

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 2<sup>ND</sup> JANUARY, 2024**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.:00434/2023**

**COMPLAINANT.....**

**ANURAG AGRAWAL  
222, 8<sup>TH</sup> CROSS, 1<sup>ST</sup> MAIN ROAD  
TALACAUVERY LAYOUT  
BASAVANAGAR  
BANGALORE-560037.**

**(BY MR. NAGESHA POOJARI Y,  
ADVOCATE)**

**Vs**

**RESPONDENTS.....**

**1. NAGAMANI CONSTRUCTIONS  
NO.12, 1<sup>ST</sup> CROSS, A BLOCK  
AECS LAYOUT  
KUNDALAHALLI VILLAGE  
BEHIND CMRIT COLLEGE  
BANGALORE-560037.**

**(BY MR.T.S. VENKATESH, MR.J.A. MADHU,  
MS. POORNIMA M.R & OTHERS ADVOCATES)**

**2. BYRE GOWDA  
3. RATHNAMMA  
4. ASHOKA  
5. ANURADHA  
6. ADHARSHINI  
7. AMARAVATHI  
8. BHAVANI  
NO.12, 1<sup>ST</sup> CROSS, A BLOCK  
AECS LAYOUT  
KUNDALAHALLI VILLAGE  
BEHIND CMRIT COLLEGE  
BANGALORE-560037.**

**(LAND OWNERS)**

**\* \* \* \* \***



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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 "**LIVING HARMONY**" developed by **M/S. NAGAMANI CONSTRUCTIONS** situated at Sy.No.45/1 to 7 and 15, Sy.No.43/1 and 2, BBMP Khatha No.583/449 and 688/485, Siddapura Village, Varthur Hobli, Bengaluru East, Bengaluru Urban for the relief of refund with interest.
2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1251/446/PR/190531/002593 and is valid till 05/02/2021. The Authority gave covid extension for 9 months valid till 05/11/2021. The registration was extended by the Hon'ble Authority for a period of 12 months valid till 04/11/2022.

**Brief facts of the complaint are as under:-**

3. The complainant has booked a flat bearing No.314, 3<sup>rd</sup> Floor, Block-A in the project of the respondents and entered into an agreement for sale and construction agreement dated 18/10/2019. The complainant has paid Rs.39,69,504/- (Rupees Thirty Nine Lakh Sixty Nine Thousand Five Hundred and Four only) to the respondents on various dates. The respondents were supposed to handover the flat and execute sale deed by 30/12/2020 with a grace period of six months i.e. by 30/06/2021, but the respondents have not completed the construction nor handed over the flat to the complainant as agreed. The complainant submits that even after lapse of two years, there is no progress in the construction and also there is no intimation regarding delivery of the flat. The complainant submits that he is facing hardship and mental agony as he is required to repay bank loan and rent due to this enormous delay. The complainant also sent a legal notice dated 7/1/2023 to the



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respondent No.1 through RPAD to which there is no response. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondents for refund of full amount with interest and compensation for mental agony. Hence this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent No.1 has appeared before the Authority through its counsel/representative, but has not filed any written submission nor have produced any documents on their behalf. Though the summons was served on all the eight (8) respondents, the remaining respondents No.2 to 8 did not appear before the Authority.
5. In support of their defence, the respondents have not filed any documents and have also failed to submit their memo of calculation despite several opportunities were given.
6. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, Construction agreement, payment receipts, legal notice dated 7/1/2023 and Memo of calculation for refund with interest as on 16/07/2023.
7. This case was heard on 19/7/2023, 12/9/2023, 28/11/2023 and 14/12/2023. Heard arguments of both sides.
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:-** It is undisputed that the respondents have failed to handover possession of the flat to the complainant herein within agreed time even after receiving substantial sale consideration amount. As per the terms of agreement of sale and construction agreement between the parties, the possession of the flat was supposed to be handed over to the complainant by 30/12/2020 with a grace period of six months i.e. latest by June 2021.
11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant was supposed to get the flat delivered by 30/12/2020 with a grace period of six months i.e. June 2021, but the respondent is nowhere near completion of the project, certainly entitles the complainant herein for refund of entire amount with interest.
12. The Hon'ble Authority has perused the written submission filed by the complainant. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, and hence, it is necessary that it shall be free from any ambiguity and vagueness. Here in this case, the respondent has not complied with the terms of the said agreement of sale and construction agreement.
13. The respondent No.1 though appeared before the Authority to participate in the proceedings has not filed their statement of objections nor produced any documents on their behalf. The respondents have not at all disputed the claim of the complainant in any manner. Therefore, the claim of the complainant remained unchallenged and it is corroborated with the cogent evidence. These being the facts, in the

