

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

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

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

DATED 18th OCTOBER 2023

COMPLAINT No: CMP/220520/0009503

COMPLAINANT....

**SANTOSH SHETTY
502, POONAM ANAND NIKETAN
APARTMENT, 8TH CROSS
GANDHINAGAR
DAKSHINA KANNADA-575003**

(IN PERSON)

V/S

RESPONDENT.....

**M/s PROVIDENT HOUSING
LIMITED
8, SHILPA REGENCY
ULSOOR ROAD
BENGALURU URBAN-560042.**

**(By Sri. JATIN UJJINI CS
AUTHORISED REPRESENTATIVE)**

JUDGEMENT

1. This complaint is filed under section 31 of the RERA against, project **"PROVIDENT SKYWORTH PHASE-I"** developed by **" M/s PROVIDENT HOUSING LIMITED"** for the relief of refund with interest.

ASO

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

2. This project is registered in RERA bearing registration no. PRM/KA/RERA/1257/334/PR/170916/000355.
3. The builder has developed this project situated at Bajpe Road, Derabail, Mangaluru, Dakshina Kannada.
4. The gist of the complaint is that the complainant had booked an apartment/unit bearing no. PS-2G-1204 situated at 12th floor, Block/Tower 2G/2G-4 on 7.7.2014 in the project "PROVIDENT SKYWORTH PHASE-1" of the respondent-promoter and thereafter entered into an agreement of sale and construction agreement both dated 18/7/2014. Out of the total sale consideration of Rs.43,18,513/- (Rs. Forty three lakhs eighteen thousand five hundred thirteen only) the complainant has paid an amount of Rs.1,00,000/- on 07/07/2014, Rs.7,75,469/- on 31/12/2014, Rs.30,000/- on 26/02/2015, Rs.4,07,645/- on 27/02/2015, Rs.2,20,110/- on 09/04/2015, Rs.3,76,382/- on 22/07/2015, Rs.1,89,324/- on 10/9/2015, Rs.1,89,324/- on 08/10/2015, Rs.1,89,324/- on 07/01/2016, Rs.1,89,670/- on 10/2/2016 and Rs.1,89,670/- on 10/02/2016 altogether Rs.28,56,918/- (Rs. Twenty eight lakhs fifty six thousand nine hundred eighteen only) to the respondent-promoter which has been duly acknowledged by him. The respondent was required to hand over the possession of the said apartment to the complainant within 30/6/2016 with a grace period of 6 months i.e. by 30/12/2016 as per construction agreement dated 18/7/2014. It is contended that since 5.5 years this project yet in a disastrous state. All his efforts, follow ups, communications in vain since Provident abandoned clients for long years. There was no hope that Provident would finish the work within the

Asst

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

stipulated timeline. Therefore, vide letter dated 24/11/2022 he has requested Provident to refund all the amount paid with interest but there is no response. There were many email communication before and after refund request. Most of the mails were unanswered. However, there was a mail assuring delayed compensation. He has running health issues for a decade. Having lost confidence with the respondent-promoter, the complainant has approached this Authority seeking for the relief of refund with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent appeared before this Authority through his counsel but has not contested the matter by filing statement of objections, producing documents if any on his behalf.
6. In support of his claim, the complainant has produced documents such as (1) Agreement of sale and construction both dated 18/7/2014 (2) payment receipts (3) email communication to the builder asking for refund (4) email/attachment from builder demand letter worksheet (5) memo of calculation.
7. The respondent in support of his defence has produced documents such as occupation certificate dated 4/8/2020 and memo of calculation for interest.
8. Heard arguments of both the parties. On 12/10/2023 the respondent has submitted his written arguments.



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

9. This matter was heard on 19/8/2022, 16/9/2022, 10/10/2022, 28/10/2022, 12/12/2022, 12/1/2023, 20/3/2023, 17/4/2023 and on 29/5/2023, 31/7/2023, 11/8/2023, 21/08/2023, 11/9/2023 and finally on 11/10/2023.

10. 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?

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

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

FINDINGS

12. Findings on point No.1:- The complainant has approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainant had booked an apartment/unit bearing no. PS-2G-1204 situated at 12th floor, Block/Tower 2G/2G-4 on 7.7.2014 in the project "PROVIDENT SKYWORTH PHASE-1" of the respondent-promoter by entering into an agreement of sale and construction agreement both dated 18/7/2014. As per the said agreement, the respondent was required to hand over the possession of the said apartment to the complainant within 30/6/2016 with a grace period of 6 months i.e. by 30/12/2016. But the respondent had failed to complete the project within the stipulated timeline. It is contended that since 5.5 years this project yet in a disastrous state. There were many email communication before and after refund request. Most of the mails were left unanswered.

