

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/220901/0009966

COMPLAINANT..

RINKESH SHAH
144/002, GANGOTRI
DWARAKA NILAYA
35th "A" CROSS STREET
4TH "T" BLOCK EAST
PATTABHIRAMA
BENGALURU URBAN-560041

(IN PERSON)

v/s

RESPONDENT....

M/S EXD PROJECTS PRIVATE
LIMITED
9/10, GROUND FLOOR
PRESTIGE TOWERS
RESIDENCY ROAD
BENGALURU URBAN-560025

(REP BY Ms. JASLEEN KAUR
ADVOCATE)

PROJECT NAME:

FIVE RINGS

REGISTRATION NO:

**PRM/KA/RERA/1251/308/PR/
171102/002143**

JUDGEMENT

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



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developed by “ **M/s EXD PROJECTS PRIVATE LIMITED**” for the relief of refund with interest.

2. The promoter has developed this project in the limits of Sy.No: 69/1, Gudighattanahalli, Sarjapura Hobli, Anekal Taluk, Anekal, Bengaluru Urban.
3. The gist of the complaint is that the complainant has booked a flat bearing no. 110 , situated on 1st floor in the project “ **FIVE RINGS**” and thereafter entered into an agreement of sale dated 10/8/2018 with the respondent for a total sale consideration of Rs.12,48,940/- (Rs. Twelve lakhs forty eight thousand nine hundred forty only). The complainant has paid an amount of Rs.7,87,000/- (Rs. Seven lakhs eighty seven thousand only) on 14/8/2018 as per memo of calculation dated 4/2/2023 submitted by the complainant to the respondent-builder which has been duly acknowledged by him. The builder was required to hand over the possession of the said flat to the complainants within December 2020 with a grace period of 6 months i.e. by June 2021. It is contended that he has cancelled the property since the builder was not able to continue construction of the flat further. Having agreed to refund the amount but it has been more than 18 months he has not refunded the amount. Besides, he is neither answering his calls not respondent his email or SMS. Having lost confidence with the respondent, the complainant has approached this forum for the relief of direction to the respondent to refund the entire amount paid along with interest. Hence, this complaint.

12/8/23

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4. After registration of the complaint, in pursuance of the notice, the respondent did appear before this Authority through its counsel on 27/4/2023 and filed a memo stating that its counsel undertakes to file vakalat. Thereafter, during the hearings held on 7/6/2023, 6/7/2023, 7/8/2023, 15/9/2023 and on 22/9/2023 neither the respondent nor his counsel did appear before this Authority and has been continuously remained absent on all the aforesaid dates of hearings. Subsequently, neither the respondent nor his counsel put forth their grievances before this Authority and have not taken any interest to file statement of objections, producing documents if any on its behalf.
6. On perusal of the sale agreement, it is seen that the completion date is agreed as December 2020 with a grace period of 6 months i.e. by 31/6/2021. The Promoter-respondent was required to complete the project and hand over possession of the unit no. 110 in the project "FIVE RINGS" to the complainant within December 2020 with a grace period of 6 months i.e. by June 2021. 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.
7. In support of his claim, the complainant has produced documents such as (1) copy of agreement of sale dated 10/8/2018 (2) details of payment made to the respondent (3) memo of calculation.
8. In support of his defence, the respondent has not filed any documents.
9. On the above averments, the following points would arise for my consideration:-



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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:

FINDINGS

11. 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.110 situated on the first floor in Block-A in the project "FIVE RINGS" of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale dated 10/8/2018 for a total sale consideration of Rs.12,48,940/- (Rs. Twelve lakhs forty eight thousand nine hundred forty only). The respondent had promised to hand over the possession of the said flat within December 2020 with a grace period of 6 months i.e. by June 2021 However, the respondent has failed to abide by the terms and conditions enumerated in the agreement of sale dated 10/8/2018 and miserably failed to hand over the said unit within the stipulated timeline as agreed.

12. Looking to the averments of agreement, parties herein have entered into an agreement of sale dated 10/8/2018. 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 10/8/2018, the respondent was supposed to handover the possession of the said flat to the complainant by



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December 2020 with a grace period of 6 months i.e. by June 2021. But the respondent had not completed and handed over the possession of the said flat to the complainant till date.

13. 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.

14. 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

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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.

15. 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.

16. 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.

17. 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 complainant on 4/2/2023. The complainant has claimed an amount of Rs.11,24,713/- (Rs. Eleven lakhs twenty four thousand seven hundred thirteen only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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

6/3/8

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Memo Calculation submitted by the complainant as on 4/2/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 4/2/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
7,87,000	4,37,713	1,00,000	11,24,713

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

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

Date of agreement of sale	10/8/2018
Date of construction agreement	Nil
Sale consideration	Rs.12,48,940/- (Rs. Twelve lakhs forty eight thousand nine hundred forty only)
Amount paid	Rs.7,87,000 (Rs. Seven lakhs eighty seven thousand only)
Promised date of possession as per agreement of sale	December 2020 with a grace period of 6 months i.e. by June 2021
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

21. Despite of several notices served upon the respondent, the counsel for the respondent did appear before this Authority and filed a memo on 27/4/2023 stating that she undertakes to file the vakalat. Thereafter, during the subsequent dates of hearings held on 7/6/2023, 6/7/2023, 7/8/2023, 15/9/2023 and on 22/9/2023 neither the respondent nor its counsel for did appear before this Authority and have been continuously remained absent on all the aforesaid dates of hearings. Further, they have failed to file



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statement of objections and furnishing documents in support of their defence and hence not contested the matter. In the absence of any resistance by the 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.


22. 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/220901/0009966 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. 11,24,713/- (Rupees Eleven lakhs twenty four thousand seven hundred thirteen only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate SBI MCLR + 2% from 14/8/2018 till 4/2/2023.
2. The interest due from 5/2/2023 shall be calculated likewise and paid to the complainant till the date of entire realization.
3. The complainant is 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