

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

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

Dated 26th December 2023

COMPLAINT NO: CMP/01070/2023

COMPLAINANT...

**1. Deepika J Gowda
No. 1192, 18th Main Road,
5th Block, Rajajinagar,
Bangalore-560010.
STATE: KARNATAKA.**

(In Person)

Vs

RESPONDENT.....

**M/s Provident Housing Limited.
No. 130/1,
Ulsoor Road,
Bangalore-560042.
(M/s Anandarama & Prashanth
Advocates)**

*** * * * ***

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Provident Neora" developed by M/s. Provident Housing Limited for the relief of interest on delay period.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/472/PR/180808/001982 valid till 31-12-2021 and extended till 30-09-2023.
3. This project is situated at, Sy. No.3, Sampigehalli Village, Yelahanka Hobli, Yelahanka, Bangalore.

Brief facts of the complaint are as under:-

4. The complainant had booked a flat bearing No. 408 in the project of the respondent namely "Provident Neora" for a total sale consideration of Rs. 47,93,574/- (Rupees Forty Seven Lakhs

Ninety Three Thousand and Five Hundred and Seventy Four only). At the time of entering into an agreement of sale, the complainant had paid a sum of Rs.4,27,000/- (Rupees Four Lakhs Twenty Seven Thousand only) to the respondent. An agreement of sale is executed on 30-11-2018 between the complainant and the respondent, the respondent was supposed to handover the flat to the complainant in December 2021. The complainant had checked with project team about completion of the project, but she got negative report that still the respondent is waiting for approval NOC's from the relevant department and the respondent got RERA extension, it means the respondent has more time to complete the project after the date of possession mentioned in the agreement of sale. After multiple follow ups also the complainant has not get any reply from their end. Even after 2 years the respondent neither register the said flat to the complainant nor refund her amount. In the substantial sale consideration of Rs.47,93,574/- (Rupees Forty Seven Lakhs Ninety Three Thousand and Five Hundred and Seventy Four only) the complainant had paid Rs.14,12,257/- (Rupees Fourteen Lakhs Twelve Thousand and Two Hundred and Fifty Seven only) from her own savings and remaining Rs.33,81,317/- (Rupees Thirty Three Lakhs Eighty One Thousand and Three Hundred and Seventeen only) from the loan of SBI as prelaunch project. The complainant is worried that the respondent will hand over the possession or not ? and the complainant struggling to pay the bank loan and its interest. Then complainant decided to get interest on delay period and she had requested the promoter for it but there is no response from their end. The complainant has filed a complaint

u/s 31 for interest on delay period. Later she changed her relief to refund along with interest. Hence, this complaint.

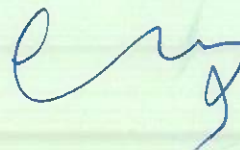
5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainant had appeared before the Authority and filed memo of calculation, agreements of sale, payment receipts and copies of letter conversation between both the parties etc. The respondent has appeared before the Authority through its counsel and filed statement of objections as under.
6. The respondent agrees that the complainant had paid total sale consideration charges including all the taxes and other charges of Rs.47,93,578/- (Rupees Forty Seven Thousand Ninety Three and Five Hundred and Seventy Eight only). The respondent has obtained all the necessary plans, licenses, clearances and NOCs from the related departments. But the respondent didn't get NOC of Government Flying Training School, Jakkur Aerodrome for the protection of obstacle limitation surfaces by the Rule 5 of the Height Restriction Rule 2015, the respondent has stated that he had requested 10 to 15 times to the same department but they have not issued NOC. The respondent has filed a Writ Petition No. 21803/2023(GM-RES) before the Hon'ble High Court of Karnataka seeking an order directing the Government Flying Training School, Jakkur Aerodrome and the matter is listed on 29-11-2023 for the hearing. Regarding the complaint filed by the complainant in RERA, the complainant seeking a relief of interest on delay period u/s 18 of the Act is not applicable to the facts and circumstances of the instant case. The respondent has stated that there is no delay in completing of



the project and there is no inability on the part of the respondent to handover the possession to the complainant. The respondent got all NOC's and approvals in time except GFTS, it was withholding the issuance of NOC is the reason for delay in completing the project. Hence, the respondent prayed this Authority to dismiss the complaint with costs in the interest of justice.

7. The complainant has filed her written submission and requested to change her relief from interest on delay period to refund with interest on 28-11-2023. The Provident customer team has ignored the complainant's calls and emails many times. There is no definite clarity to get the possession of the property from the Provident team. The complainant is fed up of the Provident team, because each time the complainant gets a different response from the various folks within their team. They are demanding only for additional funds and payment towards other infrastructure charges. The complainant didn't have any definite confirmation of the possession and she does not want to continue with the project. So she has filed an application for refund along with the interest. Accordingly, she files fresh memo of calculation as per RERA.

