

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 - 4

PRESENT

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT NO.: CMP/210210/0007605

DATED THIS 13TH DAY OF OCTOBER, 2023

COMPLAINANT.....

ABRAHAM PANICKER,
Residing at : No.D506,
Purva Panorma, Kalena Agrahara,
Bannerghatta Road,
Bengaluru - 560076.

(Rep. By Keerthana B.P. Advocate)

V/S

RESPONDENT.....

**JAIN HOUSING & CONSTRUCTION
LTD.,**
98/99, Habibullah Road,
T Nagar,
Tamil Nadu - 600017.

(Rep. By Mr. Girish Jain, Authorized
Signatory)

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "Jains Aashraya" developed by "Jain Housing & Construction Ltd.," situated in Basavanapura Village, Begur Hobli, Bannerghatta Main Road, Bengaluru South Taluk, Bengaluru for the relief of refund with interest and subsequently amended his prayer for the relief of refund with interest
2. This project has been registered in RERA bearing registration No. PRM/KA/RERA/1251/310/PR/180507/001672.



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3. This matter has been remanded by the Hon'ble High Court of Karnataka for fresh consideration vide order dated 31/05/2023 in W.P. No.3925/2023 C/w 3926/2023, 3927/2023, 3930/2023 (GM-RES).

Brief facts of the complaint are as under:-

4. The complainant had booked a flat bearing No.H-9 in the project "Jains Aashraya" of the respondent by entering into an agreement of sale and construction agreement both dated 18/12/2015. The total sale consideration of the said flat is Rs.61,92,420/- (Rupees Sixty One Lakh Ninety Two Thousand Four Hundred and Twenty Only) and paid Rs.59,93,494/- (Rupees Fifty Nine Lakh Ninety Three Thousand Four Hundred and Ninety Four Only) to the respondent on various dates. As per the agreement of sale the respondent was supposed to complete the project, execute the sale deed, handover the possession along with ready and complete common areas with all specifications and amenities to the complainant on 18/12/2018. But, the respondent had failed to handover possession of the said flat till date. The complainant has approached the respondent on multiple occasions seeking clarification on the date of completion of the unit but to no avail. Therefore, the complainant prays for interest on delay period.
5. During proceedings on 21/08/2023, advocate for complainant has filed amended complaint under section 31 of RERA Act for the relief of refund with interest. During the hearing, the apartment unit came to be completed but the amenities and specifications related to the project still stands incomplete. Complainant has sent emails to the respondent addressing his grievances; the respondent has sent a reply on 10/10/2022 and provided demand draft for the sum of Rs.59,93,494/- bearing DD No.808158 dated 10/10/2022 in favour of the complainant. The complainant has encashed the said amount in order to close the home loans availed before the SBI and has explicitly acknowledged with the respondent that the aforementioned DD has been accepted as part payment of the total amount payable only and



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further reserves his right to seek interest on the refund amount payable by the respondent. Therefore, the respondent is liable to make interest payment of Rs.30,37,196/- (Rupees Thirty Lakh Thirty Seven Thousand One Hundred and Ninety Six Only). Hence, this complaint.

6. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through his authorized representative and filed statement of objections as under:-
7. It has denied entire allegations made against it by the complainant as false. It contends that, the construction works have been completed as per the RERA Act and whoever has paid the total flat cost, the registration of sale deeds in respect of individual apartments are completed. The complainant has booked the flat and signed the agreement of sale and memorandum of agreement on 18/12/2015 i.e., much before the RERA Act came into force. The respondent has started the project and has got the plan approved on 29/10/2015 and has completed the construction much before 20/01/2020 and have obtained the occupancy certificate from the BBMP. As per clause 4(iv) and (v) of the Memorandum of understanding signed between the complainant that delay in getting necessary permissions/occupancy certificate is not constituted as delay in project. Few agreement holders also delay in making milestone instalment payments. Hence, there was some delay in obtaining occupancy certificate.
8. Further, it is submitted that the complainant delayed in payment of instalments stipulated in the agreement of sale and other few agreement holders also delay in making milestone instalment payments. Hence, there was some delay in obtaining occupancy certificate of the building on account of valid / bonafide reasons beyond the control of the respondent. Even now the complainant has not paid the balance due. The respondent has faced many issues like, cost of labour, building material increased more than 10%, the problem of securing the workmen / labour was also there, on account of COVID-19, force majeure restrictions and conditions by the

