

**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/UR/201112/0007054**

**COMPLAINANT...**

**V Kiran Kumar**

**D.No.11C, 3<sup>rd</sup> Cross, Kappagal Road,  
B.S Compound,**

**Gandhi Nagar, Bellari-583103.**

**STATE: Karnataka**

**(Shri. Vinay S, Authorized Signatory of  
the Complainant)**

**Vs**

**RESPONDENT.....**

**Connaissance Asset Shoppe (I) Pvt  
Ltd.,**

**No. 52/53, Anam Plaza,  
8<sup>th</sup> 'F' Main Road, 3<sup>rd</sup> Block,  
Jayanagar,**

**Bengaluru-560011.**

**(Ramesh Chandra, Advocate)**

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

**JUDGEMENT**

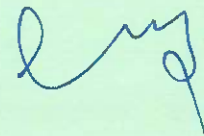
1. This complaint is filed under section 31 of the RERA Act against the project "Connaissance Asset Shoppe (I) Pvt. Ltd.," developed by Nagaraja Setty L, for the relief of refund with interest.
2. This project is not registered under RERA.



3. This project is situated at, Assets AZURE, Sy No. 3/3, 3/5 & 3/6, Kannamangala Palya, Kasaba Hobli, Devanahalli Taluk, Bangalore.

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

4. The complainant had booked a flat in the project of the respondent namely "Connaissance Asset Shoppe (I) Pvt. Ltd" and entered into a memorandum of understanding on 12/01/2009. The builder promised to handover the flat within 30 months after signing the MOU. Later, when the stipulated time was completed, the complainant had approached for registration of sale deed to Mr. Nagaraja Setty, who is the Chairman and Managing Director of the project many times but the respondent was assuring that he is expecting to get some more clearances from the government and once it is done, the flat will be completed, but there is no response from the respondent. The respondent is not responding to complainant letters and phone calls for enquiry about the project from last four years. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notices, the respondent has appeared before the Authority but not filed statement of objections and the relevant documents.
6. In support of his claim, the complainant has produced documents such as copies of Memorandum of Understanding, payment receipts, and memo of calculation as on 01/09/2023.



7. This matter is heard on 05-04-2023, 28-06-2023 & 17-08-2023.

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:-**

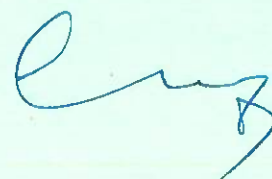
1. In the Affirmative.
2. As per final order for the following.

### **REASONS**

10. **My answer to Point No.1:-** From the materials available on record, it is apparent that in spite of entering into an memorandum of understanding, the complainant paid sum of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) to the respondent but there is no response from the other side. There seems to be no possibility of completing the project or handing over the possession of the apartment in the near future.

11. 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:

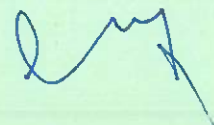
*Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or*



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.

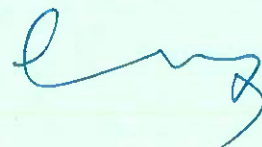
12. In the judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

*“ 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."*

13. 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.
14. 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.
15. From the averments of the complaint and the copy of MOU between the parties, it is obvious that the complainant has paid part sale consideration to the respondent towards the purchase of said flat. Having accepted the said amount and failure to keep up promise to complete and handover possession of the flat even after lapse of 05 years certainly entitles the complainant for refund of entire amount with interest.
16. The complainant has failed his memo of calculation as on 01-09-2023 claiming a refund of Rs.18,22,750/- (Rupees Eighteen Lakhs Twenty Two Thousand Seven Hundred and Fifty 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.

17. 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 date 01-09-2023.

18. 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	15-06-2008	200,000	3241	30-04-2017	159,830
2	30-06-2008	200,000	3226	30-04-2017	159,090
3	20-09-2008	200,000	3144	30-04-2017	155,046
4	23-09-2008	150,000	3141	30-04-2017	116,173
	750,000			<b>TOTAL INTEREST (11)</b>	590,139

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%
	7	R					

*[Handwritten signature]*

1	01-05-2017	750,000	2314	01-09-2023	8.15	10.15 as on 01-05-2017	482,611
2	TOTAL AMOUNT	750,000				TOTAL INTEREST (I2)	482,611

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST ( B = I1 + I2 ) AS ON 13-06-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
750,000	1,072,750	0	18,22,750

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

20. **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/UR/1201112/007054** is hereby allowed. Respondent is directed to pay a sum of **Rs.18,22,750/- (Rupees Eighteen Lakhs Twenty Two Thousand and Seven Hundred and Fifty only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 07/10/2015 to 30/04/2017 and at MCLR + 2% from 01/05/2017 till 01/09/2023.



The interest due from 02/09/2023 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.

No order as to the costs.

  
**(G R REDDY)**  
**Member, K-RERA**

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