to the complainant till date.
10. The Hon'ble Authority has perused the written submission submitted by the complainant.
11. During the process of the hearing, the Hon'ble Authority issued instruction to the complainant to implead Shriram Properties Limited as Respondent No.2. The Authority also instructed the respondent to produce documents regarding taking over of the project by Shriram and to check whether refund can be done at this stage.



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12. During the process of the hearing, the complainant submitted a plea for impleading M/s Shriram Properties Limited as Respondent No.2 in the instant complaint. The Authority has accepted the prayer accordingly.

13. Though the respondents have appeared before the Authority in response to the notice through their counsel/representative, the respondents have not taken any interest to participate in the proceedings by filing statement of objections and producing documents on its behalf. The respondents have not at all disputed the claim of the complainant in any manner and have agreed to pay the refund. Therefore, the claim of the complainant remained unchallenged and it is corroborated with cogent evidence. These being the facts, in the absence of any resistance by the respondent, there is no option left to this Authority except to accept the claim of the complainant.

14. 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:

"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."

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:

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"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."

16. 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.

17. 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.

18. The complainant vide his memo of calculation as on 31/8/2022 has claimed an amount of Rs.5,58,096/- (Rupees Five Lakh Fifty Eight Thousand and Ninety Six only) as refund with interest. The Respondent

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No.2 has not filed their memo of calculation despite several opportunities were given.

19. Having regard to all the above aspects, the Authority has concluded that the complainant is entitled for refund with interest as calculated vide his memo of calculation as on 31/8/2022.

20. Therefore, it is incumbent upon the Respondent No.2 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 INTEREST (I1) | 0 |

| Interest Calculation From 01/05/2017 (After RERA) | | | | | | | |
|---|----------------------|-------------------------|------------|-----------------|------------------|------------------------|----------------|
| S.NO | DATE FROM 01/05/2017 | AMOUNT PAID BY CUSTOMER | NO OF DAYS | NO OF DAYS TILL | MCLR INTEREST X% | INTEREST RATE X+2% | INTEREST @X+2% |
| 1 | 01-05-2017 | 0 | 2284 | 02-08-2023 | 8.15 | 10.15 as on 01-05-2017 | 0 |
| 2 | 28-06-2019 | 50,000 | 1496 | 02-08-2023 | 8.65 | 10.65 as on 10-06-2019 | 21,825 |
| 3 | 09-07-2019 | 3,12,000 | 1485 | 02-08-2023 | 8.65 | 10.65 as on 10-06-2019 | 1,35,187 |
| 4 | TOTAL AMOUNT | 3,62,000 | | | | TOTAL INTEREST (I2) | 1,57,012 |

| Memo Calculation | | | |
|------------------------|---|----------------------------|------------------------------------|
| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2) AS ON 02-08-2023 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
| 3,62,000 | 1,57,012 | 0 | 5,19,012 |

1/1/24

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

22. My answer to Point No.2:- In view of the above discussion, I proceed to pass the following

ORDER

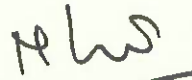
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/220223/0009046** is hereby allowed.

Respondent No.2 is directed to pay a sum of **Rs.5,19,012/- (Rupees Five Lakh Nineteen Thousand and Twelve only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 28/06/2019 to 02/08/2023.

The interest accruing from 03/08/2023 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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