

ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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 22nd September 2023**

**CMP/191114/0004720**

**Present**

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

**Hon'ble Member Smt. Neelmani N Raju**

**Hon'ble Member Shri. G.R.Reddy**

**COMPLAINANT.....**

**Vikas Sharma**

D 402, 4th Floor, R And S Riviera,  
Sy.No.105/3b, Thanisandra Road,  
KR Pura, Rachenahalli  
Bangalore -560045.

(By Sri. Shivaraj N Arali, Advocate)

**V/S**

**RESPONDENTS.....**

**Vasathi Housing Ltd**

Plot no.41, H.No.8-2-269/S/41,  
Sagar Society, Road no.2,  
Banjara Hills,  
Bengaluru - 500034.

(By Sri. Deepak Bhaskar, Advocate)

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "VASATHI AVANTE" developed by "Vasathi Housing Ltd" for the relief of refund with interest.
2. This project has been registered under RERA vide registration No. PRM/KA/RERA/1251/309/PR/171208/001088.
3. The said project is situated at Sy No 84/1, Bbmp Khata No-37/1/84/1, Rachenahalli Village, K.R.Puram Hobli.

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

4. The respondent has sold the flat No.W1-A-1001 to the complainant deliberately suppressing information of pendency of O.S.No.25522/2014 against them pending before city civil court wherein the very title to the property is under dispute. The respondent has fraudulently induced the complainant to avail loan to buy the property and promised him that he would complete the project and occupancy certificate for registration and possession will be handed over by December 2016 with 6 months grace period i.e. June 2017. He has collected about 95% of the sale consideration from the complainant and not completed the project as agreed till date. The respondent is illegally selling away even the common areas of the flat sold and collecting 2,50,000/- towards car parking space which is a common area. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through their counsel and contested the matter by filing statement of objections as under:
6. He has denied each every allegation made against them by the complainant as false. According to him the complainant has not made the payments as

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per terms of the agreement of sale and construction agreement dated 24/06/2016. The complainant is liable to pay a sum of Rs.4,09,046/- (Four lakh nine thousand forty six only) after deducting delay compensation of Rs.2,88,756/- (Two lakh eighty eight thousand seven hundred fifty six only). Now the said flat is ready and fit to occupy and the respondent is willing to handover the possession of the same to the complainant. Other several owners have taken actual possession of their flats by entering into the sale deeds. The respondent was supposed to complete the project on or before June 2017 with 6 months grace period i.e. December 2017 as agreed. He has applied for occupancy certificate on 04/05/2019. Hence, the respondent has counter claimed the direction to the complainant to pay a sum of Rs.4,09,046/- (Four lakh nine thousand forty six only) at the earliest and to come forward for execution of sale deed and to take possession of his flat on receipt of delay compensation as per agreement for construction and prayed to dismiss the complaint.

7. In support of their claim, the complainant has produced the documents such as the copies of agreement of sale, construction agreement, payment receipt, statement of loan account, acknowledgement for payment.
8. On the other hand, the respondent has submitted the the draft of sale deed.
9. This matter was heard on 13/07/2022, 26/07/2022, 05/11/2022, 30/11/2022, 15/02/2023 and 08/03/2023.
10. Heard Arguments.
11. **Based on the above averments, the following points would arise for our consideration:-**
  - 1) Whether the complainant is entitled for the relief claimed?
  - 2) What order?

**12. Findings on the above points are as under:-**

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- 1) In the Affirmative
- 2) As per final order for the following

**REASONS**

13. **Findings on point No. 1:-** The complainant has approached this forum seeking for the relief of refund with interest. The grounds urged are that the complainant has booked an flat bearing No.W1-A-1001 in the project of the respondent by entering into an agreement of sale on 19/12/2014. As per the said agreement the respondent was supposed to handover possession of the said flat to the complainant in June 2017. But till date he has not handed over the possession of the said flat to the complainant and there is a litigation pending in O.S.No.25522/2014 against the respondent before city civil court wherein the very title to the property is under dispute.
14. On the other hand, contention of the respondent is that the complainant has not made payment as per the terms of agreement of sale and now he has completed the project and he is ready to execute the sale deed and to handover possession of the said flat to the complainant on receipt of balance sale consideration along with delay compensation.
15. Mainly, the complainant is intending to withdraw from the project on account of a legal impediment caused by legal proceedings initiated in O.S.No.25522/2014 wherein the very title of the property involved in the said project is under dispute. When there is litigation in respect of the property involved in the said project, the complainant would never be able to live there peacefully as the thought of pending litigations on the project land will always be a threat and it will be like a hanging sword. There will be uncertainty of outcome of pending litigation and title of the flat can get affected permanently at any time.

