

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 6

Dated 17TH OCTOBER 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210406/0007872

COMPLAINANT.....

**SUKKRISH KUMAR
91/41, RENGANAGAR
2ND MAIN ROAD
KK NAGAR, TIRUCHIRAPALLI
PIN CODE: 620021
DISTRICT: TIRUCHIRAPALLI
STATE: TAMIL NADU**

(BY MR.S.K. RAVI, ADVOCATE)

Vs

RESPONDENT.....

**M/S COLUMBIA DEVELOPERS PVT LTD
3RD FLOOR, BELAKU COMPLEX
SINGASANDRA, HOSUR MAIN ROAD
BANGALORE-560068.**

**(BY MR. AMSHITH HEGDE HS, ADVOCATE
MR.PREM SAI KS, CEO - AAUTHORIZED
PERSON)**

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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**COLUMBIA AALTIUS**" developed by **COLUMBIA DEVELOPERS PRIVATE LIMITED** situated at 52/2, Hosur Main Road, Attibele Hobli, Anekal Taluk, adjacent to Stanley Showroom, Electronic City Phase-1, Bangalore-560100, Bengaluru Urban District for the relief of refund with interest.
2. This project has been registered under RERA bearing Registration No.PRM/KA/RERA/1251/308/PR/190330/002510 valid till 31/12/2024. The project has been granted covid-extension for a period



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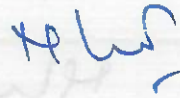
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of 9 months till 31/12/2021. The Authority has further extended its registration for a period of 9 months i.e. till 30/09/2025.

Brief facts of the complaint are as under:-

3. The complainant intended to purchase a residential flat in the project of the respondent and paid an amount of Rs.50,000/- as booking amount to the respondent. The complainant further paid an amount of Rs.4,42,500/- (Rupees Four Lakh Forty Two Thousand Five Hundred only) to the respondent and entered into agreement to sell dated 02/03/2020. The complainant has also issued five post-dated cheques for Rs.5,00,000/- each to the respondent as under:
 - a) Rs.5,00,000/- vide cheque No.066964 dated 1/4/2020;
 - b) Rs.5,00,000/- vide cheque No.066965 dated 2/4/2020;
 - c) Rs.5,00,000/- vide cheque No.066966 dated 3/4/2020;
 - d) Rs.5,00,000/- vide cheque No.066967 dated 4/4/2020;
 - e) Rs.5,00,000/- vide cheque No.066968 dated 5/4/2020.
4. The complainant submits that he had received an email dated 2/4/2020 from the Sales Executive of the respondent to the effect that the construction has slowed down due to current situation and will continue in full pace once the situation is restored back to normalcy. The complainant submits that he had a discussion with the respondent's team and sent a reply on 3/4/2020 to the above said email asking the respondent not to deposit the five cheques without confirmation as lockdown had been imposed due to Covid-19 pandemic. The complainant submits that there was no response from the respondent, however the cheques were not deposited.
5. The complainant submits that he sent an email to the respondent on 5/6/2020 regretting that he is unable to go ahead with the purchase of



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- flat due to Covid-19 pandemic and requested the respondent to cancel the agreement. There was no response from the respondent. The complainant sent reminders on 16/6/2020, 26/6/2020. Again there was no response from the respondent.
6. The complainant submits that as all his efforts vent in vain, he sent a legal notice dated 25/8/2020 to the respondent to cancel the agreement to sell and refund the entire amount paid and also to return all 5 post-dated cheques issued by him. Thus the complainant has approached this Hon'ble Authority and prays the Hon'ble Authority to direct the respondent to refund an amount of Rs.4,87,500/- after deducting 10% out of the booking amount of Rs.50,000/- and to return all 5 post-dated cheques. Hence, this complaint.
7. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative but has not filed their statement of objections nor produced any documents on their behalf.
8. Despite several opportunities were given, the respondent has failed to file their memo of calculation.
9. In support of his claim, the complainant has produced documents such as copies of agreement to sell and memo of calculation as on 04/07/2023.
10. This case was heard on 1/9/2022, 14/12/2022, 7/2/2023, 16/3/2023, 30/5/2023, 4/7/2023, 9/8/2023 and 4/10/2023. Heard arguments of both sides.
11. **On the above averments, the following points would arise for my consideration:-**

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

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

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

REASONS

13. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of the flat within 31/3/2021 with a grace period of six months i.e. latest by 30/9/2021, the respondent has failed to abide by the terms of the agreement and has not handed over the possession of the flat to the complainant till date.

14. The Hon'ble Authority has perused the written submission submitted by the complainant. 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, and hence it is necessary that it shall be from any ambiguity and vagueness. Here in this case, the respondent has not given possession of the said flat to the complainant as agreed and have not complied with the terms of the said agreement of sale.

15. 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 that:

"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

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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."

16. 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 later 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."

17. 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, flat, 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.

18. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if

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the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

19. The complainant vide his memo of calculation as on 04/07/2023 has claimed an amount of Rs.6,59,448/- as refund with interest calculated from 2/3/2020 to 4/7/2023.

20. Having regard to the above aspects, this Authority concludes that the complainant is entitled for refund with interest as claimed in his memo of calculation as on 4/7/2023.

21. Therefore, it is incumbent upon the respondent to pay refund with interest 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	30-04-2017	0	0	30-04-2017	0
2		0		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	2255	04-07-2023	8.15	10.15 as on 01-05-2017	0
2	02-03-2020	492,500	1219	04-07-2023	8.15	10.15 as on 10-02-2020	166,948
3	TOTAL AMOUNT	492,500				TOTAL INTEREST (I2)	166,948

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 04-07-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
4,92,500	1,66,948	0	6,59,448

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

23. **My answer to Point No.2:-** In view of the above discussion, I 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/210406/0007872** is hereby allowed.


1. The respondent is directed to pay a sum of **Rs.6,59,448/- (Rupees Six Lakh Fifty Nine Thousand Four Hundred and Forty Eight only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 2/3/2020 to 04/07/2023.

The interest on refund due from 05/07/2023 till 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.

2. Further, the respondent is directed to return 5 original cheques bearing No.066964, 066965, 066966, 066967 and 066968 dated 1/4/2020, 2/4/2020, 3/4/2020, 4/4/2020 and 5/4/2020 respectively.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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AMOUNT	PROMOTER	REWARD	AMOUNT (A+B-C)
4,520	0	1,500	3,020

[Signature]
 [Name]
 Member, K-12