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Government, marketing of the apartments was also affected, delay in marketing and sale of the apartment has also added to the delay and the financing of the project. There are several other reasons also for the delay in obtaining occupancy certificate. The complainant has not come forward to pay the balance due amount and to get the sale deed but opted for the cancellation and refund of the flat. Hence, the respondent has cancelled the agreement and has refunded the amount of Rs.59,93,494/- (Rupees Fifty Nine Lakh Ninety Three Thousand Four Hundred and Ninety Four Only) to the complainant and the complainant has received the same. There is no due from the respondent to the complainant. Hence, it is evident that he could no longer claim compensation for delay on handover of the apartment unit. The apartment was also ready to occupy by the purchaser. Hence, prayed to dismiss the complaint.

9. In support of his claim, the complainant has produced in all 6 documents, such as copy of sale agreement and construction agreement dated 18/12/2015, proof of transactions made in favour of the respondent, response notice issued by the respondent, DD issued by the respondent in favour of the complainant and response furnished by the complainant in favour of the RERA and the respondent, and the letter issued by the complainant on 21/10/2022 reserving his right to claim interest on refund amount.
10. Respondent has not produced any documents on its behalf.
11. This matter was heard on 10/06/2022, 25/07/2022, 05/08/2022, 19/08/2022, 06/09/2022, 10/10/2022, 14/11/2022, 22/06/2023, 3/06/2023, 10/07/2023, 24/07/2023, 11/08/2023, 21/08/2023 and finally on 24/08/2023.
12. Heard argument of both the parties.
13. 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?

14. My findings on the above points is as under:-

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

REASON

15. **My findings on point No.1:-** The complainant has approached this forum for the relief of refund with interest. The grounds urged that the complainant has booked a flat bearing No. H-9, in the project 'Jains Aashraya' by entering into an agreement of sale dated 1812/2015. The total sale consideration of the said flat is Rs.61,92,420/- (Rupees Sixty One Lakh Ninety Two Thousand Four Hundred and Twenty Only) and paid Rs.59,93,494/- (Rupees Fifty Nine Lakh Ninety Three Thousand Four Hundred and Ninety Four Only) on various dates. As per the agreement of sale the respondent was supposed to complete the project, execute the sale deed, handover the possession along with ready and complete common areas with all specifications and amenities of said flat to the complainant on 18/12/2018. But, the respondent has failed to handover possession of the said flat till date.
16. On 10th October 2022, the respondent has provided demand draft bearing No.808158, dated 10/10/2022 for a sum of Rs.59,93,494/- (Rupees Fifty Nine Lakh Ninety Three Thousand Four Hundred and Ninety Four Only) drawn on KVB Bank, in favour of the complainant. The complainant has encashed the said amount in order to close the home loan availed before the State Bank of India and has explicitly acknowledged with the respondent that the aforementioned DD has been accepted as part payment of the total amount payable only and further reserves his right to seek interest on the refund amount payable by the respondent. Therefore, the respondent is

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liable to make interest payment of Rs.30,37,196/- (Rupees Thirty Lakh Thirty Seven Thousand One Hundred and Ninety Six Only).

17. The same is resisted by the respondent on the ground that, the delay in obtaining occupancy certificate of the building on account of valid / bonafide reasons beyond the control of the respondent. Even now the complainant has not paid the balance due. The respondent has faced many issues like, cost of labour, building material increased more than 10%, the problem of securing the workmen / labour was also there, on account of COVID-19, force majeure restrictions and conditions by the Government, marketing of the apartments was also affected, delay in marketing and sale of the apartment has also added to the delay and the financing of the project. There are several other reasons also for the delay in obtaining occupancy certificate. The complainant has not come forward to pay the balance due amount and to get the sale deed but opted for the cancellation and refund of the flat. Hence, the respondent has cancelled the agreement and has refunded the amount of Rs.59,93,494/- (Rupees Fifty Nine Lakh Ninety Three Thousand Four Hundred and Ninety Four Only) to the complainant who had received the same. There is no due from the respondent to the complainant.
18. It is apparent from agreement of sale dated 18/12/2015 that, in spite of entering into the said agreement to handover the possession of the flat on 18/12/2018, the respondent had failed to handover the said flat as agreed and has delayed the project. Hence, the builder has failed to abide by the terms of the sale agreement dated 18/12/2015.
19. Undisputedly, the respondent had cancelled the agreement of sale and has refunded the amount of Rs.59,93,494/- (Rupees Fifty Nine Lakh Ninety Three Thousand Four Hundred and Ninety Four Only) to the complainant through DD bearing No.808158 dated 10/10/2022 and the complainant has encashed the same in order to close his home loan availed from SBI. The complainant has acknowledged that he had accepted the said DD towards

