

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 10TH NOVEMBER 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/221017/0010105

COMPLAINANT.....

**P ANDREW FERNANDEZ
42, MANAL STREET
THOOTHUKUDI-628001**

**DISTRICT: THOOTHUKUDI
STATE: TAMIL NADU**

**(BY MR.E.V. RAMANA
MR. KODANDA RAMA, ADVOCATES)**

Vs

RESPONDENT.....

**M/S HOSKOTE NEO HOMES LIMITED
ARTHA, NO.110/37
SOLITAIRE BUILDING
MARATHAHALLI
SARJAPUR OUTER RING ROAD
BENGALURU-560037.**

**(BY MR.E. SUHAIL AHMED, MS. JASLEEN
KAUR, MR.U.C. SUNIL, ADVOCATES)**

J U D G E M E N T**

1. This complaint is filed under section 31 of the RERA Act against the project "EMPRASA STARTUP CITY – RESIDENTIAL" developed by M/S HOSKOTE NEO HOMES LIMITED situated at Kambalipura Village, Sulibele Hobli, Hoskote Taluk, Bangalore 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/171031/001084 valid till 31/12/2023.



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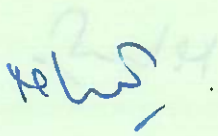
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Brief facts of the complaint are as under:-

3. The complainant had booked a residential flat bearing No.B-606, 6th Floor, Tower-B in the project of the respondent and has paid an amount of Rs.7,24,299/- (Rupees Seven Lakh Twenty Four Thousand Two Hundred and Ninety Nine only) to the respondent on various dates. The complainant submits that the respondent was supposed to handover the flat within 2 years with a grace period of six months from the date of loan disbursal from the bank/financial institution. But due to Covid-19 pandemic there was delay by the respondent. The respondent vide their email had assured to deliver the flat by June 2022. Subsequently the complainant came to know that the respondent had sold it to another builder M/S BCD Emprasa. The complainant submits that when he had visited the office of the respondent, the officials did not respond and in turn threatened the complainant and forced him to sign the agreement papers, which the complainant denied to sign. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent to refund the entire amount with interest. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative and have filed an Interlocutory Application u/s 35 & 37 of the Real Estate (Regulation & Development) Act, 2016 r/w section 151 of the Code of Civil Procedure, 1908 accompanied by an Affidavit wherein they have sworn as under:

5. The respondent submits that the complainant has filed the complaint before the Authority seeking the relief of refund and compensation. The complainant had entered into agreement of sale and construction with the respondent on 9/2/2017 for purchase of flat No.B-606 for a total sale consideration of Rs.19,06,416/- out of which the complainant has paid Rs.7,00,916/-.



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6. The respondent submits that on 18/2/2022 the complainant had entered into a cancellation agreement terminating the agreement dated 9/2/2017 and it was agreed by the parties that the complainant will swap to flat No.A-111 in lieu of B-606 in the same project and the part sale consideration would be swapped to Flat No.A-111. By virtue of the deed of cancellation and the terms and conditions agreed therein, the complainant ceases to be an allottee of unit number B-606 and that the complainant had himself agreed to swap the amount in respect of unit No.A-111 and thereby the complainant is stopped from claiming the refund before this Hon'ble Authority.
7. The respondent submits that the relief sought by the complainant for refund is liable to be rejected on the grounds that he has concealed the material facts before this Hon'ble Authority while filing the complaint and prays the Hon'ble Authority to allow the accompanying application.
8. The complainant in his rejoinder has submitted that the respondent has admitted the fact that the complainant had booked flat No.B-606 and paid a sum of Rs.7,00,916/- and entered into agreement of sale and construction on 9/2/2017.
9. The complainant submits that he had booked two flats B-114 and B-606 whereas the respondent had executed agreement of sale in respect of B-606 for which the advance amount was paid and no agreement of sale was executed in respect of Flat B-114 as the complainant did not pay any amount and the said flat was forfeited by the respondent. The complainant submits that the respondent vide their email dated 15/2/2022 informed that flat B-606 has been sold to some other investor.
10. The complainant submits that the respondent has created a document dated 18/2/2022 and is misleading the Hon'ble Authority and contends that once the respondent has forfeited Flat B-114 and sold B-606 to some other investor, the question of executing the cancellation of agreement does not arise.



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The motive of the respondent is not to pay the amount with interest claimed by him. The complainant submits that he has lost trust in the respondent and has invested the money to purchase another property.

11. The complainant submits that creation of false document (cancellation agreement) and misleading the public authority on oath amounts to giving false evidence and contends that he has not signed in the cancellation deed and that the signature on the last page is not signed by him and the deed does not have his signature on any other pages of the cancellation deed. The complainant submits that under no circumstances the respondent compel him to take the flat.

12. The complainant submits that his claim for refund of amount with interest and compensation is very simple in accordance with law and prays the Hon'ble Authority that the interlocutory application filed by the respondent may be dismissed and prays for directions to the respondent to refund the amount with interest and compensation.

13. Despite several opportunities were given, the respondent has failed to file their memo of calculation.

14. In support of their defence, the respondent has filed copies of documents such as cancellation agreement dated 18/2/2022 and email correspondences with the complainant.