13. When the matter is posted for orders, the respondent has submitted written arguments on 12/10/2023 along with copy of occupation certificate dated 4/8/2020 and email dated 15/3/2019 sent to the complainant saying that the



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

compensation will be paid to him prior to possession. Further, he contended that complainant has not calculated the interest properly in his memo of calculation knowing well that the occupation certificate has been received on 4/8/2020. Therefore, the interest should be calculated till the date of last payment made by the complainant. This project is completed and intimated the complainant. Despite that he had failed to take possession and filed this complaint seeking cancellation and refund. Therefore, the complainant has misrepresented the facts before this Authority in order to harass the respondent.

14. Looking to the averments of agreement, parties herein have entered into an agreement of sale dated 18/7/2014. 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 agreements of sale and construction, the respondent was supposed to handover the possession of the said flat to the complainant by 31/12/2016. But the respondent had not completed and handover possession of the said flat to the complainant till date.

15. On perusal of the agreement of sale, it is seen that the completion date is agreed as 30/6/2016 with a grace period of 6 months i.e. by 30/12/2016. The promoter-respondent was required to complete the project and hand over possession of the apartment by 31/12/2016. The respondent has completed the construction on 11/3/2020 and has submitted application for obtaining occupation certificate on 20/3/2020. Finally, the occupation certificate was issued by the Magaluru Mahanagara Palike, Managaluru on 4/8/2020. Having accepted the substantial sale consideration, failure on the part of the respondent to complete the project and handover the possession of the said flat to the complainant certainly entitles him for refund of amount along with interest. Herein this case, even after lapse of more than 3 years from the date of agreement, the respondent could be



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

able to complete the project and delivered the said flat to the complainant.

16. As per the the decision of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022,Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

"23. 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 RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

17. 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 Versus State of UP & others, 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 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 or the amount with interest at such rate as may be prescribed in this behalf"

AS

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

The said principle is aptly applicable to the present case on hand.

18. As per Section 18 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.

19. 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 /plot in accordance with sale agreement.

20. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant on 25/4/2023. The Promoter-respondent has submitted statement dated 23/03/2023 only with regard to calculation of interest amounting to Rs.12,29,963/-. Perused the memo of calculation submitted by both the parties. There is a difference of amount in the interest calculation. Considering the amount paid by the complainant which is substantiated by the payment receipts. Accordingly, he has produced memo of calculation in the link provided by RERA. Hence, the claim of the complainant is genuine.

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

Memo Calculation submitted by the complainant as on 25/4/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 25/4/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
28,56,918	22,28,997	0	50,85,915



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

22. Though the respondent appeared before this Authority through his Authorized Representative, he has not contested the matter to file statement of objections and furnishing documents in support of his defence.. During the proceedings held on 12/1/2023, this Authority has given an opportunity to file objections if any within 31/01/2023. Except memo of calculation for interest, he has neither submitted statement of objections nor any documents in support of his defence. In the absence of any resistance by the respondent and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant.

23. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for refund along with interest

24. Sum and substance of the case is as under:

Date of agreement of sale	18/7/2014
Date of construction agreement	18/7/2014
Sale consideration	Rs.43,18,513/- (Rs. Forty three lakhs eighteen thousand five hundred thirteen only)
Amount paid	Rs.28,56,918/- (Rs. Twenty eight lakhs fifty six thousand nine hundred eighteen only)
Promised date of possession as per AOS	31/12/2016 including grace period
Date of sale deed	Not yet executed
Date of occupancy certificate	04/08/2020
Whether the possession has been handed over	No
Prayer	Refund of amount along with interest

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

25. Findings on point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I proceed to pass the following order:



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

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: CMP/220520/0009503 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **50,85,915/-** (Rupees Fifty lakhs eighty five thousand nine hundred fifteen only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate 9% from 7/7/2014 to 30/4/2017. Further at the rate of SBI MCLR + 2% from 1/5/2017 till 25/4/2023.
2. The interest due from 26/4/2023 shall be calculated likewise and paid to the complainant till the date of entire realization.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.


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

NOT AN OFFICIAL COPY