

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 14th DAY OF DECEMBER 2023

COMPLAINT No: CMP/ 210121/0005121

COMPLAINANT..

**RUDRAYYA G.BELURMATH
NO: 1, THE LEGAL GUARDIANS
LAW FIRM, 1ST FLOOR
YAMUNA BAI ROAD
MADHAVANAGAR
BENGALURU URBAN-560001**

**(REP.BY RAJATH H V
ADVOCATE)**

V/s

RESPONDENT....

**M/S SHELTER HOUSING
SERVICES PRIVATE LIMITED
VERNEKAR BUILDING
1st FLOOR, DESHPANDENAGAR
DHARWAD-580029**

**(REP.BY SHIVAYGI M JAWOOR
ADVOCATE)**

PROJECT NAME:

ROTSO SOLITAIRE

REGISTRATION NO.

**PRM/KA/RERA/1259/410/
PR/171222/000946**

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "ROTSO



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SOLITAIRE developed by " M/s SHELTER HOUSING SERVICES PRIVATE LIMITED" for the relief of refund with interest.

2. The promoter has developed this project in the limits of Keshavapur, Hubli in C.T.C. No: 873A/1, 873A/2, 873A/3.
3. The gist of the complaint is that the complainant has booked a flat bearing no. 10'5 situated on 10th floor in Block-A in the project " ROTSON SOLITAIRE" and thereafter entered into an agreement of dated 15/5/2013 with the respondent for a total sale consideration of Rs.62,92,000/- (Rs. Sixty two lakhs ninety two thousand only). The complainant has paid an amount of Rs.5,50,000/- on 10/5/2013, Rs.17,02,200/- on 13/6/2013, Rs.4,06,800/- on 25/9/2013, Rs.3,13,000/- on 16/11/2013, Rs.3,12,812 on 8/1/2014, Rs.3,12,872/- on 9/4/2014, Rs.3,12,000/- on 7/6/2014, Rs.3,12,000/- on 30/6/2014, Rs.17,70,316/- on 30/7/2014 and Rs.3,00,000/- on 7/3/2015 altogether Rs.62,92,000/- (Rs. Sixty two lakhs ninety two thousand only) to the respondent as per the memo of calculation dated 7/12/2023 furnished by the complainant. The respondent was required to handover possession of the said flat to the complainant within 24 months i.e. by 15/5/2015. However, till date the respondent has neither completed the project nor handed over possession of the said flat to the complainant. Therefore, the complainant has approached this forum seeking for the relief of refund with interest. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent remained continuously absent during the hearings held



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on 18/7/2022, 25/7/2022, 1/8/2022, 2/9/2022. On 3/9/2022 paper publication was against the respondent's project "ROSTON SOLITAIRE" to appear before this Authority on 23/9/2022. The paper publication was published on 9/9/2022 in "HOSADIGANTA" newspaper. Thereafter the counsel for the respondent has appeared before the Authority during the subsequent dates of hearings held on 23/9/2022, 10/10/2022, 28/10/2022, 7/11/2022, 25/11/2022, 16/12/2022, 19/1/2023, 10/2/2023, 10/3/2023, 31/3/2023, 21/4/2023, 26/6/2023, 3/7/2023, 24/7/2023, 7/8/2023, 15/9/2023, 29/9/2023, 13/10/2023, 6/11/2023 and on 20/11/2023 and filed statement of objections as under:

5. The respondent has denied all the allegations made against it by the complainants as false. It is submitted that the complainant and the respondent entered into an agreement for sale dated 15/5/2013 in respect of flat no.10'5 situated on the 10th floor, Block-A in the project "ROSTON SOLITAIRE" for a total sale consideration of Rs.62,92,000/- (Rs. Sixty two lakhs ninety two thousand only). The respondent had promised to hand over the possession of the said flat within 24 months as per agreement of sale dated 15/5/2013. However, the promoter was not able to complete the said project within the stipulated timeline beyond the control of the developer because of force majeure reasons such as demonetization, GST implementation, shortage of supply of building materials, sand, lorry owners strike, COVID 19 Pandemic and act of God. Further he has applied for completion certificate before the Town Planning Authority, Hubballi Dharwad Mahanagara Palike on 22/12/2020. It is submitted that the



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respondent has several times communicated to the complainant to take the possession of the property as mentioned in the clause 13(i) and (ii) of the agreement of sale and due instalments. Further, due to the negligence on the part of the complainant, he has lost prospective buyers. Hence, prayed to dismiss the complaint.