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absence of any resistance by the respondent, there is no option left to this Authority except to accept the claim of the complainant.

14. 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."*

15. 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*

*MP*



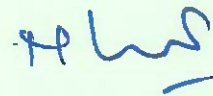
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*that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himanshu Giri came 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."*

16. 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.
17. 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.
18. The complainant has claimed Rs.52,85,447/- (Rupees Fifty Two Lakh Eighty Five Thousand Four Hundred and Forty Seven only) vide their memo of calculation as on 16/07/2023 towards refund with interest.
19. Having regard to all these aspects, the Hon'ble Authority concludes that the complainant is entitled for refund with interest calculated vide his memo of calculation as on 16/07/2023.
20. Therefore, it is incumbent upon the respondent to pay refund with interest which is determined as under:



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| 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  | 01-04-2017 | 0                       | 29         | 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                       | 2267       | 16-07-2023      | 8.15             | 10.15 as on 01-05-2017 | 0              |
| 2   | 18-07-2019           | 1,00,000                | 1459       | 16-07-2023      | 8.6              | 10.6 as on 10-07-2019  | 42,370         |
| 3   | 16-09-2019           | 4,36,800                | 1399       | 16-07-2023      | 8.35             | 10.35 as on 10-09-2019 | 1,73,279       |
| 4   | 15-02-2020           | 21,45,000               | 1247       | 16-07-2023      | 8.15             | 10.15 as on 10-02-2020 | 7,43,818       |
| 5   | 08-07-2020           | 1,71,376                | 1103       | 16-07-2023      | 7.3              | 9.3 as on 10-06-2020   | 48,163         |
| 6   | 08-07-2020           | 1,50,000                | 1103       | 16-07-2023      | 7.3              | 9.3 as on 10-06-2020   | 42,155         |
| 7   | 30-07-2020           | 9,66,328                | 1081       | 16-07-2023      | 7.3              | 9.3 as on 10-07-2020   | 2,66,158       |
| 8   | TOTAL AMOUNT         | 39,69,504               |            |                 |                  | TOTAL INTEREST ( I2 )  | 13,15,943      |

| Memo Calculation       |   |                            |                                    |
|------------------------|---|----------------------------|------------------------------------|
| PRINCIPLE AMOUNT ( A ) | INTEREST ( B = I1 + I2 ) AS ON 16-07-2023 | REFUND FROM PROMOTER ( C ) | TOTAL BALANCE AMOUNT ( A + B - C ) |
| 39,69,504              | 13,15,943                                 | 0                          | 52,85,447                          |

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

*Handwritten signature*

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22. **My answer to Point No. 2:-** In view of the above discussion, I proceed to pass the following order:-

**ORDER**


In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.00434/2023** is hereby allowed.

The respondent No.1 is directed to pay the amount of **Rs.52,85,447/- (Rupees Fifty Two Lakh Eighty Five Thousand Four Hundred and Forty Seven only)** towards **refund with interest** calculated at MCLR + 2% from 18/07/2019 to 16/07/2023 to the complainant within 60 days from the date of this order.

The interest due from 17/07/2023 up to 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