

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 13th Decem ber 2023

COMPLAINT NO: CMP/00717/2023

COMPLAINANT...

**1. Narendra TN
Technical Assistant,
MBTC Depot 19, Electronic City,
Hosur Main Road,
Near Sagar Samruddi Hotel,
Bangalore-560100.
STATE: KARNATAKA.
(In Person)**

Vs

RESPONDENT.....

**Sri Datri Developer's and Promoters.
No. 13, 1st Floor, 1st Main,
Teacher's Colony,
Nagarbhavi Main Road,
Bangalore-560072.
(Ex-parte)**

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Manjunath Enclave" developed by M/s. Sri Datri Developers and Promoters for the relief of refund along with interest.
2. This project is not registered under RERA.
3. This project is situated at, Doddakarena Halli Village, Kasaba Hobli, Nelamangala, Bangalore.

Brief facts of the complaint are as under:-

4. The complainant had booked 1600 Sq. ft. plot in the project of the respondent namely "Manjunatha Enclave" for a total sale



consideration of Rs.8,00,000/- (Rs. Eight Lakhs only). At the time of entering into an agreement of sale, the complainant had paid a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the respondent. The respondent was supposed to handover the plot to the complainant on 28-02-2023. After multiple follow ups also the complainant has not get registration. Even after four years the respondent continues to neglect to register the said plot to the complainant and also refund the amount. There after one letter received from the respondent that he has agreed to register the plot by 28/02/2023 and if there is any fail he will return the amount within a week, but there is no response. Hence, this complaint.

5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notice, the complainant had appeared before the Authority and filed memo of calculation, agreements of sale, payment receipts and copies of letter conversation between both the parties etc. The respondent did not appear before this Authority and remained absent. Hence, the respondent was placed as ex-parte.

6. In support of his claim, the complainant has produced documents such as copy of sale agreement dated 15-01-2021, payment receipts, bank statement, details of home loan and memo of calculation as on 07-08-2023.

7. This matter is heard on 28-11-2023.

8. **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?

9. **My answer to the above points are as under:-**

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

REASONS

10. **My answer to Point No.1:-** From the materials available on record, it is apparent that in spite of entering into sale agreement having received a substantial sale consideration from the complainant, the respondent has neither registered the plot and nor refunded the amount with interest till date.

11. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters v/s The State Of Uttar Pradesh 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.

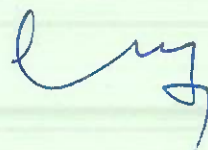
12. Further, the judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,



“ 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 letter 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. As per section 18(1) 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.

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 if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

15. From the averments of the complaint and documents of the complainant, it is obvious that the he has paid substantial sale consideration to the respondent towards the purchase of said plot. Having accepted the substantial sale consideration and having failed to abide by the terms and condition of agreement of sale to complete the project, certainly entitles the complainant for refund of entire amount with interest.

16. The complainant has filed his memo of calculation as on 07-08-2023 claiming a refund of Rs.6,17,177/- (Rupees Six Lakhs Seventeen Thousand One Hundred and Seventy Seven only) including interest. The respondent has not resisted the said memo of calculation filed by the complainant and he has not submitted his memo of calculation inspite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainant reveals that his claim is genuine.

17. In response to the notice, the respondent has not taken any interest to participate in the proceedings and to resist the claim of complainant. Hence, the claim of complainant remained unchallenged and his claim is corroborated with cogent materials. There is no reason to discard the claim of complainant.

18. Having regard to all these aspects as mentioned above, this Authority concludes that the complainant is entitled for refund along with interest as claimed vides his memo of calculation 07-08-2023.

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



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	12-06-2020	50,000	1151	07-08-2023	8.15	9.3 as on 10-06-2020	14,663
2	18-06-2020	1,00,000	1145	07-08-2023	7.3	9.3 as on 10-06-2020	29,173
3	26-08-2020	1,00,000	1076	07-08-2023	7.3	9.3 as on 10-08-2020	27,415
4	16-08-2021	2,50,000	721	07-08-2023	7.3	9.3 as on 15-08-2021	45,926
5	TOTAL AMOUNT	5,00,000				TOTAL INTEREST (I2)	117,177

MEMO OF CALCULATION			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 03-10-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
5,00,000	117,177	0	617,177


20. Accordingly the point raised above is answered in the Affirmative.

21. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, 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/00717/2023** is hereby allowed as under.

- The respondent is directed to pay a sum of **Rs.6,17,177/- (Rupees Six Lakhs Twenty Seventeen Thousand One Hundred and Seventy Seven only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 12/06/2020 till 15/08/2021.



2. The interest due from 16/08/2021 up to the date of final payment will be calculated as per MCLR + 2% and paid to the complainant.
3. The complainant is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to the costs.


(G R REDDY)
Member, K-FERA

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