

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 21st AUGUST 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/221029/0010151

COMPLAINANTS.....

**ABHISHEK M KURKURI &
SWETA A KURKURI
D.NO.52, SHRI RANGA
1ST CROSS, 1ST STAGE
SVGNSS LAYOUT
BASAVESHWARANAGAR
BANGALORE-560079.**

(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

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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; 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 complainants have purchased a flat bearing No.01.05.07, Tower 1 in the project of respondents by entering into an agreement for sale on 21/06/2019 and have paid an amount of Rs.55,48,306/- (Rupees Fifty Five Lakh Forty Eight Thousand Three Hundred and Six only) to the respondents on various dates. The complainants submit that the respondents were supposed to handover the flat by 15/4/2021 and have failed to handover the flat as agreed. The complainants submit that the respondents have stopped giving any response on the completion and are stating that they require another 24 months to complete it. The complainants further submit that they are facing financial problems for paying both EMI and rent every month. The complainants also submit that they have paid all the installment towards the flat. The complainants also submit that the respondents are refusing to meet in person and resolve this issue. Thus, the complainants have approached the Hon'ble Authority and pray for direction 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 have appeared before the Authority through their counsel/representative and informed the Hon'ble Authority that Shriram Properties Limited have filed application before the RERA Authority for taking over this project. Accordingly, the project has



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been taken over by Shriram Properties Limited. The respondents have not filed any statement of objections nor produced documents on their behalf. Despite opportunities given, the respondents have not filed their memo of calculation.

5. The complainants have produced documents such as copies of Agreement for Sale, customer statement of account dated 11/1/2023 issued by the respondents, E-payment receipts and memo of calculation as on 10/2/2023.
6. This matter was heard on 21/2/2023, 5/4/2023, 14/6/2023, 20/7/2023 and 10/8/2023. Heard arguments of both sides.
7. **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?
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 receiving substantial total consideration amount and entering into an agreement for to handover the possession of the flat within 15/04/2021, the respondents have failed to abide by the terms of the agreement and not handed over the possession of the flat to the complainants till date.

10. The Hon'ble Authority has perused the written submission submitted by the complainants.

11. During the process of the hearing, the Hon'ble Authority issued instruction to the complainants to implead Shriram Properties Limited as Respondent No.2. The complainants have submitted a plea for impleading

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M/s Shriram Properties Limited as Respondent No.2 in the instant complaint. The Authority has accepted the prayer accordingly.

12. During the process of the hearing, the Respondent No.2 has also agreed to refund the amount to the complainants.

13. Though the respondents have appeared before the Authority in response to the notice through their counsel/representative, the respondents have not filed any statement of objections and producing documents on their 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 complainants remained unchallenged and it is corroborated with cogent evidence. These being the facts, in the absence of any resistance by the respondent, the Authority accepts the claim of the complainants for refund with interest.

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 complainants vide their memo of calculation as on 10/02/2023 have claimed an amount of Rs.77,01,428/- (Rupees Seventy Seven Lakh One Thousand Four Hundred and Twenty Eight only) as refund with

HWS

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interest. The Respondent 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 complainants are entitled for refund with interest as calculated vide their memo of calculation as on 10/02/2023.

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	2111	10-02-2023	8.15	10.15 as on 01-05-2017	0
2	21-06-2019	55,48,306	1330	10-02-2023	8.65	10.65 as on 10-06-2019	21,53,122
3	TOTAL AMOUNT	55,48,306				TOTAL INTEREST (I2)	21,53,122

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 10-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
55,48,306	21,53,122	0	77,01,428

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

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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/221029/0010151** is hereby allowed.

Respondent No.2 is directed to pay a sum of **Rs.77,01,428/- (Rupees Seventy Seven Lakh One Thousand Four Hundred and Twenty Eight only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 21/06/2019 to 10/02/2023.

The interest accruing from 11/02/2023 till the date of final payment will be calculated likewise and paid to the complainants.

The complainants are 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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