

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 29<sup>th</sup> DAY OF DECEMBER 2023**

**COMPLAINT No: CMP/ UR/220816/0009900**

**COMPLAINANTS..**

VERNON MILBURG PINTO &  
NICOLETTE PINTO  
55, NANDANAM COLONY  
10<sup>TH</sup> MAIN, 7<sup>TH</sup> CROSS  
HORAMAVU MAIN ROAD  
BENGALURU URBAN-560084

(REP BY VINUTHA NAIDU  
ADVOCATE)

V/s

**RESPONDENT....**

1. T. NAGARAJ  
#421, 5<sup>TH</sup> MAIN, 9<sup>TH</sup> CROSS  
RMV 2<sup>ND</sup> STAGE  
DOLLARS COLONY  
BENGALURU URBAN-560094.

2. V. CHAYA  
#421, 5<sup>TH</sup> MAIN, 9<sup>TH</sup> CROSS  
RMV 2<sup>ND</sup> STAGE  
DOLLARS COLONY  
BENGALURU URBAN-560094.

(REP BY ANAND K.V. ADVOCATE)

**PROJECT NAME:**

**ELEGANT ALTIS**



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## JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**ELEGANT ALTIS**" for the relief of refund with interest.
2. The respondents 1 and 2 are the landowners/promoters.
3. This project is not registered in RERA. During the course of hearing of the complaint, it was brought to the notice of the Authority that despite the fact that the project was not completed as on the date of the commencement of the Act, the promoter of the project failed to register the project as an ongoing project under Section 3 of the Act. The developer/promoter of the project and the landowners of the project were heard on 29/4/2022, 26/5/2022 and 6/7/2022 during which the promoters together have undertaken to comply with the requirement of the registration of the project by uploading the registration application and the requisite documents for completion of the registration process. However, the applications uploaded for registration of the project by the developer-promoter did not comply with all the requisite submission and uploading of the documents in accordance with the procedure laid down by the Authority. The deficiencies in the documents has been brought to the notice of the promoters of the project by sending emails and further conducting hearing by the Full Bench of the Authority on 8/9/2022 and 22/9/2022. During the hearing, the promoters of the project i.e. developer-promoter as well as land owners, have once again undertaken that they will comply with the application procedure and upload all the documents which are pre-condition for granting registration of the project. It is noticed that there is a failure on the part of the promoter of the project in complying with the uploading of all the



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requisite documents even as on date. The Full Bench of the Authority has taken into consideration the failure on the part of the promoter of the project to register the project as an ongoing project, despite the fact that the project was incomplete as on the date of commencement of the Act and by the order dated 4/11/2022 has directed the promoter to comply with the requirement of registration under section-3 of the Act. In view of the direction of the Full Bench of the Authority, this project is deemed to be a registered project and accordingly falls within the ambit and jurisdiction of the Authority for adjudicating the complainants filed by the complainants against the promoter of the project.

4. The promoter has developed this project in the limits of Sy.No: 115/2(Old Sy.No: 115) situated at Byrathi Village, Bidarahalli hobli, Bengaluru East Taluk now bearing new Corporation No.7 of Sy.No: 115/2(Old Sy.No.115) Byrathi in Corporation Ward No.54, Bengaluru.

5. The gist of the complaint is that the complainants have booked a flat bearing no. 706, situated on the 7th floor, Tower-2 in the project "ELEGANT ALTIS" and thereafter entered into an agreement of sale dated 30/7/2013 with the respondents for a total sale consideration of Rs.58,80,000/- (Rs. Fifty eight lakhs eighty thousand only). The complainants have paid an amount of Rs.25,00,000/- on signing the agreement of sale dated 30/7/2013, Rs.3,50,000/- on 24/9/2015 favouring T. Nagaraj, Rs.3,50,000/- on 24/9/2015 favouring V. Chaya, Rs.6,05,000/- on 13/10/2015 favouring V. Chaya, Rs.6,05,000/- on 13/10/201 favouring T. Nagaraj, Rs.2,50,000/- on 1/12/2015 favouring T. Nagaraj, Rs.2,50,000/- on 1/12/2015 favouring V. Chaya altogether Rs.49,10,000/-(Rs. Forty nine lakhs ten thousand only) to the respondents 1 and 2 which has been duly acknowledged by them. The respondents were required to hand over the possession of the said flat to the





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complainants within 2 years i.e. by 30/7/2015. It is contended that even after seven years from the date of agreement, the respondents have neither completed the project nor handed over possession of the said flat. Having lost confidence with the respondent, the complainants have approached this forum for the relief of direction to the respondents to refund the entire amount paid along with interest. Hence, this complaint.

