

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 21<sup>st</sup> SEPTEMBER 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/UR/191120/0004770**

**COMPLAINANT.....**

**RUPESH KUMAR CHOUDHARY  
APPJEY SCHOOL  
HOSHIRAPUR ROAD  
JALANDAR  
PUNJAB-144025  
DISTRICT: JALANDAR  
STATE: PUNJAB**

**(BY MR. RAMESH MANCHI, ADVOCATE)**

**V/S**

**RESPONDENT.....**

- 1. JAGADISH**
- 2. S. SANJAY BABU, PROPRIETOR  
S.V. TOWER, 3<sup>RD</sup> FLOOR  
NO.138, 20<sup>TH</sup> MAIN ROAD  
WEST OF CHORD ROAD  
NEAR SIDWIN HOSPITAL  
5<sup>TH</sup> BLOCK, RAJAJINAGAR  
BANGALORE-560010.**

**(IN PERSON)**

**\*\*\*\*\***

**J U D G E M E N T**

- 1. This complaint is filed under section 31 of the RERA Act against the project "TERRACON PRIDE COUNTY" developed by M/S. TERRACON LAND DEVELOPERS situated at Gandra Gulipura Village, Nelamangala Taluk, Bangalore Rural District for the relief of refund with interest.**
- 2. This project is not registered under RERA.**

*M/S*

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**Brief facts of the complaint are as under:-**

3. The complainant submits that he is working in the Defence in Punjab and that in 2013 while he was working in Bangalore approached the respondent and paid Rs.4,29,000/- (Rupees Four Lakh Twenty Nine Thousand only) for purchase of a site bearing No.415 measuring 30'x40' in the project of the respondent and entered into agreement to sell on 29/7/2013. The complainant submits that the respondent has not handed over the possession of the flat till date. The complainant submits that the respondent in fact has failed to form the layout itself in accordance with rules and regulations. The complainant also submits that the respondent neither delivered the site nor returned the amount paid by him. The complainant further submits that he sent a notice to the respondent on 5/8/2019. Though the notice was served on the respondent, they never replied to it. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent to refund the full amount with interest. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the Respondent-1 has appeared before the Authority and informed the Hon'ble Authority that he is an employee in the company and that the proprietor is one S. Sanjay Babu and filed his statement of objections as under:
5. The respondent-1 submits that he is only an employee working in the Terracon Land Developers. The respondent-1 further submits that he is not the signatory to the transaction taken place between the Terracon Land Developers and the complainant and the promoter of the project is respondent-2. The respondent-1 had received the summons on behalf of

*[Handwritten signature]*

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respondent-2. During the process of the hearing, respondent-1 submitted that the promoter is aware of the summons but could not attend as he was out of Bangalore. The respondent-1 prays the Hon'ble Authority to dismiss the complaint against him in the interest of justice and equity.

6. In support of his claim the complainant has produced copies of documents such as agreement to sell.

7. Heard arguments of both sides.

**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?

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

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

**REASONS**

10. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement to sell for sale of a site, the developer has not developed the layout itself and completed the project as per agreement. The respondent has not handed over the site in favour of the complainant till date. Hence, the developer has failed to abide by the terms of the agreement for sale dated 29/07/2013. There seems to be no possibility of completing the project or handing over the possession of the site to the complainant by the respondent in the near future.



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11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid the substantial sale consideration amount. Having accepted the said amount and failure to keep up promise to develop the layout and handover possession of the site, certainly entitles the complainant herein for refund with interest.
12. The Hon'ble Authority has perused the complaint filed by the complainant and statement of objections filed by Respondent-1. The Hon'ble Authority has accepted the contention of Respondent-1 that he is an employee working in Terracon Land Developers on monthly payment and not signatory to the transaction taken place between the Terracon Land Developers and the complainant. The complainant submitted a Memo with a prayer to make S. Sanjay Babu, Proprietor, Terracon Land Developers as respondent in the complaint and the Hon'ble Authority accepted the memo submitted by the complainant accordingly.
13. During the process of the hearing, the Hon'ble Authority noticed that though the summons was served on respondent-2 S. Sanjay Babu, he has not appeared before the Hon'ble Authority to participate in the proceedings by filing statement of objections and producing documents on his behalf. The respondent has not at all disputed the claim of the complainant in any manner. Therefore, the claim of the complainant remained unchallenged and it is corroborated with cogent evidence. 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, and hence, it is necessary that it shall be free from any ambiguity and vagueness. Here in this case, the respondent has not complied with the terms of the said agreement of sale. Hence, the Hon'ble Authority accepts the claim of the complainant.