15. In support of his claim, the complainant has produced documents such as copies of agreement of sale and construction, email correspondence with the respondent, bank statement for having made payments to the respondent and memo of calculation as on 17/02/2023.

16. This case was heard on 21/2/2023, 5/4/2023, 30/5/2023, 4/7/2023, 9/8/2023, 4/10/2023 and 2/11/2023. Heard arguments of both sides.

17. **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?

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

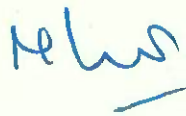
1. In the Affirmative.
2. As per final order for the following:-

REASONS

19. **My answer to Point No.1:-** From the materials placed on record, the grievance of the complainant is that the flat No.B-606 booked by him was sold to another investor without any notice. The respondent's contention is that the complainant has executed Cancellation Agreement dated 18/2/2022 and thereby ceases any right on the unit B-606 and has agreed to swap it with another flat No.A-111. It is apparent that inspite of entering into an agreement for sale to handover the possession of the flat within two years with a grace period of six months (the exact period not mentioned but says from the date of 1st disbursement of the loan to the respondent), the respondent has failed to abide by the terms of the agreement and instead of handing over the flat to the complainant, without bringing it to his notice, the respondent has sold the flat B-606 to some other investor and informed the complainant that the amount has been forfeited and allotment of unit has been cancelled for violation of agreement to sell.

20. During the process of the hearing, the Hon'ble Authority directed the respondent to furnish status of completion and likely date of possession and the complainant to give explanation regarding swap agreement accepting unit A-111.

21. Accordingly, the respondent that flat No.A-111 is ready with water and electricity connections and are ready to proceed with the registration of the flat once the complainant pays the outstanding dues to the respondent company. The respondent also filed a memo along with email correspondences with the



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complainant to the effect that they are in talks for an alternate unit. The complainant claims that he never agreed for it and the signature on the agreement does not belongs to him. The counsel for the complainant submitted that the complainant is not interested and wants to exit from the project.

22. The Hon'ble Authority has perused the affidavit submitted with Interlocutory Application by the respondent and written submission and objections filed 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.

23. The Authority has noticed that the complainant in his email dated 16/2/2022 sent to the respondent has intimated that he will be visiting Bangalore tomorrow (i.e. 17th February) and will visit the site at Hoskote and confirm one of the units available.

24. After couple of days the cancellation agreement dated 18/2/2022 has been executed and according to which the respondent claim that the complainant has agreed to swap the unit with A-111, whereas the complainant denies of having signed on any such cancellation agreement and agreeing for swapping the flat. The respondent company in their emails dated 16/3/2022 and 29/6/2022 have again informed the complainant that the amount paid towards the unit B-606 is forfeited, allotment is cancelled, the unit has been sold to other investor and that the complainant can choose any other unit in Emprasa 1A project. It is not understood how the negotiation was still continued as per the above mails for swapping of flat, when the respondent claims that the complainant had agreed for swapping of flat to A-111 in



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Emprasa 1A project as per the cancellation agreement dated 18/2/2022. The copies of these two emails have been submitted to the court by the respondent himself.

25. The Hon'ble Authority has noticed that the complainant in his objections filed on the interlocutory application has denied with the contention of the respondent. The complainant has clearly said that he is not interested in the respondent's project and wants to exit from the project. He also denied signing the cancellation agreement dated 18/2/2022 produced by the respondent. It is also noted that the said cancellation agreement is also not signed by the complainant on each page.

26. The Hon'ble Authority has not agreed with the contentions of the respondent as they have sold the flat allotted to the complainant to some other investor without bringing to his notice. It is also not correct on the part of the respondent to forfeit the amount paid by the complainant, when they themselves were ready to carry forward the amount to the chosen unit. The Hon'ble Authority has also noticed that, the respondent has not produced any proof to substantiate their claim that the complainant had agreed to swapping of unit to A-111.

27. 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."

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28. 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."

29. 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.

30. 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.

31. The complainant vide his memo of calculation as on 17/02/2023 has claimed an amount of Rs.11,31,024/- as refund with interest.

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32. 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 17/2/2023.

33. 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	14-01-2016	2,00,916	472	30-04-2017	23,383
2		2,00,916		TOTAL INTEREST (I1)	23,383

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	2,24,299	2118	17-02-2023	8.15	10.15 as on 01-05-2017	1,32,107
2	01-05-2017	2,00,916	2118	17-02-2023	8.15	10.15 as on 01-05-2017	1,18,335
3	12-04-2018	5,00,000	1772	17-02-2023	8.35	10.35 as on 01-04-2018	2,51,235
4	TOTAL AMOUNT	7,24,299				TOTAL INTEREST (I2)	5,01,677

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 17-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
7,24,299	4,06,725	0	11,31,024

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

35. **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/UR/221017/0010105** is hereby allowed.

The respondent is directed to pay a sum of **Rs.11,31,024/- (Rupees Eleven Lakh Thirty One Thousand and Twenty Four only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 14/1/2016 to 30/4/2017 and MCLR + 2% from 01/05/2017 to 17/02/2023.

The interest on refund due from 18/02/2023 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.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA