

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 FULL BENCH

PRESENT:

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

SMT. NEELMANI N RAJU, HON'BLE MEMBER

SHRI. GURIJALA RAVINDRANADHA REDDY, HON'BLE MEMBER

COMPLAINT NO.: CMP/UR/190212/0002124

DATED THIS 24th DAY OF AUGUST, 2023

COMPLAINANT.....

RAMAMANI V,
#1020, HMT Layout,
Bengaluru - 560073.

(In Person)

V/S

RESPONDENT.....

L NAGARAJA SHETTY,
M/s. Asset Shoppe, #52/53,
Anam Plaza, 8th F Main Road,
3rd Block, Jayanagara,
Bengaluru - 560011.

(Rep. By Rameshchandra, Advocate)

1. This complaint is filed under section 31 of the RERA Act against the project "Asset Habitat" developed by "Asset Shoppe" on Sy. No. 206, 207, 208 and 233 situated at Ilavala Village, Ilavala Hobli, Mysore Taluk for the relief of refund with interest.
2. This is an unregistered project.

Brief facts of the complaint are as under:-

3. The complainant has booked a site bearing No. C68 in the project of respondent wherein the complainant entered into an agreement for sale on 14/06/2012 for the total sale consideration of Rs.21,60,000/- (Rupees Twenty One Lakh Sixty Thousand only) and paid Rs.12,40,000/- (Rupees Twelve Lakh Forty Thousand only) to the respondent in instalments. The respondent was supposed to handover the site in favour of the complainant on or before 14/06/2014. But, he has failed to handover the flat as agreed. The complainant has also sent a letter and reminders to the respondent on 21/11/2018, 07/12/2018 and 10/01/2019 regarding withdrawing from the project by refunding the amount along with interest and compensation. But, they are unanswered from the respondent. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and filed statement of objections as under:-
5. It has denied entire allegations made by the complainant against it as false. It contends that, the complainant has agreed to purchase the property from the private individual for a sum of Rs.21,60,000/- (Rupees Twenty One Lakh Sixty Thousand Only). The agreement dated 14/06/2012, indicates that the respondent is the owner of the property and it is a self acquired property. The complainant and her husband have agreed to pay the balance consideration of Rs.13,60,000/- (Rupees Thirteen lakh Sixty Thousand Only) within 2 years in equal instalments of 6 months. The complainant has failed to pay the amount despite of repeated requests cannot claim and seek for refund without any default. Paragraph 6 of the agreement clearly indicates the allottees are entitled for penalty of Rs. 1 Lakh on failure of payment schedule and the amount paid by the allottee will be forfeited for not complying with the payment. Paragraph 4, consists that the party failing has a right to file suit for specific performance.

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6. On 27/03/2023, respondent has filed additional objections stating that, the agreement is between allottee and the power of attorney holder. Power of attorney holder has not power to present or depose on behalf of the principal as held by the Hon'ble Supreme Court. Hence, prayed to dismiss the complaint.
7. In support of her claim, the complainant has produced in 2 documents such as copy of payment receipts and agreement for sale dated 14/06/2012.
8. In support of defence, the respondent has not produced any documents.
9. Hearings were conducted on 25/01/2023, 22/02/2023 and 09/03/2023.
10. Heard arguments of both sides.
11. **On the above averments, the following points would arise for our consideration:-**
 1. Whether the complainant is entitled for the relief claimed?
 2. What order?
12. **Our findings on the above points is as under:-**
 1. In the Affirmative.
 2. As per final order for the following

FINDINGS

13. **Our finding on point No. 1:-** The complainant has approached this forum for the relief of refund of amount paid to the respondent towards purchase of said site with interest on the grounds that the respondent has not completed the project and handed over the possession of her site as agreed.
14. Contention of the respondent is that, the complainant has agreed to purchase the property from the private individual. The agreement dated 14/06/2012, indicates that the respondent is the owner of the property and it is a self acquired property. The complainant and her husband have agreed to pay the

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balance consideration of Rs.13,60,000/- (Rupees Thirteen lakh Sixty Thousand Only) within 2 years in equal instalments of 6 months. The complainant has failed to pay the amount despite of repeated requests cannot claim and seek for refund without any default.

15. From the materials available on record, the payment receipt furnished by the complainant it is clear that, the amount paid by the complainant to the respondent Asset Shoppe and Mr. L Nagaraj Shetty, is the partner of the real estate firm Asset Shoppe.
16. It is apparent that, in spite of entering into a sale agreement to handover the possession of a site, the respondent has failed to handover the site as agreed and has delayed the project. Hence, the builder has failed to abide by the terms of the sale agreement dated 14/06/2012. There seems to be no possibility of completing the project or handing over possession in near future.
17. At this juncture my our attention is drawn towards 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,

"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

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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 latter 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."

18. 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 V/s. 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 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."

19. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only as the promoter fails to complete or provide possession of an site etc., in accordance with sale agreement.
20. From the averments of the complaint and the copy of agreement between the parties, the complainant has already paid substantial sale consideration. Having accepted the said amount and failure to keep up promise to handover possession of site certainly entitles the complainant herein for refund with interest.

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21. Despite of several opportunities were given, the respondent has not filed his memo of calculation. A thorough verification of documentary evidence submitted by the complainant reveals that her claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide her memo of calculation dated 08/07/2023.
22. Therefore, it is incumbent upon the respondent to refund the amount with interest which is 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	28-05-2012	150,000	1798	30-04-2017	66,501
2	14-06-2012	650,000	1781	30-04-2017	285,447
3	23-12-2012	340,000	1589	30-04-2017	133,214
4	06-07-2013	100,000	1394	30-04-2017	34,372
5		1,240,000		TOTAL INTEREST (I1)	519,534

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	1,240,000	2259	08-07-2023	8.15	10.15 as on 01-05-2017	778,952
2	TOTAL AMOUNT	1,240,000				TOTAL INTEREST (I2)	778,952

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 08-07-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,240,000	1,298,486	0	2,538,486

23. Accordingly, the point raised above is answered in the Affirmative.
24. **Our findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we 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/UR/190212/0002124 is hereby allowed

1. The respondent is directed to pay the amount of Rs.25,38,486/- (Rupees Twenty Five Lakh Thirty Eight Thousand Four Hundred and Eighty Six Only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 28/05/2012 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 08/07/2023.
2. The interest due from 09/07/2023 up to the date of final payment shall be calculated likewise and paid to the complainant.
3. 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.


(G.R. REDDY)
Member
K-RERA


(NEELMANI N. RAJU)
Member
K-RERA


(H.C. KISHORE CHANDRA)
Chairman
K-RERA

