

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 2nd NOVEMBER 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/220826/0009944

COMPLAINANTS.....

**KARTIK R BHAT &
SAAHIBA R SINGH
7011, PRESTIGE TRANQUILITY
APARTMENTS
BUDIGERE CROSS
BANGALORE-560049.**

(IN PERSON)

V/S

RESPONDENT....

**SHRIVISION TOWERS PRIVATE LTD
NO.40/43, 8TH MAIN ROAD, 4TH CROSS
SADASHIV NAGAR
BENGALURU-560080.**

**(By Mr.Joseph Anthony,
Advocate & others, JSM Law
Partners)**

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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 "SHRIRAM GREENFIELD PHASE-2" developed by "SHRIVISION TOWERS PRIVATE LIMITED" on Sy.No.73/1, 73/2A, 74(P) & 81, Bommanahalli Village, Bidarahalli Hobli, Bangalore East Taluk, Hoskote, Bengaluru Rural District for the relief of refund with interest.

2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1250/304/PR/171014/001220 valid from 10/8/2017 till

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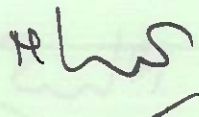
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31/3/2021. The project was extended due to COVID-19 for a period of 9 months i.e. till 31/12/2021. As the registration of the project expired on 31/12/2021, the Authority extended the registration for a further period of 12 months which is valid till 30/12/2022.

Brief facts of the complaint are as under:-

3. The complainants submit that they are NRI. The complainants submit that in 2017 during a Property Expo held at Lalit Hotel, the respondent had assured that the complainants do not have to pay Pre-EMIs till the possession of the flat and asked them to pay 10% down payment to book a flat. The complainants have entered into an agreement of sale with the respondent on 12/02/2018 for flat bearing No.J-108, 1st Floor, Tower-J, Building-2 and have paid an amount of Rs.20,87,885/- (Rupees Twenty Lakh Eighty Seven Thousand Eight Hundred and Eighty Five only) to the respondent. Subsequently, the respondent has stopped paying PEMI from 2019 before Covid-19 pandemic which resulted in bad CIBIL score with the bank. In fact, the respondent was supposed to handover the flat by 31/3/2020, but till today the respondent has not handed over the flat to the complainants. Further, the respondent has illegally cancelled the allotment of the flat despite delay on their part. The complainants submit that there was no support from the respondent regarding resale of the apartment to a third party without levying any additional transfer fee or any delay payment charges. The complainants have enclosed the correspondences made with the respondent through email and the brochure which they had given at the time of making down payment. The complainants have also submitted that the Bank has treated their account as NPA. The complainants have approached this Hon'ble Authority and pray for direction to the respondent to refund the entire amount with interest and clear all the bank dues. Hence this complaint.



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4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel but have not filed their statement of objections nor have produced any documents on their behalf. Despite several opportunities were given, the respondent has not filed their memo of calculation.

5. The complainants in their written submission have submitted that the SBI had also issued NOC for reassigning the property for which housing loan is sanctioned with a condition that the complainants have to close loan against property before selling and clear all the suit filed charges. Though the complainants have sent number of emails on this aspect, there was no response from the respondent and as such, the complainants have prayed this Hon'ble Authority to resolve this issue and relieve them from the financial distress.

6. The complainants have produced copies of documents such as Agreement of Sale, Tripartite Agreement, payment receipts, NOC letter dated 4/3/2023 issued by SBI, email correspondences with the respondent and memo of calculation as on 16/12/2022.

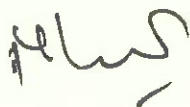
7. This case was heard on 22/12/2022, 7/3/2023, 15/3/2023, 6/6/2023, 13/7/2023, 7/9/2023 and 11/10/2023. Heard arguments of both sides.

8. On the above averments, the following points would arise for my consideration:-

1. Whether the complainants are 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



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REASONS

10. My answer to Point No.1:-From the materials placed on record, it is apparent that inspite of entering into an agreement to handover the possession of the flat within 31/3/2020, the respondent has failed to abide by the terms of the agreement and not handed over the possession of the apartment to the complainants till today. The respondent has also stopped paying PEMIs as agreed.

11. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that complainants were supposed to get the possession of the flat by 31/3/2020. Having accepted substantial sale consideration, the respondent has failed to handover the flat to the complainants and has not paid pre-EMIs to the Bank as agreed, certainly entitles the complainants herein for refund of entire amount with interest.

12. During the process of the hearing, the respondent submitted that they are in negotiation with the complainants for settlement. Later it was informed to the Hon'ble Authority they they were not able to come to any settlement. The complainants also submitted that they have not made any payment regarding EMI.

13. On 11/10/2023, the respondent submitted a copy of the summons issued by Debts Recovery Tribunal, Bangalore (DRT 1) in Case No.OA/849/2021 between SBI V/s Kartik R Bhat wherein the respondent was also made a party with regard to recovery of debts of Rs.20,17,918/-. The respondent also informed the Hon'ble Authority that they are ready to refund the amount to the complainants. Accordingly, the Hon'ble Authority reserved the case for orders as per memo of calculation filed by the complainants.



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14. 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 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."

15. 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

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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."

16. 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.

17. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

18. The complainants vide their memo of calculation as on 16/12/2022 have claimed an amount of Rs.32,47,351/- (calculated from 28/06/2017 to 16/12/2022) as refund with interest. Despite several opportunities were given the respondent did not file their memo of calculation.

19. Having regard to all the above aspects, the Authority has concluded that the complainants are entitled for refund with interest as per memo of calculation filed by them.

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

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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	1	0	30/04/2017	0
2	30/04/2017	0	0	30/04/2017	0
3		1		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	1	2055	16/12/2022	8.15	10.15 as on 01-05-2017	0
2	28/06/2017	20,87,885	1997	16/12/2022	8.15	10.15 as on 01-06-2017	11,59,465
3	TOTAL AMOUNT	20,87,886				TOTAL INTEREST (I2)	11,59,465

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 16-12-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
20,87,886	11,59,465	0	32,47,351

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

22. My answer to Point No.2:- In view of the above discussion, I proceed to pass the following

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the

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complaint bearing No. **CMP/220826/0009944** is hereby allowed.

The respondent is directed to pay a sum of Rs.32,47,351/- (Rupees Thirty Two Lakh Forty Seven Thousand Three Hundred and Fifty One only) towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 28/06/2017 to 16/12/2022.

The interest accruing from 17/12/2022 till the date of final payment will be calculated likewise and paid to the complainants.

The complainants are 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.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA