

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-4

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

Dated 29th DAY OF NOVEMBER 2023

COMPLAINT No: CMP/UR/ 200719/0009764

COMPLAINANTS..

RAMESH N.R &
INDIRA RAMESH
12, YAMUNA BUILDING
GOODWILL APARTMENTS
CHANDRA LAYOUT
BENGALURU URBAN-560040

(IN PERSON)

v/s

RESPONDENT....

M/S TGS CONSTRUCTIONS
PRIVATE LIMITED
L-142, 5TH AVENUE, 5TH MAIN
ROAD, 6TH SECTOR
HSR LAYOUT
BENGALURU URBAN-560102

(ABSENT)

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "VYBHAVALAKSHMI" developed by "M/s TGS CONSTRUCTIONS PRIVATE LIMITED" for the relief of refund with interest.
2. This project is not registered in RERA. This Authority has issued an interim order dated 16/8/2023 directing the respondent to register



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

the project as required under Section 3 of the RERA Act within two weeks from the date of said order. But the respondent is yet to register the project.

3. The promoter has developed this project in the limits of Sy.No.160 situated at Kommaghatta Village, Kengeri Hobli, Bengaluru South Taluk.

4. The gist of the complaint is that the complainants have booked two sites in the project "Vybhavalakshmi" and entered into an Memorandum of Understanding dated 19/6/2016 with the respondent for a sale consideration of Rs.9,80,000/- (Rs. Nine lakhs eighty thousand only). As per this MOU, the complainants have agreed to pay 50% of the total agreed cost to the respondent. The complainants have paid an amount of Rs.4,80,000/- on 20/6/2016, Rs.5,00,000/- on 18/6/2016 altogether Rs.9,80,000/- (Rs. Nine lakhs eighty thousand only) which has been duly acknowledged by the respondent. It is contended that as per the MOU, the respondent has to refund the amount collected from them with interest if the project is delayed beyond 20 months. Till this date, the respondent has neither allotted the sites nor refunded the amount with interest. Therefore, the complainants have approached this forum seeking for the relief of refund with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent did not appear before this Authority and has been continuously remained absent during the hearings held on 21/9/2022, 14/10/2022, 2/11/2022, 17/11/2022, 9/12/2022,



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

12/01/2023, 8/2/2023, 13/4/2023, 31/5/2023, 11/8/2023, 8/9/2023. Hence, in spite of providing sufficient opportunity, it is seen that the respondent did not appear before the Authority to put forth his grievances and has not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf but remained continuously absent on all the aforesaid dates of hearings.

6. In support of their claim, the complainants have produced documents such as copy of MOU dated 19/6/2016 entered into between both the parties, payment receipts and memo of calculation.
7. The respondent in support of his defence has not produced any documents.
8. Heard arguments of the complainant.
9. 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?
10. **Findings on the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following:

6/10/23

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

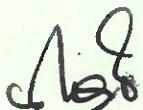
Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

FINDINGS

11. 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 complainants have booked two sites in the project "VAIBHAVALAKSHMI" of the respondent-promoter. Accordingly, both the parties have entered into an Memorandum of Understanding dated 19/6/2016 for a total sale consideration of Rs.9,80,000/- (Rs. Nine lakhs eighty thousand only). The respondent had promised to hand over the possession of the said flat within 20 months from the date of MOU. It is contended that the project is delayed beyond 20 months. As on date, they neither got their sites nor refund of amount paid along with interest.

12. Looking to the averments of agreement, parties herein have entered into a Memorandum of Understanding dated 19/6/2016. The MOU is 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 Memorandum of Understanding dated 19/6/2016, the respondent was supposed to handover the possession of the booked sites to the complainants within 20 months. But the respondent had not completed the development work in the project and handed over the possession of the said sites to the complainants till date.

13. As per 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:



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

“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.

14. 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”

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

Ab

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

15. 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.

16. 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.

17. From the averments made in the complaint, it is obvious that the complainants have paid the substantial sale consideration and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the complainants. The complainants have claimed an amount of Rs.15,94,072/- (Rs. Fifteen lakhs ninety four thousand seventy two only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

18. 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 26/9/2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 26/9/2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
9,80,000	6,14,072	0	15,94,072

(Handwritten signature)

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

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

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

Date of agreement of sale/MOU	19/6/2016
Date of construction agreement	Nil
Sale consideration	Rs. 9,80,000/- (Rs. Nine lakhs eighty thousand only)
Amount paid	Rs. 9,80,000/- (Rs. Nine lakhs eighty thousand only)
Promised date of possession as per agreement of sale	18/2/2018
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

21 Despite of several notices served upon the respondent, he did not appear before this Authority during the aforesaid dates of hearings. Subsequently, he has failed to file statement of objections and furnishing documents in support of his defence and hence not contested the matter. 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. Accordingly, the points raised above is answered in the Affirmative.

22. 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:



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

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/220719/0009764 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **15,94,072/-** (Rupees Fifteen lakhs ninety four thousand seventy two only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate of 9% from 19/6/2016 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 26/9/2022.
2. The interest due from 27/9/2022 shall be calculated likewise and paid to the complainants till the date of realization.
3. The Secretary, KRERA shall initiate proceedings u/s 59(1) of the Act against the respondent-promoter for violation of section 3 of the Act to register the project.
4. The complainants are at the 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