

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 6

Dated 2ND JANUARY, 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/221025/0010132

COMPLAINANT.....

**ACHU RAJ
4TH FLOOR, JP SQUARE
NO.190, SANKEY ROAD
SADASHIVANAGAR
BENGALURU-560080.**

**(BY MR.PRASHANTH M.V.,
MR.D.K. ROHITH, ADVOCATES)**

V/S

RESPONDENTS....

**M/S S L RESIDENTIAL LAYOUT
PRIVATE LIMITED
NO.44/1, 8TH MAIN ROA
SADASHIVANAGAR
RMV EXTN
BANGALORE-560080.**

**(BY MR.DINESH S KADLAS,
MS. JAYANTHI M.S., ADVOCATES)**

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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**SHRIRAM BAGESHRI**" developed by "**SL RESIDENTIAL LAYOUT PRIVATE LIMITED**" situated at Sy.No.32/1A, Chikkagatiganabbe, Kasaba Hobli, Hoskote Taluk, Bangalore Rural District for the relief of refund with interest.
2. This project has been registered under RERA bearing registration No.PRM/KA/RERA/1250/304/PR/190305/002479 and was valid till



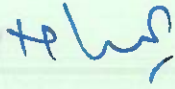
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04/02/2021. The Authority had given 9 months covid extension till 04/11/2021.

Brief facts of the complaint are as under:-

3. The complainant had booked a plot bearing No.140 in the project of the respondent vide allotment letter dated 01/02/2021 for a total sale consideration of Rs.45,23,900/- and has paid Rs.39,45,315/- to the respondent on various dates. The respondent was requested for execution of sale agreement in terms of the above said allotment letter, but the respondent failed to execute the same. The respondent as per his assurance was supposed to have completed the project and handed over the plot on or before 31/3/2021 with a grace period of six months i.e. latest by 30/9/2021. There is no proper response from the respondent for the delay. The respondent had agreed to execute the sale deed on or before 31/3/2021 by receiving the balance amount, which has not been honoured causing mental agony to the complainant. The respondent has failed to adhere to the timelines for completion of the project and is learnt that the final design approval letter has been kept under scanner of cancellation by the concerned Authority. Thus, the complainant has approached the Hon'ble Authority and prays for directions to the respondent for refund of full amount with interest. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Hon'ble Authority through their counsel/representative and have filed their written submissions as under:-
5. The respondent submits that in spite of calling the complainant to sign the sale agreement, he didn't come forward to sign and is now blaming the respondent. The draft copy of the agreement to sale was sent



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through email dated 8/7/2021 and the complainant has not responded till date. The respondent contends that the complainant is hiding the facts to gain sympathy. The complainant has paid Rs.38,45,291.40 and not 39,45,315/- as claimed.

6. The respondent submits that the delay in completion of the project was due to the impact of Covid-19 pandemic, lockdowns, labours returning to their native places which were beyond the control of the respondent. This was explained to the complainant during his visit to the project.
7. The respondent submits that necessary permission has been obtained from the concerned Authority and is waiting for final release letter of the STRR Planning activity and that once the Khatha is generated they will proceed ahead with the registration. The respondent further submits that all the developmental activities have already taken place and submits photograph of the same as proof and prays the Hon'ble Authority to dismiss the complaint.
8. The complainant in his written submission (Memo filed on 26/7/2023) contends that the STRRPA (Satellite Town Ring Road Planning Authority) rescinded the approval granted on 31/5/2018 as the respondent had submitted false conversion order dated 26/3/2000 and a Public Notice was issued on 20/4/2022. In another Public Notice dated 15/6/2022 it was revealed that the promoter tendered an apology on 25/4/2022 and the STRRPA withdrew the approval. The complainant submits that as the respondent did not disclose another ongoing litigation during the sanction of permissions, the layout plan development permission was revoked. A stay on this revocation was ordered by the Hon'ble High Court of Karnataka on 26/11/2020 in W.P. No.13533/2020.
9. The complainant further submits that the project land had been mortgaged to Catalyst Trusteeship Ltd., (formerly Milestone Trusteeship



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Limited). Owing to the breach of mortgage terms, Catalyst Trusteeship Ltd took possession of the property under SARFESI Act on 24/2/2023. The complainant contends that the promoter did not notify the Authority about these developments. The complainant thus wants to exit from the project and prays the Hon'ble Authority for directions to the respondent to refund the entire amount with interest.

10. The respondent in their objections to the written submission (Memo) intends to add that they purchased this land after STRRPA approved a layout formation. The question of submitting wrong conversion order does not arise as the STRR has provided its confirmation for availability of the conversion orders. The promoter company had applied for the copy of the letter through RTI before purchasing the land and since the letter was issued by STRR confirming availability of the conversion orders, the promoter company purchased the land. The Hon'ble High Court of Karnataka has passed an order dated 23/3/2022 in W.P.No.13533/2020. The release order dated 28/1/2022 issued by STRRPA has not been disputed by STRRPA while seeking dismissal of the Writ Petition.

