

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/220909/0009996

COMPLAINANTS..

**BABLU MANDAL &
NABONEETA MONDAL
#403, HIMAGIRI ENCLAVE
2B BLOCK, KAGGADASAPURA
BENGALURU URBAN-560093**

**(REP.BY KOWSHIK RAJA G
ADVOCATE)**

V/s

RESPONDENT....

**M/S KSR PROPERTIES
PRIVATE LIMITED
NO; 23, SANKEY SQUARE
SANKEY ROAD
SADASHIVANAGAR
BENGALURU URBAN-560003**

(ABSENT)

PROJECT NAME:

KSR BASIL

REGISTRATION NO:

**PRM/KA/RERA/1251/446/PR/
180519/001744**

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "KSR BASIL" developed by "M/s KSR PROPERTIES PRIVATE LIMITED" for the relief of refund with interest.

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2. The promoter has developed this project in the limits of Sy.No: 68/2, Huskur Village, Bidarahalli Hobli, Bengaluru East Taluk, Bengaluru.
3. The gist of the complaint is that the complainants have booked a flat bearing no. J-207, situated on 2nd floor, J-Block in the project " **KSR BASIL**" and thereafter entered into an agreement of sale dated 31/01/2019 with the respondent for a total sale consideration of Rs.33,41,834/- (Rs. Thirty three lakhs forty one thousand eight hundred thirty four only). The complainants have paid an amount of Rs.1,00,000/- on 21/12/2018, Rs.3,51,172/- on 28/01/2019, Rs.10,86,071/- on 5/3/2019, Rs.4,01,020/- on 2/5/2019, Rs.4,01,020/- on 29/5/2019 altogether Rs.23,39,283/- (Rs. Twenty three lakhs thirty nine thousand two hundred eighty three only) which has been duly acknowledged by the respondent. The builder was required to hand over the possession of the said flat to the complainants within December 2019 with a grace period of 6 months i.e. by June 2020. It is contended construction work at KSR Basil project site is completely stopped since December 2019. Prior to lockdown due to COVID 19, they tried to reach the executives of KSR properties over phone and email, but there was no response. Further, office of the promoter was closed. But still they have not received any communication from the promoter with regard to possession of their flat. Having lost confidence with the respondent, the complainants have approached this forum for the relief of direction to the respondent to refund the entire amount paid along with interest. Hence, this complaint.

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4. After registration of the complaint, in pursuance of the notice, the respondent did not appear before this Authority during the hearings held on 12/12/2022, 9/1/2023, 9/3/2023, 8/3/2023, 13/4/2023, 31/5/2023, 22/6/2023, 24/7/2023, 21/8/2023, 15/9/2023 and has been continuously remained absent on all the aforesaid dates of hearings. Subsequently, the respondent has not put forth his grievances before this Authority and has not taken any interest to file statement of objections, producing documents if any on its behalf.
5. On perusal of the sale agreement, it is seen that the completion date is agreed as December 2019 with a grace period of 6 months i.e. by 30/6/2020. The Promoter-respondent was required to complete the project and hand over possession of the unit no. J-207 in the project "KSR BASIL" to the complainants within December 2019 with a grace period of 6 months i.e. by June 2020. In cases wherein the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for the relief in accordance with Section 18 of the Act.
6. In support of their claim, the complainants have produced documents such as (1) copy of agreement of sale dated 31/1/2019 (2) copy of receipts with regard to payment made to the respondent (3) memo of calculation.
7. In support of his defence, the respondent has not filed any documents.



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8. 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?

9. **Findings on the above points are as under:-**

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

FINDINGS

10. Findings on point No.1:- The complainant have approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainants have booked a unit flat no.J-207 situated on the second floor in Block-J in the project "KSR BASIL" of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale dated 31/1/2019 for a total sale consideration of Rs.33,41,834/- (Rs. Thirty three lakhs forty one thousand eight hundred thirty four only). The respondent had promised to hand over the possession of the said flat within December 2019 with a grace period of 6 months i.e. by June 2020. However, the respondent has failed to abide by the terms and conditions enumerated in the agreement of sale dated 31/1/2019 and miserably failed to hand over the said unit within the stipulated timeline as agreed.

11. Looking to the averments of agreement, parties herein have entered into an agreement of sale dated 31/1/2019. 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



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agreement of sale dated 31/1/2019, the respondent was supposed to handover the possession of the said flat to the complainant by December 2019 with a grace period of 6 months i.e. by June 2020. But the respondent had not completed and handed over the possession of the said flat to the complainant till date.

12. 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.

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 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

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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.

14. 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.

15. 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.

16. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainants on 11/12/2022. The complainants have claimed an amount of Rs.32,74,856/- (Rs. Thirty two lakhs seventy four thousand eight hundred fifty six only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

17. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

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Memo Calculation submitted by the complainant as on 11/12/2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 11/12/2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
23,39,283	9,35,573	0	32,74,856

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

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

Date of agreement of sale	31/1/2019
Date of construction agreement	Nil
Sale consideration	Rs.33,41,834/- (Rs. Thirty three lakhs forty one thousand eight hundred thirty four only)
Amount paid	Rs.23,39,283 (Rs. Twenty three lakhs thirty nine thousand two hundred eighty three only)
Promised date of possession as per agreement of sale	December 2019 with a grace period of 6 months i.e. by June 2020
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

20. Despite of several notices served upon the respondent, the respondent did not appear before this Authority and has been continuously remained absent on all the aforesaid dates of hearings. Further, 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



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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.

21. 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/220909/0009996 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. 32,74,856/- (Rupees Thirty two lakhs seventy four thousand eight hundred fifty six only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate SBI MCLR + 2% from 28/1/2019 till 11/12/2022.
2. The interest due from 12/12/2022 shall be calculated likewise and paid to the complainant till the date of entire realization.
3. The complainants are at 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