

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/ 221021/00010130

COMPLAINANT..

**RUDRAYYA G.BELURMATH
GURUNEELA SADAN
THUNGABHADHRA VINYAS
2nd CROSS, HALIYAL ROAD
DHARWAD-580 007**

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



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2. The promoter has developed this project in the limits of Keshavapur, Hubli in CTS No.873A/1,873A/2, 873A/3.
3. The gist of the complaint is that the complainant has booked a flat bearing no. 905 situated on 9th floor in Block-A in the project "**ROTON SOLITAIRE**" and thereafter entered into an agreement of dated 18/5/2013 with the respondent for a total sale consideration of Rs.62,56,250/- (Rs. Sixty two lakhs fifty six thousand two hundred fifty only). The complainant has paid the entire sale consideration of Rs.62,56,250/- as full and final payment of the project as per the agreement of sale dated 18/5/2013. The builder was required to hand over the possession of the said flat to the complainant within 24 months i.e. by 18/5/2015. It is contended that despite the respondent builder has received the entire sale consideration, the respondent/builder 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 has appeared before this Authority through its counsel and filed objections as under:
5. The respondent has denied all the allegations made against it by the complainants as false. It is contended that the complainant and the respondent entered into an agreement for sale dated 18/5/2023 in respect flat no. 905 situated on the 9th floor in the

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project " ROTSON 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 18/5/2013. 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 21/12/2020. It is submitted that the 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 negligent 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 18/5/2013 (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.
7. The respondent in support of his defence has produced documents such as application for completion certificate.
8. Heard arguments of both the parties.

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9. This matter was heard on 20/2/2023, 10/3/2023, 20/4/2023, 5/6/2023, 22/6/2023, 21/8/2023, 28/8/2023, 6/9/2023, 8/9/2023, 15/9/2023, 29/9/2023 and finally on 13/10/2023.
10. 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?
11. **Findings on the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following:

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.905 situated on the 9th floor in the project "ROTSON SOLITAIRE" of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale dated 18/5/2013 for a total sale consideration of Rs.62,56,250/- (Rs. Sixty two lakhs fifty six thousand two hundred fifty only). The respondent had promised to hand over the possession of the said flat within 24 months as per agreement of sale dated 18/5/2013. 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 18/5/2013. The agreement of sale is key instrument which binds the

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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 18/5/2013, the respondent was supposed to handover the possession of the said flat to the complainant within 24 months i.e. by 18/5/2015. But the respondent had not completed and handed over the possession of the said flat to the complainants till date.

14. 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 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.

15. 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:



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“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.

16. 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.

17. As per Section 18 of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable without prejudice to

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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.

18. 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.

19. 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.1,21,25,315/- (Rs. One crore twenty one lakhs twenty five thousand three hundred fifteen only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

20. 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 24/1/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 24/1/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
62,56,250	58,69,065	0	1,21,25,315

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

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

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Date of agreement of sale	18/5/2013
Date of construction agreement	Nil
Sale consideration	Rs.62,56,250/- (Rs. Sixty two lakhs fifty six thousand two hundred fifty only)
Amount paid	Rs.62,56,250/- (Rs. Sixty two lakhs fifty six thousand two hundred fifty only)
Promised date of possession as per agreement of sale	18/5/2015
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

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

24. 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/221021/0010130 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **1,21,25,315/-** (Rupees One crore twenty one lakhs twenty five thousand three hundred fifteen only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 18/5/2013 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 24/1/2023..

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2. The interest due from 25/1/2023 shall be calculated likewise and paid to the complainant 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

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