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14. At this juncture, my attention is drawn towards the 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 that:

*"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."*

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 later category. The RERA Act thus*

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*definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment."*

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 complainant has claimed Rs.7,97,419/- (Rupees Seven Lakh Ninety Seven Thousand Four Hundred and Nineteen only) vide his memo of calculation as on 01/08/2023. The respondent has not filed his memo of calculation despite several opportunities were given.
19. Having regard to the above aspects, the Hon'ble Authority concludes that the complainant is entitled for refund with interest as claimed by him vide his memo of calculation as on 01/08/2023.
20. 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	29-07-2013	1,00,000	1371	30-04-2017	33,805
2	09-08-2013	8,000	1360	30-04-2017	2,682
3	09-11-2013	24,000	1268	30-04-2017	7,503
4	09-12-2013	8,000	1238	30-04-2017	2,442

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5	07-01-2014	8,000	1209	30-04-2017	2,384
6	07-02-2014	8,000	1178	30-04-2017	2,323
7	07-03-2014	8,000	1150	30-04-2017	2,268
8	07-04-2014	8,000	1119	30-04-2017	2,207
9	07-05-2014	8,000	1089	30-04-2017	2,148
10	09-07-2014	16,000	1026	30-04-2017	4,047
11	09-08-2014	8,000	995	30-04-2017	1,962
12	09-09-2014	33,000	964	30-04-2017	7,844
13	09-10-2014	8,000	934	30-04-2017	1,842
14	09-11-2014	8,000	903	30-04-2017	1,781
15	09-12-2014	8,000	873	30-04-2017	1,722
16	09-01-2015	8,000	842	30-04-2017	1,660
17	09-03-2015	8,000	783	30-04-2017	1,544
18	09-04-2015	8,000	752	30-04-2017	1,483
19	09-07-2015	8,000	661	30-04-2017	1,303
20	09-08-2015	16,000	630	30-04-2017	2,485
21	09-09-2015	8,000	599	30-04-2017	1,181
22	09-10-2015	8,000	569	30-04-2017	1,122
23	09-12-2015	8,000	508	30-04-2017	1,002
24	09-01-2016	8,000	477	30-04-2017	940
25	09-02-2016	8,000	446	30-04-2017	879
26	09-03-2016	8,000	417	30-04-2017	822
27	09-04-2016	8,000	386	30-04-2017	761
28	09-05-2016	8,000	356	30-04-2017	702
29	09-06-2016	8,000	325	30-04-2017	641
30	09-07-2016	8,000	295	30-04-2017	581
31	09-08-2016	8,000	264	30-04-2017	520
32	09-09-2016	8,000	233	30-04-2017	459
33	09-10-2016	8,000	203	30-04-2017	400
34	09-11-2016	8,000	172	30-04-2017	339
35	09-12-2016	8,000	142	30-04-2017	280
36		4,29,000		TOTAL INTEREST ( I1 )	96,064

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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	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	4,29,000	2283	01-08-2023	8.15	10.15 as on 01-05-2017	2,72,355
2	TOTAL AMOUNT	4,29,000				TOTAL INTEREST ( I2 )	2,72,355

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 01-08-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
4,29,000	3,68,419	0	7,97,419

21. Accordingly the point raised above is answered in the Affirmative.
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/UR/191120/0004770** is hereby allowed.

The Respondent-2 is directed to pay a sum of **Rs.7,97,419/- (Rupees Seven Lakh Ninety Seven Thousand Four Hundred and Nineteen only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 29/07/2013 to 30/04/2017



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and MCLR + 2% from 01/05/2017 till 01/08/2023 to the complainant within 60 days from the date of this order.

The interest due from 02/08/2023 up to the date of final payment will be calculated likewise and paid to the complainant.

The complainant is 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.

  
(Neelmani N Raju)  
Member, K-RERA

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