

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

PRESENT:

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT NO.: CMP/201023/0006943

DATED THIS 28TH DAY OF MARCH, 2024

RECTIFICATION ORDER UNDER SECTION 39 OF RERA ACT

COMPLAINANT.....

VERONICA VIJAYA THOMPSON,
A-70, Jal Vayu Vihar,
HRBR Layout, 3rd Block,
Kalyan Nagar,
Bengaluru -560043.

**(Rep. by Sri. Syed Khamruddin Shamanth
Naik, Advocates)**

V/S

RESPONDENT.....

**M/S. WELLNEST INDIA PROJECTS
PRIVATE LIMITED.,**
No.219/11, 2nd Floor,
JP Corp, Bellary Road,
Sadashivanagar,
Bengaluru Urban - 560080.

(Ex-parte)

1. This complaint has been filed under section 31 of the RERA Act against the project "**VALLEY OF WINDS PHASE-2**" developed by "**M/WELLNEST INDIA PROJECTS PRIVATE LIMITED**" for the relief of refund of amount with interest.
2. This project is registered under RERA bearing registration no. PRM/KA/RERA/1250/301/PR/171201/001855.

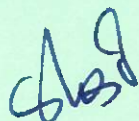
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3. The promoter has developed this project situated at Sy.No.109 & 111 of Heggadehalli, Sy.No: 192 to 197 of Gulyanandigunda Village, both of Tubigere Hobli, Doddaballapura Taluk, Bengaluru Rural District.
4. **Brief facts of the complaint are as under:** The complainant herein had booked a site bearing no. **97** in the project "**VALLEY OF WIND PHASE II**" of the respondent by entering into an agreement of sale dated 3/3/2019 for a total sale consideration of Rs.48,00,000/- (Rs. Forthy eight lakhs only). The complainant has paid an amount of **Rs.12,00,000/- (Rupees Twelve Lakhs Only) (Rectified vide order date 28/03/2024)** on 2/3/2018 to the respondent which has been duly acknowledged by him. The respondent was required to hand over the possession to the complainant within 31/5/2018 as per memo of calculation furnished by the complainant. The complainant has approached this Authority for a direction to the respondent to for the relief of refund of amount paid to the respondent along with interest.
- 4A. The advocate for complainant Mr. Abdul Kareem had moved an application dated 04/03/2024 inviting attention of the Authority to rectify the principal amount mentioned in the judgement dated 24/08/2023 as **Rs.12,00,000/- (Rupees Twelve Lakhs Only)** instead of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand Only). This application has been verified and it is found necessary to rectify the order dated 24/08/2023.
- (i) This rectification is done within two years from the date of this original judgement i.e., 24th August 2023.
- (ii) Herein this case, at present there is no information about appeal being preferred against the said Judgement.
- (iii) The Authority's judgement dated 24/08/2023 is declared Non Est and replaced by this order dated 28/03/2024.



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5. After registration of the complaint, in pursuance of the notice, the respondent has been continuously remained absent during the hearings held on 23/7/2022, 19/8/2022, 30/8/2022, 13/9/2022, 30/9/2022, 28/10/2022, 21/11/2022, 12/12/2022, 17/01/2023, 13/2/2023, 13/3/2023, 31/3/2023, 21/4/2023 and on 26/6/2023 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.
6. In support of his claim, the complainant has produced documents such as memo of calculation and copy of agreement of sale dated 3/3/2018.
7. Heard the complainant.
8. On the above averments, the following points would arise for my consideration.
9. 1) Whether the complainant is entitled for the relief claimed?
2) What order?
10. Findings to the above points is as under:
 - 1) In the Affirmative
 - 2) As per final order for the following:

FINDINGS

11. **Findings on point no.1:** It is the case of the complainant that he has booked a site No. 97 in the project "VALLEY OF WIND PHASE II" and entered into an agreement of sale dated 3/3/2018 with 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 31/05/2018. The respondent has been continuously absent on all the dates of hearings. Therefore, he has approached this



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forum for a direction to the respondent for the relief of refund of amount paid by him along with interest.

12. 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:
13. *"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.*
14. 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.
15. 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



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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"

16. From the averments made in the complaint and other documents, it is obvious that the complainant has paid an amount of **Rs.12,00,000/- (Rs. Twelve Lakhs Only) (Rectified vide order date 28/03/2024)** to the respondent towards the purchase of site no: 97 in the project "VALLEY OF WIND PHASE II" which has been duly acknowledged by the respondent. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.
17. Therefore, it is incumbent upon the respondent to refund the amount along with interest.
18. 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 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.



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19. **Findings on point no.2:** In view of the above discussion, the complaint deserves to be 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/201023/0006943 is hereby allowed.

1. The respondent is hereby directed to refund the amount of **Rs.12,00,000/- (Rupees Twelve Lakhs Only)** (*Rectified vide order date 28/03/2024*) along with interest to the complainant within 60 days from the date of this order calculated at the rate of SBI MCLR +2% from 2/3/2018 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