

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 BEFORE THE AUTHORITY

Dated 7th September 2023

CMP/211130/0008653

Present

Hon'ble Chairman Shri. H.C. Kishore Chandra

Hon'ble Member Shri. G.R.Reddy

Complainants.....

1. Prabhat Kumar

2. Rashmi Kumari

Flat No. 308, Primrose 3rd Block,

SJR Blue Water Apartment,

Silver County Road Haralur,

Bengaluru – 560068.

(By Shri. Abheek Saha, Advocate)

V/S

Respondent.....

FRONTIER SHELTERS PVT LTD

NO 422 80 FEET ROAD,

6TH BLOCK KORAMANGALA

Bengaluru-560095.

(By Shri. Girish Kumar, Advocate)

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1. This complaint is filed under section 31 of the RERA Act against the project "FRONTIER HEIGHTS" developed by "FRONTIER SHELTERS PVT LTD" of the respondent for the relief of refund with interest.

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2. This project has been registered under RERA vide registration No. PRM/KA/RERA/1251/446/PR/171214/001250.
3. The said project is situated at S.NO.49 1 2, HARALUR VILLAGE VARTHUR HOBLI , Bengaluru East , Bengaluru Urban.

Brief facts of the complaint are as under:-

4. The complainants have entered into an agreement of sale on 23/01/2019 to purchase a flat bearing No.2102 in the project of respondent. The respondent was supposed to handover the possession of the said flat to the complainants in March 2020. But, the respondent has failed to handover the possession of the said flat as agreed. Complainants have borrowed home loan from the bank and presently paying Rs. 44000 EMI Per Month and Rs. 24000 Rent per month. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through his counsel, but has not contested the matter by filing statement of objections, producing documents on his behalf etc.,
6. In support of their claim, the complainants have produced/uploaded copies of agreement for sale, email conversation, payment receipts.
7. This matter was heard on 18/04/2021, 30/05/2022, 01/08/2022 and 30/03/2023.
8. Heard arguments of both sides.
9. **On the above averments, the following points would arise for our consideration:-**

1. Whether the complainants are entitled for the relief claimed?
2. What order?

10. Findings on the above points is as under:-

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

REASONS

11. Findings on Point No.1:- The complainants have approached this forum seeking for the relief of interest on delay period. The grounds urged are that the complainants have booked an apartment bearing No.2102 in the project of the respondent by entering into agreement of sale on 23/01/2019. As per the said agreements the respondent was supposed to handover possession of the said flat to the complainants in March 2020. But till date he has not handed over the possession of the apartment to the complainants.

12. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 23/01/2019. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale, the respondent was supposed to handover the possession of said flat to the complainants in March 2020. But the respondent had not completed and handover the possession of the said flat to the complainants till date.

13. As per 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 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

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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,

" 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 letter 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."

14. As per section 18(1) of RERA Act, 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, plot, building as the case may be with

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interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

15. 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 etc., in accordance with sale agreement.

The said principles are aptly applicable to the present case on hand.

16. As per sec.18 of RERA Act, the respondent is liable to refund of amount with interest. Since the claim of the complainants remained unchallenged, considering the cogent materials available of record, the delay in handing over possession being apparent, this Authority see no legal impediment in allowing the complaint as prayed. The complainants have paid Rs. 57,15,077/- (Fifty seven lakh fifteen thousand and seventy seven only) to the respondent towards entire sale consideration.

17. In response to the notice the respondent has appeared before the Authority through his counsel. But, he has not contested the matter by participating in the proceedings, filing objections, producing documents on his behalf etc. Therefore, claim of the complainants remained undisputed and unchallenged. Hence, there is no reason to discard the claim of complainants. In the absence of any resistance by the respondent no option is left to this Authority except to accept the claim of complainants which is corroborated with the cogent evidence.

18. Therefore, it is incumbent upon the respondent to refund the amount along with interest to the complainants. The complainants have furnished memo of calculation as under.

S.NO	DATE FROM	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	1917	31-07-22	8.15	10.15 as on 01-05-2017	0
2	07-01-19	200,000	1301	31-07-22	8.75	10.75 as on 10-12-2018	76,634



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3	21-01-19	404,785	1287	31-07-22	8.75	10.75 as on 10-01-2019	153,432
4	30-01-19	3,740,000	1278	31-07-22	8.75	10.75 as on 10-01-2019	1,407,725
5	21-08-19	411,400	1075	31-07-22	8.45	10.45 as on 10-08-2019	126,618
6	12-11-19	401,000	992	31-07-22	8.2	10.2 as on 10-11-2019	111,163
7	13-11-19	250,000	991	31-07-22	8.2	10.2 as on 10-11-2019	69,234
8	22-05-20	56,585	800	31-07-22	7.55	9.55 as on 10-05-2020	11,844
9	28-11-20	251,307	610	31-07-22	7.3	9.3 as on 10- 11-2020	39,059
10	TOTAL AMOUNT	5,715,077				TOTAL INTEREST (I2)	1,995,709

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 31-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
5,715,077	1,995,709	0	7,710,786

19. In spite of providing sufficient opportunity, the respondent has not furnished memo of calculation on his behalf.

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

20. **Our findings on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we 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/211130/0008653** is hereby allowed as under.

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1. The respondent is directed to pay the amount of Rs. 77,10,786/- (Seventy seven lakh ten thousand seven hundred and eighty six only) towards refund of amount including the interest at the rate of SBI MCLR+2% from 07/01/2019 upto 31/07/2022 to the complainants within 60 days from the date of this order.
2. The interest due from 01/08/2022 till the realization will be calculated likewise and paid to the complainants.
3. The complainants are at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to costs.


(G.R.Reddy)
Member
K-RERA


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

