

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

**PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4**

**PRESIDED BY SHRI. H.C. KISHORE CHANDRA, CHAIRMAN**

**DATED 30<sup>TH</sup> AUGUST 2023**

**COMPLAINT No: CMP/220822/0009929**

**COMPLAINANT....**

**SADASHIVA RAO  
#601, EWS 6<sup>TH</sup> MAIN  
NEAR KALIKAMBA TEMPLE  
KENGARI UPANAGAR  
BENGALURU SOUTH-560060**

**V/S**

**RESPONDENT.....**

**BASAVARAJ MALLIKARJUN  
YERAGAL  
DEVELOPER  
NO: 107, NEELA GANGA NILAYA  
NEAR ST.PETERS SCHOOL  
NAGADEVANAHALLI  
BENGALURU-560056.**

**(EX-PARTE)**

**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA against the project **"SAI PRITHVI ELITE"** for the relief of refund with interest.
2. This project is registered in RERA bearing registration no. PRM/KA/RERA/1251/310/PR/180131/001379.

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3. The builder has developed this project in the limits of Kengeri Village, Kengeri Hobli, Bengaluru South Taluk
4. The gist of the complaint is that the complainant had booked an apartment bearing no. 224 on the first floor in the project "**SAI PRITHVI ELITE** " and thereafter entered into an agreement of sale and construction agreement both dated 4<sup>th</sup> July 2016 with the respondent for a total sale consideration of Rs.26,00,000/- (Rs. Twenty six lakhs only). The complainant has paid an amount of Rs.1,00,000/- on 23/1/2016, Rs.2,10,000/- on 31/8/2016, Rs.1,00,000/- on 13/10/2016 and Rs.7,25,508/- on 25/10/2016 altogether Rs.11,35,508/- (Rs. Eleven lakhs eighty five thousand five hundred eight only) to the respondent which has been duly acknowledged by him. The respondent was required to hand over the possession of the said apartment to the complainant by 3/7/2018. It is contended that the respondent-builder has stopped the work since last 3 years and there was no progress of construction. Therefore, the complainant has approached this forum seeking for the relief of refund with interest. Hence, this complaint.
5. After registration of the complaint, in pursuance of notice, the respondent did not appear before this Authority during the hearings held on 10/11/2022, 29/11/2022, 19/12/2022, 31/1/2023, 23/2/2023, 8/5/2023 and on 30/6/2023 but continuously remained absent and hence he has been placed as Ex-parte.
6. In support of his claim, the complainant has produced documents such as (1) Agreement of sale and construction both dated 4/7/2016 (2) Axis Bank

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amount transfer statement (3) Statement of IIFL Home Loan amount transfer by way of RTGS (4) Payment receipts (5) Memo of calculation.

7. Heard arguments of the complainant.

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?

09. **Findings to the above points are as under:-**

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

**FINDINGS**

10. **Findings to point No.1:-** The grievance of the complainant is that the complainant has booked an apartment no. 224 situated on the first floor in the project "SAI PRITHVI ELITE" of the respondent. The respondent was required to hand over the possession of the said flat within 18 months with a grace period of 6 months i.e. by 4/7/2018. However, the respondent-developer has not handed over the said flat within the stipulated timeline and failed to abide by the terms and condition of the agreement of sale and construction agreement both dated 4/7/2016.

11. At this juncture, my 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:

*"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*

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*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.*

12. 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:

*"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"*

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. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted

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by the complainant. The complainant has claimed an amount of Rs.18,33,446/-. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

15. 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 4/11/2022**

PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 4/11/2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
11,35,508	6,97,938	0	18,33,446

16. Despite of several notices served upon the respondent, he did not appear before this Authority but 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 resistance by the respondent and considering the claim of the complainant 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.

**17. Findings to point no.2.** In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I proceed to pass the following order:

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**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: CMP/220822/0009929 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **18,33,446/-** (Rupees Eighteen lakhs thirty three thousand four hundred forty six only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate 9% from 23/1/2016 till 30/4/2017. Further, at the rate SBI MCLR + 2% from 1/5/2017 to 4/11/2022. The interest due from 5/11/2022 shall be calculated likewise and paid to 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 order.

No order as to costs.

**(H.C. Kishore Chandra)**  
Chairman  
**K-RERA**