

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 23rd AUGUST 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/00593/2023

COMPLAINANTS.....

**PRAMOD &
VIDYA
1949/24, TRINETRA
8TH B CROSS
SANJIVININAGAR
MOODALAPALYA
BANGALORE-560072.**

(IN PERSON)

V/S

RESPONDENTS....

**1.M/S.TANMATHRA AQUARELLE
DEVELOPERS PRIVATE LIMITED
NO.523, 2ND FLOOR, 24TH MAIN
SECOND SECTOR, HSR LAYOUT
BANGALORE-560102.**

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

AND 50 OTHERS

**(By Mr.Joseph Anthony,
Advocate & others, JSM Law
Partners)**

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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 project **"SHRIRAM CHIRPING GROVE"** developed by

HLWS

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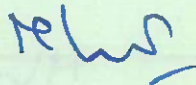
“M/S.TANMATHRA AQUARELLE DEVELOPERS PRIVATE LIMITED”

situated at Sy.No.114, 115 & 116, Katha No.150200102200123633, Thindlu Village, Sarjapura Hobli, Anekal Taluk, Anekal, Bengaluru Urban for the relief of refund with interest and cancellation of booking and agreement.

2. This project has been registered under RERA bearing registration No.PRM/KA/RERA/1251/308/PR/200226/003310 valid till 19/01/2025. The Authority has given covid extension for 9 months i.e. till 19/10/2025.

Brief facts of the complaint are as under:-

3. The complainants have booked a Villa bearing No.30, Wing-B in the project of the respondents by entering into an agreement for sale on 21/10/2021 and have paid an amount of Rs.91,29,268/- (Rupees Ninety One Lakh Twenty Nine Thousand Two Hundred and Sixt Eight only) to the respondents on various dates. The complainants submit that the respondents were informed to cancel the booking of villa vide their email dated 24th November 2021 stating that they will be moving to USA for long term and were unsure when they are returning to India and requested the respondents to refund the entire amount paid by them.
4. The complainants submit that the respondents requested them to continue with the booking for now and will assist with resale after one year as cancellation will attract the forfeiture of entire booking amount. The complainants submit that when he discussed this matter with the then sales head, he was told that the respondents would help with resale after one year and also assign a sales person to get the villa resold as soon as possible. The complainants submit that now the new sales head is saying that they can't help with resale of the villa, as they still have



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some unsold villas and that the complainants may have to wait for more than one year on until all the remaining villas are sold.

5. The complainants submit that the respondents have sent an email dated 20th March 2023 intimating cancellation charges and GST charges to the tune of Rs.17,72,348/-. The complainants submit that the respondents instead of making refund of the amount made them to hold on to the booking the villa; pay up additional funds/instalments and made false promises of assisting with resale after an year. The complainants also submit that the plot size was 1,500 sq.ft but it is measuring only 1485 sq.ft. 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.
6. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through their counsel/representative, but have not submitted their statement of objections nor produced any documents on their behalf. Despite opportunities given, the respondents have not filed their memo of calculation.
7. The complainants have produced documents such as copies of Booking Form, Agreement for Sale, payment receipts for having made payments to the respondents, email correspondences with the respondents and memo of calculation as on 07/08/2023.
8. This matter was heard on 10/8/2023 and 17/8/2023. Heard arguments of both sides.
9. **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?



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10. **My answer to the above points are as under:-**

1. In the Affirmative.
2. As per final order for the following:-

REASONS

11. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of receiving email communication from the complainants for cancellation of booking, the respondents instead of cancelling the booking, requested the complainants to hold on with the booking for a year and that they will assist the complainants for resale of their villa, failed to keep up their promise and to refund the full amount paid by the complainants with interest.
12. It is also apparent that the respondents after lapse of more than one and a half years, sent an email to the complainants claiming cancellation charges and deduction of GST to the tune of Rs.17,72,348/-
13. 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 M/s Shriram Properties Limited as Respondent No.2 in the instant complaint. The Authority accepts the prayer accordingly.
14. During the process of the hearing, the Respondent No.2 has also agreed to refund the amount to the complainants.
15. 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 nor produced any documents on their behalf. The respondents have not at all disputed the claim of the complainants in any manner and have agreed to pay the refund with interest. Therefore, the claim of the complainants remained unchallenged and it is corroborated with cogent evidence. These being

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the facts, the Authority accepts the claim of the complainants for refund with interest.

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 07/08/2023 have claimed an amount of Rs.1,04,61,118/- (Rupees One Crore Four Lakh Sixty One Thousand One Hundred and Eighteen only) as refund with 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 07/08/2023.
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 (I)	0

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H. H. S.

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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 07-08-2023	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	2289	07-08-2023	8.15	10.15 as on 01-05-2017	0
2	29-04-2021	50,000	830	07-08-2023	7.3	9.3 as on 10-04-2021	10,573
3	06-09-2021	50,000	700	07-08-2023	7.3	9.3 as on 15-08-2021	8,917
4	24-09-2021	1,000	682	07-08-2023	7.3	9.3 as on 15-09-2021	173
5	26-09-2021	3,00,000	680	07-08-2023	7.3	9.3 as on 15-09-2021	51,978
6	27-09-2021	9,90,458	679	07-08-2023	7.3	9.3 as on 15-09-2021	1,71,354
7	02-12-2021	14,17,548	613	07-08-2023	7.3	9.3 as on 15-11-2021	2,21,405
8	29-12-2021	21,06,754	586	07-08-2023	7.3	9.3 as on 15-12-2021	3,14,558
9	09-02-2022	21,06,754	544	07-08-2023	7.3	9.3 as on 15-01-2022	2,92,013
10	08-04-2022	21,06,754	486	07-08-2023	7.3	9.3 as on 15-03-2022	2,60,879
11	TOTAL AMOUNT	91,29,268				TOTAL INTEREST (I2)	13,31,850

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 07-08-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
91,29,268	13,31,850	0	1,04,61,118

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/00593/2023** is hereby allowed.

The Respondent No.2 is directed to pay a sum of **Rs.1,04,61,118/- (Rupees One Crore Four Lakh Sixty One Thousand One Hundred and Eighteen only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 29/04/2021 to 07/08/2023.

The interest accruing from 08/08/2023 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

MEMORANDUM FOR THE DIRECTOR
FROM THE ASSISTANT ATTORNEY GENERAL
DATE: 10/15/54

Re: [Illegible] - [Illegible] - [Illegible]

ORDER

In furtherance of the order entered under Section 21 of the
Federal Reserve Act, and in accordance with the provisions of
Section 21 of the Federal Reserve Act, it is hereby ordered that
the respondent shall be directed to pay a sum of
[Illegible] - [Illegible] - [Illegible] outside
of and with interest to the complainant within 60 days from
the date of this order. The respondent is advised that
the interest accruing on the date of final
payment will be calculated on the basis of the
complaint.
The complainant is authorized to bring an 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.

[Signature]
[Illegible]
[Illegible]

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