8. The respondent had replied for the written submission filed by the complainant for change request of relief of refund, he disagrees for the delay and has stated that, the complainant is liable to pay registration charges on the amount of consideration shown in the agreement of sale and the guidance value has now increased beyond the agreed consideration amount. The complainant had agreed that the builder shall obtain occupancy certificate by 25-12-2023 but she has filed



this complaint before the timeline. Thus the respondent prayed to dismiss the complaint with costs in the interest of justice to this Hon'ble Authority.

9. This matter is heard on 20-09-2023 & 29-11-21023.
10. **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?
11. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following.

REASONS

12. **My answer to Point No.1:-** The complainant had approached this forum seeking for the relief of interest on delay period and requesting for handing over the possession. The grounds urged are that the complainant had booked a flat bearing No. NEORA-A-408 in the project of the respondent by entering into an agreement of sale on 30-11-2018. As per the said agreement, the respondent was supposed to handover possession of the said flat to the complainant on or before 31-12-2021 but, the respondent has not handed over the possession of the said flat to the complainant as agreed. Due to demanding of excess amount from the builder the complainant has changed her request to refund along with interest.
13. Looking to the averments of agreement, 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, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale, the respondent had supposed to



handover the possession of said flat to the complainant in December 2021.

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 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.

15. 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."

16. 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.

17. 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.

18. 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 flat. 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.

19. The complainant has filed her memo of calculation as on 20-11-2023 claiming a refund of Rs.66,56,484/- (Rupees Sixty Six Lakhs Fifty Six Thousand Four Hundred and Eighty Four 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.

20. Having regard to all these aspects as mentioned above, this Authority concludes that the complainant is entitled for refund along with interest as claimed vide her memo of calculation 20-11-2023.

21. 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	01-05-2017	0	2394	20-11-2023	8.15	10.15 as on 01-05-2017	0
2	20-10-2018	2,00,000	1857	20-11-2023	8.7	10.7 as on 01-10-2018	1,08,876
3	30-10-2018	1,95,988	1847	20-11-2023	8.7	10.7 as on 01-10-2018	1,06,117
4	30-10-2018	26,458	1847	20-11-2023	8.7	10.7 as on 01-10-2018	14,325
5	22-11-2018	4,554	1824	20-11-2023	8.7	10.7 as on 01-11-2018	2,435
6	31-12-2018	26,683	1785	20-11-2023	8.75	10.75 as on 10-12-2018	14,027
7	06-03-2019	13,10,639	1720	20-11-2023	8.75	10.75 as on 10-02-2019	6,63,937
8	16-07-2019	5,08,793	1588	20-11-2023	8.6	10.6 as on 10-07-2019	2,34,641
9	26-09-2019	5,04,092	1516	20-11-2023	8.35	10.35 as on 10-09-2019	2,16,698
10	04-01-2020	70,000	1416	20-11-2023	8.2	10.2 as on 10-12-2019	27,699
11	06-01-2020	30,000	1414	20-11-2023	8.2	10.2 as on 10-12-2019	11,854

12	17-01-2020	4,04,092	1403	20-11-2023	8.2	10.2 as on 10-01-2020	1,58,432
13	15-07-2020	47	1223	20-11-2023	7.3	9.3 as on 10-07-2020	14
14	16-07-2020	2,52,001	1222	20-11-2023	7.3	9.3 as on 10-07-2020	78,462
15	01-02-2021	1,20,000	1022	20-11-2023	7.3	9.3 as on 10-01-2021	31,248
16	01-02-2021	1,32,046	1022	20-11-2023	7.3	9.3 as on 10-01-2021	34,384
17	16-11-2021	2,00,000	734	20-11-2023	7.3	9.3 as on 15-11-2021	37,403
18	08-12-2021	3,04,092	712	20-11-2023	7.3	9.3 as on 15-11-2021	55,166
19	27-06-2022	2,52,046	511	20-11-2023	7.7	9.7 as on 15-06-2022	34,227
20	15-07-2022	2,45,047	493	20-11-2023	7.8	9.8 as on 15-07-2022	32,436
21	07-03-2023	6,996	258	20-11-2023	8.7	10.7 as on 15-02-2023	529
22	TOTAL AMOUNT	47,93,574				TOTAL INTEREST (I2)	18,62,910

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)
47,93,574	18,62,910	0	66,56,484

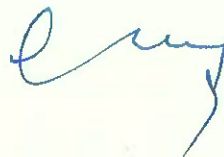
22. Accordingly the point raised above is answered in the Affirmative.

23. **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/01070/2023** is hereby allowed as under.

1. The respondent is directed to pay a sum of **Rs.66,56,484/- (Rupees Sixty Six Lakhs Fifty Six Thousand Four Hundred and Eighty Four only)** towards refund with interest to the complainant within



60 days from the date of this order, calculated at MCLR + 2% from 20-10-2018 till 20-11-2023.

2. The interest due from 21-11-2023 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-RERA

NOT AN OFFICIAL COPY