6. After registration of the complaint, in pursuance of the notice, the respondents did appear before this Authority through their counsel and filed vakalat. Though the respondents have appeared before this Authority they have not participated in the proceedings by filing statement of objections, producing documents etc. on their defence.

7. In support of their claim, the complainants have produced documents such as (1) copy of agreement of sale dated 30/7/2013 (2) details of payment made to the respondent (3) memo of calculation. (4) RERA challan (5) General power of attorney.

8. In support of their defence, the respondents have not submitted any documents.

9. 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?

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 complainants have approached this forum seeking for the relief of refund of amount paid along with interest.



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The grounds urged are that the complainants have booked a unit /flat no.706 in the project "ELEGANT ALTIS" of the respondents' no.1 and 2. Accordingly, both the parties have entered into an agreement of sale dated 30/7/2013 for a total sale consideration of Rs. 58,80,000/- (Rs. Fifty eight lakhs eighty thousand only). The respondents have promised to hand over the possession of the said flat within 2 years i.e. by 30/7/2015. However, the respondent has failed to abide by the terms and conditions enumerated in the agreement of sale dated 30/7/2013 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 30/7/2013. 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 30/7/2013, the respondents were supposed to handover the possession of the said flat to the complainants by 30/7/2015. But the respondents have not completed and handed over the possession of the said flat to the complainants 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*



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*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 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.

*ASB*



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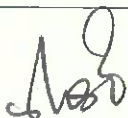
16. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment /plot in accordance with sale agreement.

17. From the averments made in the complaint, it is obvious that the complainants have paid the substantial sale consideration and are entitled to get their amount paid along with interest. The complainants have filed memo of calculation dated 15/11/2022. On perusal of the memo of calculation it is noticed that the complainants have claimed for having paid principal amount of Rs.54,10,000/- whereas it is apparent from the records that the complainants have paid only Rs.49,10,000/- to the respondents out of total sale consideration of Rs.58,80,000/- (Rs. Fifty eight lakhs eighty thousand only). In this regard, the complainants have not produced any single iota of evidence to establish their claim for having paid additional amount over and above Rs.49,10,000/-. Therefore, this Authority has considered principal amount of Rs.49,10,000/- (Rs. Forty nine lakhs ten thousand only) for having paid by the complainants to the respondents based upon the payment receipts produced by them along with permissible interest thereupon. The respondents have not submitted any memo of calculation in spite of several opportunities given to them.

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

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

Date of agreement of sale	30/7/2013
Date of construction agreement	Nil
Sale consideration	Rs.58,80,000/- (Rs. Fifty eight lakhs eighty thousand only)



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Amount paid	Rs.49,10,000/- (Rs. Forty nine lakhs ten thousand only)
Promised date of possession as per agreement of sale	Within 2 years from the date of agreement of sale dated 30/7/2013 i.e. by 30/7/2015
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

20. Despite of several notices served upon the respondents, the counsel for the respondents did appear before this Authority on 30/1/2023 and filed vakalat. Thereafter, during the preceding and subsequent dates of hearings from 24/2/2023 onwards neither the counsel for the respondents nor the respondents did appear before this Authority and have been continuously remained absent. Further, they have failed to file 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 respondents and considering the claim of the complainants which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainants. Accordingly, the points raised above is answered in the Affirmative.

21. As regards claim of the complainants for the relief of liquidated damages/monthly rent, such reliefs does not come under the purview of this Authority.

**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:





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**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: CMP/UR/220816/0009900 is hereby allowed as under:

1. The respondents 1 & 2 are hereby directed to refund an amount of Rs.49,10,000/- (Rupees Forty nine lakhs ten thousand only) along with interest to the complainants within 60 days from the date of this order calculated at the rate of 9% from 30/7/2013 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till the date of entire realization.
2. 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

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