

**PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5**

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

**Dated 16<sup>th</sup> November 2023**

**COMPLAINT NO: CMP/00224/2023**

**COMPLAINANT...**

**Azeem K V  
No. 79, 5<sup>th</sup> Main,  
15<sup>th</sup> Cross, Lakkasandra,  
Bangalore-560030.  
STATE: KARNATAKA.**

**(In Person)**

**Vs**

**RESPONDENT.....**

**VSan Infrastructure Pvt Ltd.,  
Sy. No. 187, 188,  
Mallinathapura Village,  
Bilikere Hobli, Hunsur Taluk,  
Hunsur, Mysore.  
STATE: KARNATAKA**


**(R. Hari Prasad, Advocate)**

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**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA Act against the project "Kaveri" developed by VSan Infrastructure Pvt Ltd., for the relief of refund with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1268/381/PR/180627/001923.
3. This project is situated at, Sy. No. 187, 188 Mallinathapura Village, Bilikere Hobli, Hunsur Taluk, Mysore.

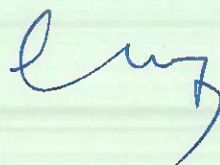
**Brief facts of the complaint are as under:-**



4. The complainant had booked a plot in the project of the respondent namely "Kaveri" for a total sale consideration of Rs.3,25,000/- (Rupees Three Lakhs Twenty Five Thousand only). The complainant had paid total sale consideration of Rs.3,25,000/- (Rupees Three Lakhs Twenty Five Thousand only) in the various dates to the respondent. The respondent and the complainant have entered into an Memorandum of Understanding on 04-04-2019. The complainant states that even after paying total sale consideration to the respondent, the respondent demanded to pay an additional payment of registration fee of Rs.1,08,000/- (Rupees One Lakh Eight Thousand only), if the complainant fails to pay this amount, he should pay Rs.1,68,000/- (Rupees One Lakh Sixty Eight Thousand only) for late penal charges. The respondent intimated that if the complainant had failed to make this payment the registration cannot be processed. The complainant tried to contact numerous times to the respondent and he again demanded for extra payment. The respondent refused to get the registration done. Due to these reasons the complainant decided to cancel the booking and he had sent an email to the respondent for cancellation and refund his amount. But, the respondent did not refund his amount. Hence this complaint.

5. After registration of the complaint, in pursuance of the notices, the respondent advocate has appeared before the Authority and filed a vakalath nama but the respondent has failed to file statement of objection on its behalf.

6. In support of his claim, the complainant has produced documents such as copy of memorandum of understanding



dated 04-04-2019, payment receipts and memo of calculation as on 09/07/2023.

7. This matter is heard on 04-10-2023.
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 issuing memorandum of understanding and having received a substantial sale consideration from the complainant, the respondent has not registered his plot as agreed and the respondent did not 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 failed to registered the plot in accordance with memorandum of understanding.

15. From the averments of the complaint and documents of the complainant, it is obvious that the complainant has paid substantial sale consideration to the respondent towards the purchase of said plot. Having accepted the substantial sale consideration and having failed to abide by the terms of memorandum of understanding. dated 04-04-2019 certainly entitles the complainant for refund of entire amount with interest.

16. The complainant has filed his memo of calculation as on 09-07-2023 claiming a refund of Rs.5,69,322/- (Rupees Five Lakhs Sixty Nie Thousand Three Hundred and Twenty Two 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 opportunity. On verification of the memo of calculation filed by the complainant reveals that his claim is genuine.

17. In response to the notice, the respondent has appeared before the Authority but he has not taken any interest to participate in the proceedings and to resist the claim of complainant. Hence, the claim of complainant remained unchallenged which is corroborated



with cogent materials. There is no reason to discard the claim of complainant.

18. Having regard to all these aspects as mentioned above, this Authority concludes that the complainant is entitled for refunds along with interest as claimed vide his memo of calculation 09-07-2023.

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

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	2260	09-07-2023	8.15	10.15 as on 01-05-2017	0
2	18-01-2019	10,000	1633	09-07-2023	8.75	10.15 as on 10-01-2019	4,809
3	26-02-2019	1,00,000	1594	09-07-2023	8.75	10.15 as on 10-02-2019	46,946
4	26-03-2019	1,00,000	1566	09-07-2023	8.75	10.15 as on 10-03-2019	46,121
5	20-03-2020	50,000	1206	09-07-2023	8.05	10.15 as on 10-04-2020	16,603
6	17-01-2022	75,000	538	09-07-2023	7.3	9.3 as on 15-01-2022	10,208
7	06-03-2022	30,000	490	09-07-2023	7.3	9.3 as on 15-02-2022	3,754
8	08-09-2022	50,000	304	09-07-2023	8.0	10.0 as on 15-08-2022	4,164
9	10-09-2022	20,000	302	09-07-2023	8.0	10.0 as on 15-08-2022	1,654
10	Total Amount	435,000				TOTAL INTEREST(I2)	134,322

PRINCIPLE AMOUNT (A)	INTREST(B=11+12+13) AS ON 09-07-2023	REFUND FROM PROMOTER	TOTAL BALANCE AMOUNT (A+B-C)
435,000	134,322	0	5,69,322

20. 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/00224/2023** is hereby allowed as under.

1. The respondent is directed to pay a sum of **Rs.5,69,322/- (Rupees Five Lakhs Sixty Nine Thousand Three Hundred and Twenty Two only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 18/01/2019 till 15/08/2022.

2. The interest due from 16/08/2022 up to the date of final payment will be calculated as per MCLR + 2% and paid to the complainant.

3. 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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**ORDER**

  
G. R. KERRY  
Member, K-REPS