

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 4TH DECEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/200309/0005660

COMPLAINANT.....

**VIKRAM CHANDRASHEKHAR
SHANTINIKETAN, MINI FARM
DODDAGUBBI, OFF HENNUR ROAD
BANGALORE**

**(BY S.Y. SHIVALLI & OM PRASHANTHA,
ADVOCATES)**

Vs

RESPONDENT.....

**SKYLINE CONSTRUCTIONS & HOUSING
PRIVATE LIMITED
NO.11, HAYES ROAD
BANGALORE-560025.**

(BY SMT. SUJATHA, ADVOCATE)

*** * * * ***

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project **"SKYLINE RETREAT"** developed by **M/S. SKYLINE CONSTRUCTIONS & HOUSING PRIVATE LIMITED** situated at Sy.No.1/5, Byrathikane Village, KR Puram Hobli, Bengaluru Urban for the relief of refund with interest.
2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1251/310/PR/201106/003683 and is valid till 31/03/2021.

Brief facts of the complaint are as under:-

HLWS

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3. The complainant has booked a flat bearing No.804, 8th Floor, Block-A in the project of the respondent for a total sale consideration of Rs.34,80,000/- (Rupees Thirty Four Lakh Eighty Thousand only) and entered into an agreement for sale-cum-construction dated 26/6/2012. The complainant has paid Rs.27,96,336/- (Rupees Twenty Seven Lakh Ninety Six Thousand Three Hundred and Thirty Six only) to the respondent on various dates. The respondent was supposed to handover the flat within 30 months with a grace period of six months from the date of obtaining the commencement certificate, but the respondent has not completed the construction nor handed over the flat to the complainant as agreed. The complainant submits that he has invested his hard earned money in the project and there is no work going on since 2014. Though number of meetings were held with the MD of the respondent's company, they have not intimated the reasons for stalling the construction. The plea for refund has no response. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent for refund of full 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. The respondent has not filed their written submission nor have produced any documents on their behalf.
5. In support of their defence, the respondent has not filed any documents and have also failed to submit their memo of calculation despite several opportunities were given.



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6. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale-cum-Construction, payment receipts and Memo of calculation for refund with interest as on 08/07/2023.
7. This case was heard on 22/9/2022, 13/10/2022, 8/11/2022, 19/1/2023, 28/2/2023, 5/4/2023, 14/6/2023, 20/7/2023 and 29/11/2023. Heard arguments of both sides.
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:-** It is undisputed that the respondent has failed to handover possession of the flat to the complainant herein within agreed time even after receiving substantial sale consideration amount. As per the terms of agreement of sale-cum-construction between the parties, the possession of the flat was supposed to be handed over within 30 months with a grace period of six months from the date of obtaining the commencement certificate.
11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant was supposed to get the flat delivered within 30 months with a grace period of six months from the date of obtaining commencement certificate, but the respondent

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is nowhere near completion of the project, certainly entitles the complainant herein for refund of entire amount with interest.

12. The Hon'ble Authority has perused the written submission 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 free from any ambiguity and vagueness. Here in this case, the respondent has not complied with the terms of the said agreement of sale-cum-construction.
13. The respondent though appeared before the Authority to participate in the proceedings has not filed their statement of objections nor produced any documents on their behalf. The respondent has not at all disputed the claim of the complainant in any manner. Therefore, the claim of the complainant remained unchallenged and it is corroborated with the cogent evidence. These being the facts, in the absence of any resistance by the respondent, there is no option left to this Authority except to accept the claim of the complainant.
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."

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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 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.



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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 complainant has claimed Rs.56,39,145/- (Rupees Fifty Six Lakh Thirty Nine Thousand One Hundred and Forty Five only) vide their memo of calculation as on 08/07/2023 towards refund with interest.
19. Having regard to all these aspects, the Hon'ble Authority concludes that the complainant is entitled for refund with interest calculated vide his memo of calculation as on 08/07/2023.
20. Therefore, it is incumbent upon the respondent to pay refund with interest which is 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	17-10-2011	3,48,000	2356	30-04-2017	2,02,164
2	14-08-2012	3,48,000	1720	30-04-2017	1,47,590
3	21-10-2012	1,74,000	1652	30-04-2017	70,877
4	25-12-2012	3,48,000	1587	30-04-2017	1,36,177
5	16-04-2013	3,48,000	1475	30-04-2017	1,26,567
6	23-05-2013	1,74,000	1438	30-04-2017	61,696
7	10-06-2013	1,86,336	1420	30-04-2017	65,243
8	07-08-2013	1,74,000	1362	30-04-2017	58,435
9	05-10-2013	3,48,000	1303	30-04-2017	1,11,808

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10	16-12-2013	3,48,000	1231	30-04-2017	1,05,629
11		27,96,336		TOTAL INTEREST (I1)	10,86,186

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	27,96,336	2259	08-07-2023	8.15	10.15 as on 01-05-2017	17,56,623
2	TOTAL AMOUNT	27,96,336				TOTAL INTEREST (I2)	17,56,623

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 08-07-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
27,96,336	28,42,809	0	56,39,145

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:-

ORDER

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

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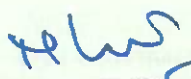
complaint bearing **No.CMP/200309/0005660** is hereby allowed.

The respondent is directed to pay the amount of **Rs.56,39,145/- (Rupees Fifty Six Lakh Thirty Nine Thousand One Hundred and Forty Five only)** towards **refund with interest** calculated at 9% from 17/10/2011 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 08/07/2023 to the complainant within 60 days from the date of this order.

The interest due from 09/07/2023 up to 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