6. In support of his claim, the complainant has produced documents such as (1) copy of agreement of sale dated 15/5/2013 (2) copy of legal notice issued to the respondents dated 16/11/2019 (3) copy of postal receipts and acknowledgement (4) copy of allotment letter (5) memo of calculation.(copy of income tax returns, balance sheet, books of accounts for the years 2012-13 to 2021-22.
7. The respondent in support of his defence has produced documents such as application for completion certificate and copy of agreement of sale dated 15/5/2023.
8. Heard arguments of both the parties. Written arguments filed by the complainant has been taken note of.
9. 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?
10. **Findings on the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following:

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FINDINGS

12. 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 complainant has booked a unit /flat no.10,5 situated on the 10th floor in the project "ROTON SOLITAIRE" of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale dated 15/5/2013 for a total sale consideration of Rs.62,92,000/- (Rs. Sixty two lakhs ninety two thousand only). The respondent had promised to hand over the possession of the said flat within 24 months i.e. by 15/5/2015 as per agreement of sale dated 15/5/2013. It is contended that even though the respondent/builder has received the entire sale consideration, he has neither completed the project nor handed over possession of his said flat.

13. Looking to the averments of agreement, parties herein have entered into an agreement of sale cum construction agreement dated 15/5/2013. 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 terms of agreement of sale dated 15/5/2013, the respondent was supposed to handover the possession of the said flat to the complainant within 24 months i.e. by 15/5/2015. But the respondent had not completed and handed over the possession of the said flat to the complainants till date.

14. The dispute between the parties whether the complainant has paid Rs.17,70,316/- (Rs. Seventeen lakhs seventy thousand three hundred sixteen only) in cash to the respondent as claimed by him. In support



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of this contention, the complainant has placed reliance upon the I.T. returns submitted before the concerned authority so also the bank statement showing that on the relevant date i.e. 30/7/2014 he had withdrawn Rs.1,23,45,380/- from the bank account. Similarly, IT returns filed by the complainant for the assessment years 2018-19 shows that he had paid Rs.1,23,45,380/- towards acquisition of two flats in the same project during the financial year 2017-18.

15. On conjoint readings of these two documents by applying the rule of preponderance of probability, it is to be inferred that the complainant has withdrawn the amount of Rs.1,23,45,380/- for payment of the same in the form of cash to the respondent. On the other hand, except the bare denial on the part of the respondent, there is nothing on record to render payment of R. 17,70,316/- in probable. Thus, it is prima facie shown that the complainant was capable of paying the said amount of Rs.62,90,000/- as on the relevant date and his declaration before the Income Tax Authority for having paid Rs.62,90,000/- to the respondent is not shown to be false. It is needless to say that IT returns submitted to the concerned authority shall be held to be valid proof of transaction declaration of which made therein unless and until contrary is proved. Its validity or genuinity cannot assailed by 3rd party. Therefore, this Authority has no ground to discard the claim of the complainant that he had paid Rs.17,70,316/- to the respondent in the form of cash.

16. The respondent in its statement of objections contended that the project has not been completed within the stipulated timeline due to force majeure events such as demonetization, GST implementation, scarcity of raw materials, non availability of skilled labours, transport disruption etc. In addition COVID 19 pandemic and the lockdown have

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also contributed significantly to the obstacles faced by the respondent. The respondent has sought to explain the delay by referring to above issues which are nothing but routine requirements of compliances and construction related issues. These issues are required to be handled by the promoter of any project who has undertaken to develop the real estate project. None of the reason submitted by the respondent has any force and legal validity to justify the delay in completion of the project and provide any exception from the application of Section 18 of the Act. Therefore, as per Section 18 of the Act, the promoter is liable to refund the amount paid along with interest.

17. 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:

"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.

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18. 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.

19. 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.

20. 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.

21. From the averments made in the complaint, it is obvious that the complainant has paid the entire sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant. The complainant has claimed an amount of Rs.1,23,68,186/- (Rs. One crore twenty three lakhs sixty eight thousand one hundred eighty six only) as refund with interest.

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The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

22. 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 7/12/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 7/12/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
62,92,000	60,76,186	0	1,23,68,186

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

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

Date of agreement of sale	15/5/2013
Date of construction agreement	Nil
Sale consideration	Rs.62,90,000/- (Rs. Sixty two lakhs ninety thousand only)
Amount paid	Rs.62,90,000/- (Rs. Sixty two lakhs ninety thousand only)
Promised date of possession as per agreement of sale	15/5/2015
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

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

26. 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:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: CMP/210121/0005121 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **1,23,68,186/-** (Rupees One crore twenty three lakhs sixty eight thousand one hundred eighty six only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 10/5/2013 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 7/12/2023.
2. The interest due from 8/12/2023 shall be calculated likewise and paid to the complainants till the date of entire realization.
3. The complainant is at the liberty to enforce the said order in accordance with law if the respondent fails to comply with the said order.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
K-RERA