

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 18TH October 2023

COMPLAINT NO: CMP/211026/0008474

COMPLAINANT...

**Chandrashekara B S
No. 16, 2nd Floor, Bhagavathi Layout,
Hulimavu, Bannerghatta Road,
Bangalore-560076.
STATE: KARNATAKA.**

(Mr. S Madhu, Advocate)

Vs

RESPONDENT.....

**VIIJCON PROPERTIES,
No. 88, 1st Floor, 7th Cross,
14th Main, HSR Layout,
Sector 4, Bengaluru-560102.
(Ex-parte)**

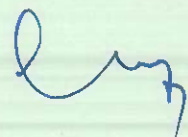
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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "VIVANSAA AURIGAA" developed by VIIJCON PROPERTIES for the relief of refund with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/309/PR/181010/0002053.
3. This project is situated at, Prestige Misty Waters Vist Tower, Building No.3, BBMP Katha No.745/21/3,6/2A, 2B, 2C of Hebbal Ammanikere Village, Yelahanka Hobli, Bengaluru North, Bengaluru Urban.

Brief facts of the complaint are as under:-

4. The complainant had booked flat bearing no. B-505 in fifth Floor in the project of the respondent namely "VIVANSAA AURIGAA" and entered into sale cum construction agreement on 22/03/2019 for total sale consideration of Rs.49,64,000/- (Rupees Forty Nine Lakhs and Sixty Four Thousand only). At the time of entering into sale cum construction agreements, the complainant had paid a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the respondent. The complainant had applied for housing loan in Sundaram Home Finance Limited for Rs.45,00,000/- (Rupees Forty Five Lakhs only) and got approval for the same. The said finance company released Rs. 33,50,000/- (Rupees Thirty Three Lakhs Fifty Thousand only) in two instalments on various dates to the respondent. Swapnil Agarwal, the director of the Viji Properties had entered into a Tripartite Agreement on 29-03-2019 along with M/s Sundaram BNP Paribas Home Finance Limited by specifically mentioning about the details of payment made by the Complainant and also remaining sale consideration to be paid within the stipulated time. The complainant had paid Rs.44,14,000/- (Rupees Forty Four Lakhs Fourteen Thousand only) as on 29-03-2019 and he has to pay balance amount of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only). The complainant had paid 9 instalment of Rs.30,400/- per month aggregating a sum of Rs.2,73,600/- (Rupees Two Lakhs Seventy Three Thousand Six Hundred only). The complainant had visited the respondent premises on 17-12-2019 and he came know through Inventory book that the flat which the respondent promised to sell is already conveyed to some other person namely Sri. Shirish Patel, the complainant



was shocked and he had contacted immediately one Shirish Patel, on enquiry he sent email stating that he got seven flats from the respondent including the said flat. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notices, the respondent has not appeared before the Authority and not contested the matter by filing statement of objection, producing documents on its behalf etc.,.

6. In support of his claim, the complainant has produced documents such as copies of agreement for sale and construction agreement both dated 22-03-2019, payment receipts, and copies of NEFT & RTGS transaction, email conversation with the said owner of the flat, and memo of calculation as on 03/10/2023.

7. This matter is heard on 22-06-2023, and 13-07-2023.

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 sale and construction agreement having received a substantial sale consideration from the complainant, the respondent has not handed over the possession and sold the flat to the other person

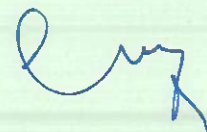
without informing the complainant & that the respondent didnot refund the amount along with interest.

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. Further, 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 copies of the agreement between the parties, it is obvious that the complainant has paid substantial sale consideration to the respondent towards the purchase of said flat. Having accepted the said amount and alienating the flat to the other person certainly entitles the complainant refund of entire amount with interest.



16. The complainant has filed his memo of calculation as on 03-10-2023 claiming a refund of Rs.18,45,761/-(Rupees Eighteen Lakhs Forty Five Thousand Seven Hundred and Sixty One 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 dated 03-10-2023.

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

S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS TILL 30-04-2017	INTEREST @9%
1	30-04-2017	0	0	0
2			TOTAL INTEREST (11)	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	2346	03-10-2023	8.15	10.15 as on 01-05-2017	0
2	27-03-2019	200,000	1651	03-10-2023	8.75	10.75 as on 10-03-2019	97,250
3	30-03-2019	390,000	1648	03-10-2023	8.75	10.75 as on 10-03-2019	189,294

4	30-03-2019	400,000	1648	03-10-2023	8.75	10.75 as on 10-03-2019	194,147
5	03-04-2019	4,000	1644	03-10-2023	8.75	10.75 as on 10-03-2019	1,936
6	29-04-2019	17,721	1618	03-10-2023	8.7	10.7 as on 10-04-2019	8,405
7	28-05-2019	26,431	1589	03-10-2023	8.65	10.65 as on 10-05-2019	12,254
8	27-06-2019	30,709	1559	03-10-2023	8.65	10.65 as on 10-06-2019	13,969
9	29-07-2019	30,709	1527	03-10-2023	8.6	10.6 as on 10-07-2019	13,618
10	28-08-2019	31,115	1497	03-10-2023	8.45	10.45 as on 10-08-2019	13,335
11	26-09-2019	30,450	1468	03-10-2023	8.45	10.35 as on 10-09-2019	12,675
12	26-10-2019	30,410	1438	03-10-2023	8.25	10.25 as on 10-10-2019	12,280
13	29-11-2019	30,430	1404	03-10-2023	8.2	10.2 as on 10-11-2019	11,939
14	27-12-2019	30,830	1376	03-10-2023	8.2	10.2 as on 10-11-2019	11,854
15	TOTAL AMOUNT	1,252,805				TOTAL INTEREST (I2)	592,956

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 13-06-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,252,805	592,956	0	1,845,761

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

20. The complainant had also sought for the relief of direction to the respondent to repay the balance outstanding loan amount, including the principle and interest components, directly to the said bank. Accordingly, the point raised above is answered in the Affirmative.

21. **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

22. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/211026/0008474** is hereby allowed as under.

1. The respondent is directed to pay a sum of **Rs.1,845,761/- (Rupees Eighteen Lakhs Forty Five Thousand Seven Hundred and Sixty One only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 27/03/2019 till 03/10/2023.

2. The interest due from 04/10/2023 up to the date of final payment will be calculated likewise and paid to the complainant.

3. Further, the respondent is directed to clear the loan amount whatever is due from the

complainant to his loan account No. YLK20190080.

4. The complainant is hereby directed to cooperate with the respondent for cancellation of agreement of sale and construction agreement dated 01-09-2017 on receipt of entire amount as directed to be refunded by the respondent.

5. 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 the costs.


(G R REDDY)
Member, K-RERA

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complainant to his loan account No.

YK2019080

4. The complainant is hereby directed to cooperate with the respondent for cancellation of agreement of sale and construction agreement dated 01-09-2017 on receipt of entire amount as directed to be returned by the respondent.

The complainant is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No cost to the costs.


(G R REDDY)
Member, K-REKA

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