

**PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5**

**Present**

**SHRI. G.R. REDDY HON'BLE MEMBER**

**Dated 20<sup>TH</sup> September 2023**

**COMPLAINT NO: CMP/200927/0006685**

**COMPLAINANT...**

**Amba Prasad Tiwari  
No. 310, Shubha Nandana Serial,  
No.23/1, Balaji layout, Gollahalli  
Village, Electronic City Phase-1,  
Bangalore-560100.  
STATE: Karnataka.**

**(In person)**

**Vs**

**RESPONDENT.....**

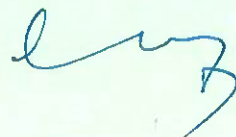
**SHRIPROP LIVING SPACE PVT LTD.  
No. 40/43, 8<sup>TH</sup> MAIN, 4<sup>TH</sup> CROSS,  
SADASHIV NAGAR,  
Bengaluru 560080.  
(Mr. A.Anand, Advocate)**

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**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA Act against the project "Shriram 107 Southeast" developed by Shriprop Living Space Pvt Ltd., for the relief of refund with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/308/PR/181122/002156.
3. This project is situated at, SY.NO. 5/1, 5/2, 7/2, 10/2, 44/2, 44/5, 45/2C, 46 AND 47 Of Manchenahalli Village, Attibele Hobli, Anekal Taluk, Bangalore.

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



4. The complainant had booked a flat in the project of the respondent namely "Shriram 107 Southeast" and entered into sale agreement on 28/05/2019 for total sale consideration of Rs.24,96,976/- (Rupees Twenty Four Lakhs Ninty Six Thousand and Nine hundred and Seventy Six only). At the time of entering into sale and construction agreements, the complainant had paid the sum of Rs.1,39,831/- (Rupees One Lakhs Thirty Nine Thousand Eight Hundred and Thirty One only) on various dates to the respondent. The complainant came to know that false information is provided at the time of booking of flat and at the time of registration of agreement, the complainant decided to withdraw his booking amount. The complainant send an email to the respondent for asking cancellation of flat and refund of his amount. But there is no response from the respondent. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notices, the respondent has appeared before the Authority through its counsel and the Authority stated to file statement of objections. The respondent advocate appeared and did not file any statement of objection.
6. In support of his claim, the complainant has produced documents such as copies of registered sale agreement dated 28-05-2019, email conversation with the respondent, payment receipts, and memo of calculation as on 25/07/2023 .
7. On the other hand, the respondent has not furnished any documents on his behalf.
8. This matter is heard on 19-07-2022, 11-08-2022, 23-03-2022, 27-04-2023, 01-06-2023 and 13-07-2023.



9. **On the above averments, the following points would arise for my consideration:-**

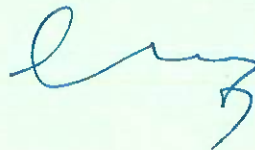
1. Whether the complainant is entitled for the relief claimed?
2. What order?

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

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

**REASONS**

11. **My answer to Point No.1:-** From the materials available on record, it is apparent that the facilities as per the brochure and as per agreement are different. In brochure respondent mention the list of facilities are Drop off Plaza, Club House Plaza, Peripheral planting, Internal courts and Giant Board Games and seating area, Outdoor exercise station, Practice Basketball court with seating area, Surface Car Parking, Tree Court plaza with informal seating, Skating Ring and club house spill over space, Entrance plaza with informal seating, Skating Ring and club house spill over space, Entrance plaza with informal seating, children's play area, Mini football field, Meditation and yoga deck, Practice Sand Volley Ball, Cricket/Multipurpose play ground, Lake side Garden with seating, Sunken stake Board area with local art, Amphitheatre with lake view, Simming pool, Herb garden and Butterfly Garden. But in the time of sale agreement the respondent cut some 12 amenities and he ready to give amenities i.e., only club House, Gym room, Yoga room, Children's play area, Land Scape Garden Area, Staking Ring, Internal courts as Giant board games and seating areas, open amphi-theatre, Drop off plaza,



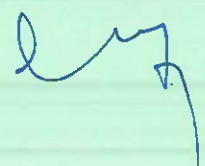
Practice sand volley ball and Pedestrian crossing with art work. The respondent mentioned at the time of booking, possession of the flat on December 2021, but at the time of agreement it is changed to October 2023. The respondent has neither completed the project, handed over the possession of the flat nor refunded the amount with interest till date as agreed.

12. 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 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.*

13. Further, 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*



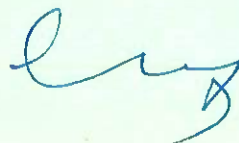


apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest 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 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.

16. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that the complainant



has paid substantial booking amount to the respondent towards the booking of said flat.

17. The complainant has filed his memo of calculation as on 10-06-2023 claiming a refund of Rs.2,05,332/- (Rupees Two Lakhs Five Thousand and Three Hundred and Thirty Two only) including interest. The respondent has not resisted the said memo of calculation filed by the complainant and he has not submitted his Memo of calculation inspite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainant reveals that his claim is genuine.

18. Having regard to all these aspects as mentioned above, this Authority concludes that the complainant is entitled for refund with interest as claimed vide his memo of calculation dated 10-06-2023.

19. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS TILL 30-04-2017	INTEREST @9%
1	30-04-2017	0	0	0
2			TOTAL INTEREST ( I1 )	0

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	0	2231	10-06-2023	8.15	10.15 as on 01-05-2017	0
2	28-12-2018	25,000	1625	10-06-2023	8.75	10.15 as on 10-12-2018	11,964

3	08-02-2019	114,831	1583	10-06-2023	8.75	10.75 as on 10-01-2019	53,537
4	TOTAL AMOUNT	1,39,831				TOTAL INTEREST (I2)	65,501

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 13-06-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
139,831	65,501	0	205,332

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

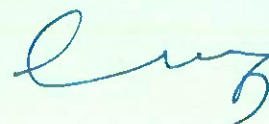
21. The complainant had also sought for the relief of direction to the respondent to repay the balance outstanding loan amount, including the principle and interest components, directly to the complainant. Accordingly, the point raised above is answered in the Affirmative.

22. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this 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/200927/0006685** is hereby allowed as under.

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/200927/0006685** hereby allowed.





Respondent is directed to pay a sum of **Rs.2,05,332/- (Rupees Two Lakhs Five Thousand Three Hundred and Thirty Two only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 28/12/2018 till 19/10/2023.

2. The interest due from 20/10/2023 up to the date of final payment will be calculated likewise and paid to the complainant.

3. The complainant is hereby directed to cooperate with the respondent for cancellation of agreement of sale agreement dated 28-05-2019 on receipt of entire amount as directed to be refunded by the respondent.

4. 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 the costs.

  
(G R REDDY)  
Member, K-RERA