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16. In general to have his own cozy house is everyone's dream. To fulfill that dream one would take risk of investing all his lifetime savings and raise loans in terms of lakhs or crores which would take away rest of his life in repaying the same. That being so, the developer who promises to fulfill dream of owning the house shall conduct himself in equally responsible manner. When there is litigation pending with regard to very title of the said project land, it would not only shatter the dreams of investors, but also makes him to run from pillar to post by incurring heavy investment as well as legal expenses.
17. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 19/12/2014. 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 construction agreement, the respondent was supposed to handover the possession of said flat to the complainant in June 2017. But the respondent had not completed and handover the possession of the said flat to the complainant as agreed. However, the respondent has applied for Occupancy certificate on 04/05/2019.
18. 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*

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*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.*

19. 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."*

20. 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

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may be prescribed in this behalf including compensation in the manner as provided under this Act.

21. 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.
22. Having regard to all these aspects, the respondent is liable to refund the amount with interest to the complainant. In spite of providing sufficient opportunity the respondent has not filed his memo of calculation. Therefore, it is incumbent upon the respondent to pay the amount as per memo of calculation filed by the complainant 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	11-07-14	1,184,424	1024	30-04-17	299,058
2	13-10-14	394,808	930	30-04-17	90,535
3	28-02-15	807,260	792	30-04-17	157,647
4	28-09-15	719,781	580	30-04-17	102,938
5	21-04-16	560,739	374	30-04-17	51,710
6	22-06-16	560,739	312	30-04-17	43,138
7	29-08-16	561,648	244	30-04-17	33,791
8	12-10-16	561,648	200	30-04-17	27,697
9	14-10-16	561,648	198	30-04-17	27,420
10	27-01-17	561,648	93	30-04-17	12,879
11		6,474,343		TOTAL INTEREST (I1)	846,813

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PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 12-09-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
7,035,991	5,377,908	0	12,413,899

S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL 12-09-23	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-17	6,474,343	2325	12-09-23	8.15	10.15 as on 01-05-2017	4,185,928
2	24-08-17	561,648	2210	12-09-23	8.15	10.15 as on 01-08-2017	345,167
3	TOTAL AMOUNT	7,035,991				TOTAL INTEREST ( I2 )	4,531,095

Sum and substance of the case is as under.

Date of agreement of sale	19/12/2014
Date of construction agreement	19/12/2014
Sale consideration	Rs. 75,71,816/- (Seventy five lakh seventy one thousand and eight hundred sixteen only).
Amount paid	Rs. 70,35,991/- (Seventy lakh thirty five thousand and nine hundred ninety one only) on various dates.
Promised date of possession as per AOS	30/06/2017
Date of sale deed	Not yet executed
Date of occupancy certificate	16/07/2020
Whether the possession has been handed over	No
Prayer	Refund with interest

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

*ASB*

*[Signature]*

*[Signature]*



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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/191114/0004720** is hereby allowed as under.

- i. The respondent is directed to pay a sum of Rs. 1,24,13,899/- (One crore twenty four lakh thirteen thousand and eight hundred ninety nine only) towards refund of amount including the interest at the rate of 9 % calculated from 11/07/2014 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 12/09/2023 to the complainant within 60 days from the date of this order.
- ii. The interest due from 13/09/2023 till realization of the amount will be calculated likewise and paid to the complainant.
- iii. 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.

  
(Neelmani N Raju)  
Member  
K-RERA

  
(G.R. Reddy)  
Member  
K-RERA

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

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