11. The respondent further submits that the company was forced to opt for regularization of conversion orders as the respective files which were available in 2018 were not available in 2021. The planning authority had also informed that they will co-operate for faster movement of files and get the necessary approvals/permission as soon as possible and also meet the clients, if necessary. Some clients met the planning authority personnel in August & November 2022 wherein the authority had confirmed that the approvals will be coming in short time. The promoter company also kept the investors informed from time to time about the progress and the investor was convinced with the steps taken



by the company for early solution. The respondent submits that taking over the physical possession has no significance, and they still remain the owner of the property.

12. The respondent submits that considering the huge cost incurred and awaiting for approvals, they are constrained to pay any amount of interest or compensation in case of any cancellation for no mistake of the respondent.

13. In support of their defence the respondent has produced copies of High Court Order in W.P.No.13533 of 2020, letter dated 23/4/2018, confirmation letter dtd 25/8/2020 from Sr.Asst.Director, Horticulture Department, Hoskote; letter dated 24/12/2020 from AEE, PWD, Hoskote; letter dated 9/12/2020 from PDO, Doddagattiganabbe Gram Panchayat, Hoskote Taluk; commencement certificate dated 6/2/2023 from STRRPA and photographs of developmental activities.

14. The complainant has produced documents such as copies of allotment letter, payment receipts, Public Notice dated 15/6/2022, Hon'ble High Court Order in W.P.No.13533/2020, photographs and memo of calculation as on 18/12/2023.

15. This matter was heard on 22/12/2022, 21/2/2023, 14/3/2023, 13/4/2023, 22/6/2023, 26/7/2023, 13/9/2023, 10/10/2023, 7/12/2023 and 14/12/2023. Heard arguments of both sides.

16. **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?

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

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

REASONS

18. **My answer to Point No.1:-** From the materials placed on record, it is apparent that in spite of several requests by the complainant, the respondent did not come forward to execute the agreement of sale as required under RERA 13(2) and it is evident that the respondent has collected more than 10% of the total sale consideration value and thereby violated RERA 13(2), certainly entitles the complainants for refund of full amount with interest.

19. The Hon'ble Authority has perused the written submissions submitted by the complainant and statement of objections filed by the respondent.

20. During the process of the hearing, the complainant submitted that the STRRPA has withdrawn plan sanction in 2021 and had given paper advertisement to caution general public about the cancellation of plan. The respondent made a plea that they want to negotiate with the complainant. The respondent filed a Memo that they are ready to execute the sale deed pertaining to Plot No.140 in favour of the complainant, once the final release from STRRPA is obtained. The complainant submitted that he wants refund and is not agreeable to wait any longer.

21. 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 that:

"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."

22. In 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 later 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."

23. 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, flat, 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.

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

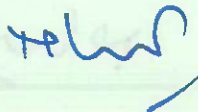
25. The complainant vide his memo of calculation as on 18/12/2023 has claimed an amount of Rs.48,52,544/- (Rupees Forty Eight Lakh Fifty Two Thousand Five Hundred and Forty Four only) as refund with interest.

26. Having regard to all the above aspects, the Authority has concluded that the complainant is entitled for refund with interest as calculated in his memo of calculation as on 19/08/2023.

27. Therefore, it is incumbent upon the respondent to pay refund with interest determined as under:

Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	0	0	30-04-2017	0
2		0		TOTAL INTEREST (I1)	0

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	01-05-2017	0	2422	18-12-2023	8.15	10.15 as on 01-05-2017	0
2	02-02-2021	1,00,000	1049	18-12-2023	7.3	9.3 as on 10-01-2021	26,727
3	09-02-2021	2,00,000	1042	18-12-2023	7.3	9.3 as on 10-01-2021	53,099
4	09-02-2021	3,00,000	1042	18-12-2023	7.3	9.3 as on 10-01-2021	79,648



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5	09-02-2021	5,30,951	1042	18-12-2023	7.3	9.3 as on 10-01-2021	1,40,965
6	01-03-2021	9,50,000	1022	18-12-2023	7.3	9.3 as on 10-02-2021	2,47,380
7	01-03-2021	17,64,340	1022	18-12-2023	7.3	9.3 as on 10-02-2021	4,59,434
8	TOTAL AMOUNT	38,45,291				TOTAL INTEREST (I2)	10,07,253

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 18-12-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
38,45,291	10,07,253	0	48,52,544

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

29. My answer to Point No.2:- In view of the above discussion, 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 No. **CMP/221025/0010132** is hereby allowed.

The respondent is directed to pay a sum of **Rs.48,52,544/- (Rupees Forty Eight Lakh Fifty Two Thousand Five Hundred and Forty Four only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 02/02/2021 to 18/12/2023.

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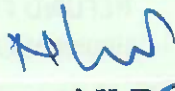
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The interest accruing from 19/12/2023 till the date of final payment will be calculated likewise and paid to the complainant.

The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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