

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 15th September 2023

CMP/210407/0007873

Present

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

Hon'ble Member Shri. G.R.Reddy

Complainant.....

1. Saurav Khandelwal

Flat -213,Block B,
Manya Hi Living,
52/3 Doddathoguru,
Electronic City Phase 1
Bengaluru - 560100.

(In person)

V/S

Respondent.....

FRONTIER SHELTERS PVT LTD

NO 422 80 FEET ROAD,
6TH BLOCK KORAMANGALA
Bengaluru-560095.

(By Shri. Girish Kumar, Advocate)

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 of booking amount 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 complainant has booked a flat No.2143 on 14th floor in the project 'FRONTIER HEIGHTS' of the respondent on 06/11/2019 by paying booking amount of Rs.2,00,000/-. After an email confirmation by the respondent that before the agreement if he wants to cancel the booking for any legal issues, the booking amount will be fully refunded. He has waited till 04/05/2020 for the approval plans and all the documents. They had approval till 11th floors and did not receive the modified approval for 12 to 15 floors. On 05/05/2020 he has cancelled the booking as he didn't get the approval documents on time for verification. On 28th July he was informed that due to COVID the fund is stuck. Till date the respondent didn't refund his booking amount. 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 complainant has produced/uploaded copies of agreement for sale, email conversation, payment receipts and allotment letter.

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:-

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1. Whether the complainant is entitled for the relief claimed?
2. What order?

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

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

REASONS

11. Findings on Point No.1:- The complainant has approached this forum seeking for the relief of refund of booking amount with interest. The grounds urged are that the complainant has booked a flat bearing No. 2143 in the project of the respondent by paying advance amount of Rs.2,00,000/- .

12. In response to the notice, the respondent has appeared before the Authority through his counsel. But he has not contested the matter by filing statement of objections, producing documents, etc.

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 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.



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14. 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."

15. 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.

16. 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.

17. As per sec.18 of RERA Act, the respondent is liable to refund of amount with interest. Since the claim of the complainant 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 complainant has paid Rs. 2,00,000/- (Two lakhs only) to the respondent towards sale consideration.

18. 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 complainant remained undisputed and unchallenged. Hence, there is no reason to discard the claim of complainant. In the absence of any resistance by the respondent no option is left to this Authority except to accept the claim of complainant which is corroborated with the cogent evidence.

19. Therefore, it is incumbent upon the respondent to refund of amount with interest to the complainant.

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

20. **Findings on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following

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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/210407/0007873** is hereby allowed as under.

1. The respondent is directed to pay the amount of Rs. 2,00,000/- (Two lakhs only) towards refund of amount along with interest at the rate of SBI MCLR+2% from 07/11/2019 till realization of the amount.
2. The complainant is 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