

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-4**

**PRESIDED BY MR. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN**

**DATED 17<sup>TH</sup> DAY OF AUGUST 2023**

**COMPLAINT NO. CMP/UR/220812/0009881**

**COMPLAINANT:**

SUNIL H. KABADI  
H.NO; 17, R.S. NO.154/B  
BALAJI NAGAR  
BEHIND NEELAMMA TAYI  
MATH, GADAG  
KARNATAKA-582102.

(IN PERSON)

V/s

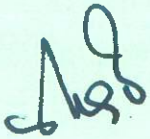
**RESPONDENTS...**

T.V. SRINIVASAMURTY  
PROPRIETOR  
M/s BALAJI BUILDERS AND  
DEVELOPERS  
887, 19<sup>TH</sup> MAIN, 19<sup>TH</sup> CROSS  
IDEAL HOME TOWNSHIP  
RAJARAJESHWARI NAGAR  
MYSORE ROAD  
BENGALURU URBAN-560098

(EX-PARTE)

**PROJECT NAME &**

**JAITHRA TOWERS**



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**JUDGEMENT**

1. This complaint has been filed under section 31 of the RERA Act against the project "**JAITHRA TOWERS**" developed by "**M/s BALAJI BUILDERS AND DEVELOPERS**" for the relief of refund of amount with interest.
2. The promoter has developed this project situated at Chandapura Taluk, Anekal, Bengaluru Rural District.
3. **Brief facts of the complaint are as under:** The complainant herein had booked an apartment bearing no. **209** situated on the second floor in the project "**JAITHRA TOWERS**" of the respondent by entering into an agreement of sale DATED 12/7/2013 for a total sale consideration of Rs.29,00,000/- (Rs. Twenty nine lakhs only). The complainant has paid an amount of Rs.3,60,000/- on 12/7/2013, Rs.48,000/- on 7/2/2014, Rs.22,000/- on 8/2/2014, Rs.99,000/- on 3/3/2014, Rs.99,000/- on 4/3/2014, Rs.49,000/- on 24/3/2014, Rs.49,000/- on 23/4/2014, Rs.49,000/- on 3/7/3024, Rs.45,000/- on 14/11/2014 and Rs.49,000/- on 20/01/2015 altogether Rs.8,69,000/- (Rs. Eight lakhs sixty nine thousand only) to the respondent which has been duly acknowledged by him. The respondent was required to hand over the possession to the complainant within 31/01/2015 as per memo of calculation furnished by the complainant. It is contended that the builder has failed to complete the project. The construction of the project is totally stalled. Having lost confidence with the respondent, the complainant has approached this forum for a direction to the respondent to refund the amount along with interest. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has been continuously remained absent during the





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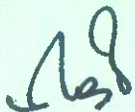
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hearings held on 28/12/2022, 15/11/2022, 1/12/2022, 22/12/2022, 13/1/2023, 6/2/2023, 27/2/2023, 28/3/2023, 4/5/2023 and hence he has been placed as an Ex-parte. Despite of providing sufficient opportunity, it is noticed that the respondent has not appeared before the Authority to put forth his defence and has not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf and remained absent on the aforesaid dates of hearings.

5. In support of their claim, the complainant has produced documents such as payment receipts and memo of calculation.
6. Heard the complainant.
7. On the above averments, the following points would arise for my consideration.
8.
  - 1) Whether the complainant is entitled for the relief claimed?
  - 2) What order?
9. **Findings to the above points is as under:**
  - 1) In the Affirmative
  - 2) As per final order for the following:

**FINDINGS**

10. **Findings on point no.1:** From the payment receipts furnished by the complainant, it is apparent that the complainant had booked a flat bearing 209 situated at send floor and paid substantial sale consideration to the respondent. As per the agreement of sale entered into between the parties, the respondent was required to hand over the possession of the said flat to the complainant by



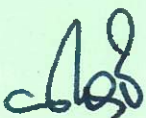
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31/01/2015. It is contended that the respondent has not completed the project within the stipulated timeline as agreed. Therefore, the complainant has approached this Authority for refund of amount along with interest.

11. At this juncture, our attention is drawn towards the decision of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:
12. *"23. 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 RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.*
13. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment /plot in accordance with sale agreement.
14. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021(arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, it is held as under:





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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 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 or the amount with interest at such rate as may be prescribed in this behalf”*

15. From the averments made in the complaint and other documents, it is obvious that the complainant has paid substantial sale consideration of Rs.8,69,000/- (Rs. Eight lakhs sixty nine thousand only) to the respondent towards the purchase of flat no: 209 which has been duly acknowledged by him. The complainant has claimed an amount of Rs.16,13,092/- towards refund along with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.
16. Therefore, it is incumbent upon the respondent to refund The amount with interest which is determined as under:

**Memo Calculation submitted by the complainant as on 28/10/2022**

PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 28/10/2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
8,69,000	7,44,092	0	16,13,092

17. Despite of several notices served upon the respondent, he did not appear before this Authority has been continuously remained absent on all the dates of hearings. Subsequently he has failed to file statement of objections and furnishing documents in support of his defence and hence not contested the matter. In the absence of any



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resistance by the respondent and considering the claim of the complainants which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant. Considering all these aspects, the point raised above is answered in the Affirmative.

18. **Findings on point no.2:** In view of the above discussion, the complaint deserves to be partly allowed. Hence, 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/UR/220812/0009881** is hereby allowed.

1. The respondent is hereby directed to pay a sum of **Rs.16,13,092/-** (Rs. Sixteen lakhs thirteen thousand ninety two only) along with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 12/7/2013 to 30/4/2017. Further, at the rate of SBI MCLR +2% from 1/5/2017 till 28/10/2022. The interest due from 29/10/2022 shall be calculated likewise and paid the complainant till the date of entire realization.
2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.



(H.C. Kishore Chandra)

Chairman  
K-RERA