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part payment of total amount and reserved his right to seek for the interest on the amount of Rs.59,93,494/- (Rupees Fifty Nine Lakh Ninety Three Thousand Four Hundred and Ninety Four Only) paid to the respondent.

20. At this juncture my our attention is drawn towards 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 latter 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."

21. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction civil appeal No's.6745 – 6749 of 2021 arising out of SLP (civil) No's. 3711-3715 of 2021 between M/s. Newtech Promoters and Developers Private Limited V/s. State of UP & others, it is held as under:

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“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.”

22. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only as the promoter fails to complete or provide possession of a flat etc., in accordance with sale agreement.
23. From the averments of the complaint and the copy of agreement between the parties, the complainant has already paid substantial sale consideration. Having accepted the said amount and failure to abide by the terms of said sale agreement dated 18/12/2015. Certainly entitles the complainant herein for interest on the amount paid to the respondent.
24. Despite of several opportunities were given, the respondent has not filed his memo of calculation. A thorough verification of documentary evidence submitted by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide his memo of calculation dated 28/06/2023.
25. 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	19-10-2015	50,000	559	30-04-2017	6,891

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S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
2	21-10-2015	387,325	557	30-04-2017	53,196
3	11-12-2015	922,208	506	30-04-2017	115,061
4	16-03-2016	521,480	410	30-04-2017	52,719
5		1,881,013		TOTAL INTEREST (I1)	227,867

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	1,881,013	1988	10-10-2022	8.15	10.15 as on 01-05-2017	1,039,875
2	10-05-2018	1,700,000	1614	10-10-2022	8.35	10.35 as on 01-05-2018	778,036
3	15-05-2018	448,773	1609	10-10-2022	8.35	10.35 as on 01-05-2018	204,752
4	07-07-2018	299,181	1556	10-10-2022	8.45	10.45 as on 01-07-2018	133,280
5	23-07-2018	100,000	1540	10-10-2022	8.45	10.45 as on 01-07-2018	44,090
6	03-08-2018	454,843	1529	10-10-2022	8.45	10.45 as on 01-08-2018	199,109
7	18-01-2019	277,421	1361	10-10-2022	8.75	10.75 as on 10-01-2019	111,202
8	31-01-2019	277,421	1348	10-10-2022	8.75	10.75 as on 10-01-2019	110,139
9	26-07-2019	554,842	1172	10-10-2022	8.6	10.6 as on 10-07-2019	188,846
10	TOTAL AMOUNT	5,993,494				TOTAL INTEREST (I2)	2,809,329

Refund Interest Calculation From 01/05/2017 (After RERA)

S.NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	5,993,494	10-10-2022	5,993,494	0	259	26-06-2023	8.0	10.0 as on 15-09-2022	0
2								TOTAL INTEREST (I3)	0

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 28-06-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
5,993,494	3,037,196	5,993,494	3,037,196

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

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27. **My findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we proceed to pass the following order.

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/210210/0007605 is hereby allowed

1. The respondent is hereby directed to pay an amount of Rs.30,37,196/- (Rupees Thirty Lakh Thirty Seven Thousand One Hundred and Ninety Only) towards interest on total amount of Rs.59,93,494/- (Rupees Fifty Nine Lakh Ninety Three Thousand Four Hundred and Ninety Four Only) paid by the complainant towards purchase of flat bearing No.H-9 in the project 'Jain Aashraya' within 60 days from the date of this order, calculated at rate of 9% p.a. from 19/10/2015 to 30/04/2017 and at the rate of SBI MCLR+2% from 01/05/2017 till 28/06/2023.
2. The interest due from 29/06/2023 up to the date of final payment shall be calculated likewise and paid to the complainant.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.


(H.C. KISHORE CHANDRA)

Chairman
K-RERA

