

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 FULL BENCH

PRESENT:

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

SMT. NEELMANI N RAJU, HON'BLE MEMBER

SHRI. GURIJALA RAVINDRANADHA REDDY, HON'BLE MEMBER

COMPLAINT NO.: 00239/2023

DATED THIS 1ST DAY OF DECEMBER, 2023

COMPLAINANT.....

POOJA PRABHAKAR NAIK,
Flat 3211, Prestige Westwood,
Binnie Peth, Gopalapura,
Bengaluru - 560023.

(In person)

V/S

RESPONDENTS.....

- 1. VIJCON PROPERTIES,**
#88, 1st Floor, 7th Cross,
14th Main, HSR Layout,
Sector - 4,
Bengaluru - 560102.
- 2. SMT. U. ANITHA REDDY,**
- 3. SMT. M. PALLAVI REDDY,**
- 4. SRI. U. YESHWARDHAN REDDY,**
T-401, Red Wood Apartments,
Haralur Road, Off Sarjapura Road,
Bengaluru - 560102.

(Ex-parte)

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "Vivansaa Aurigaa" developed by "Vijcon Properties" situated at Sy. No.36/6 & 36/7, Chambenahalli Village, Sarjapura Hobli, Anekal Taluk, Bengaluru Urban District for the relief of refund with interest.

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[Signature]

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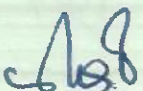
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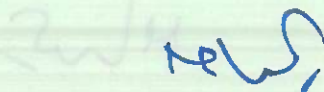
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2. This project is registered under RERA bearing Registration No. PRM/KA/RERA/1251/308/PR/171230/002053 valid till 30/12/2019.

Brief facts of the complaint are as under:-

3. The complainant had booked a flat bearing flat No. A-402 on 4th floor in the project 'Vivansaa Aurigaa' of respondents wherein the complainant entered into an agreement for sale on 27/06/2015 for a total sale consideration of Rs.37,00,174/- (Rupees Thirty Seven Lakh One Hundred and Seventy Four only) and paid Rs.33,76,000/- (Rupees Thirty Three Lakh Seventy Six Thousand only) to the respondent on 11/05/2015 and 15/07/2015. The respondents have assured to handover possession of the flat on 31/12/2016. However, the respondents failed to complete the project as per the agreement date. Further, complainant contends that they have not occupied the flat and there is no response from the builder that he will construct the flat within agreed timeline. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondents have never appeared before this Authority and not contested the matter by filing objections and producing documents etc.,
5. In support of her claim, the complainant has produced in all 3 documents such as copies of General Power of Attorney dated 02/06/2023, Payment receipts and Agreement of sale dated 27/06/2015.
6. Hearings were conducted on 04/07/2023, 25/07/2023, 08/08/2023 and finally on 22/08/2023.
7. Heard complainant.
8. **On the above averments, the following points would arise for our consideration:-**
1. Whether the complaint is entitled for the relief claimed?
 2. What order?






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9. **Our answer to the above points is as under:-**

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

REASONS

10. **Our answer to point No. 1:-** From the materials available on records, it is apparent that in spite of entering into an sale agreement to handover the possession of an flat, the builder has not completed the project as per agreement and has delayed the project. Hence, the builder has failed to abide by the terms of the sale agreement dated 27/06/2015. The respondent had promised to handover possession of the said flat within 31/12/2016. Despite numerous efforts and correspondences, the respondents did not update the status regarding handing over of the schedule property. The respondents have miserably failed to handover the possession of the said unit to the complainant within the stipulated timeline.
11. Looking to the averments of agreement, parties herein have entered into an agreement of sale dated 27/06/2015. The agreement of sale 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 agreement of sale dated 27/06/2015, the respondents were supposed to handover the possession of the said flat to the complainant by 31/12/2016. But the respondents have not completed and handed over the possession of the said flat to the complainant till date.
12. At this juncture my our attention is drawn towards 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,







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"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 latter 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. 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 V/s. 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 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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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 as the promoter fails to complete or provide possession of a flat etc., in accordance with sale agreement.
15. From the averments of the complaint and the copy of agreement between the parties, the complainant has already paid substantial sale consideration. Having accepted the said amount and failure to abide by the terms of said sale agreement dated 27/06/2015. Certainly entitles the complainant herein for interest on the amount paid to the respondent.
16. Despite of several opportunities were given, the respondents have not filed their memo of calculation. A thorough verification of documentary evidence submitted by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide his memo of calculation dated 21/08/2023.
17. Therefore, it is incumbent upon the respondent to refund the amount 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	11-05-2015	5,00,000	720	30-04-2017	88,767
2	15-07-2015	28,76,000	655	30-04-2017	4,64,493
3		33,76,000		TOTAL INTEREST (I1)	5,53,260

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	33,76,000	2303	21-08-2023	8.15	10.15 as on 01-05-2017	21,62,069
2	TOTAL AMOUNT	33,76,000				TOTAL INTEREST (I2)	21,62,069

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Memo Calculation

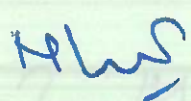
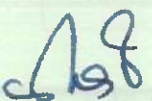
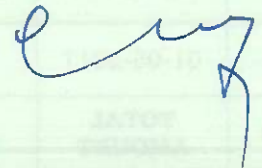
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 28-06-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
33,76,000	27,15,329	0	60,91,329

18. Sum and substance of the case is as under:-

Date of agreement of sale	27/06/2015
Date of construction agreement	-
Sale consideration	Rs. 37,00,174/- (Rupees Thirty Seven Lakh One Hundred and Seventy Four Only)
Amount paid	Rs.33,76,000/- (Rupees Thirty Three Lakh Seventy Six Thousand Only)
Promised date of possession as per agreement of sale	31/12/2016
Date of occupancy certificate	-
Whether the possession has been handed over with date	No
Prayer	Refund with interest

19. In the absence of any resistance by the respondents 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. Considering all these aspects, the point raised above is answered in the Affirmative.

20. **Our findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we proceed to pass the following order.



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ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.00239/2023 is hereby allowed.

1. The respondents are hereby directed to pay the amount of Rs.60,91,329/- (Rupees Sixty Lakh Ninety One Thousand Three Hundred and Twenty Nine Only) with interest at the rate of 9% p.a from 11/05/2015 till 30/04/2017.
2. Further, the respondents are directed to pay the amount of Rs.60,91,329/- (Rupees Sixty Lakh Ninety One Thousand Three Hundred and Twenty Nine Only) with interest at the rate of SBI MCLR+2% from 01/05/2017 to till the date of entire realisation.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondents fail to comply with the above order.

No order as to costs.


(G.R. REDDY)

Member
K-RERA


(NEELMANI N. RAJU)

Member
K-RERA


(H.C. KISHORE CHANDRA)

Chairman
K-RERA

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Member
K. K. K.

Member
K. K. K.

(H. C. CHANDRA)
Chairman
K. K. K.