

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 8th DAY OF JANUARY 2024

COMPLAINT No: CMP/220826/0009954

COMPLAINANT..

BEENU CHAREMANDA
POONACHA AND
NIRAN AJJIKUTTRIA
UTHAIAH
1197, 22nd CROSS
HSR LAYOUT SECTOR 3
BENGALURU URBAN-560102
(IN PERSON)

V/s

RESPONDENT....

M/S ITALIX LIVING SPACES
PRIVATE LIMITED
NO: 38, ULSOOR ROAD
BENGALURU URBAN-560042
(REP BY PREMILA RANI
AUTHORIZED
REPRESENTATIVE)

PROJECT NAME:

GREEN VIEW KORAMANGALA

REGISTRATION NO:

PRM/KA/RERA/1251/310/PR/
200109/001520

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "GREEN VIEW KORAMANGALA" developed by " M/s ITALIX LIVING SPACES PRIVATE LIMITED" for the relief of refund with interest.



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2. The promoter has developed this project in the limits of New municipal no.395, Roopena Agrahara Village, Begur Hobli, Bengaluru South Taluk, Bengaluru South, Bengaluru Urban.
3. The background of the project in brief is that M/s Pebblebay Developers Private Limited have obtained registration from RERA for the two projects viz: Pebblebay Koramangala Phase-I and Raheja Chambers.
4. After commencement of initial civil works by the said promoter of the projects, one Sri. N. Anand and others have filed a civil petition with regard to the ownership title of the property on which the proposed projects are to be put up. However, the said matter was amicably settled before the court of XLIII Additional City and Civil and Sessions Judge vide order dated 15.2.2019. Thereafter M/s Pebblebay Developers Private Limited reached an understanding with M/s Italix Living Spaces Private Limited to transfer both the above projects to the latter. Based upon such understanding, the application dated 16.5.2019 has been filed before this Authority seeking approval of the transfer of these two projects u/s 15 of the Act. On 30.8.2019, this Authority has granted approval of these two projects from the transfer company M/s Pebblebay Developers to the transferee company M/s Italix Living Spaces Private Limited along with entire rights and liabilities.
5. Thereafter the project has been transferred under third party with promoter name retains the same as earlier i.e. "ITALIX LIVING SPACES PRIVATE LIMITED" however project name has been changed from "Pebble Bay-Koramangla Phase I to "Green Veiw Koramangala" vide registration dated 09/01/2020 approved by K-RERA.



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6. The gist of the complaint is that the complainants have booked a flat bearing no. B-401 in the erstwhile project “ **PEBBLEBAY-KORAMANGALA - NOW KNOWN AS GREEN VIEW KORAMANGALA**” and thereafter entered into an agreement of sale dated 1/6/2017 with the respondent for a total sale consideration of Rs.2,18,92,250/- (Rs.Two crore eighteen lakhs ninety two thousand two hundred fifty only). The complainants have paid an amount of Rs.10,00,000/- on 26/8/2016, Rs.65,00,000/- on 19/9/2016, Rs.20,00,000/- on 26/10/2016 altogether Rs.95,00,000/- (Rs. Ninety five lakhs only) as per memo of calculation dated 4/2/2023 and payment receipts submitted by the complainants to the respondent-builder which has been duly acknowledged by him. The builder was required to hand over the possession of the said flat to the complainants within 30/6/2019 with a grace period of 6 months i.e. by 30/12/2019. It is contended that till now the project had only been completed until ground floor. Further, the residential apartment has been demolished on 17/5/2022. Despite of repeated messages to the respondent to know the status of the project, he did not responded. Therefore, the complainants have approached this forum for the relief of direction to the respondent to refund the entire amount paid along with interest. Hence, this complaint.

7. After registration of the complaint, in pursuance of the notice, the respondent did appear before this Authority through its Authorized Representative. Thereafter, neither the respondent nor his authorized representative have taken any interest to file statement of objections, producing documents if any on their behalf.



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8. On perusal of the sale agreement, it is seen that the completion date is agreed as 30/6/2019 with a grace period of 6 months i.e. by 30/12/2019. The Promoter-respondent was required to complete the project and hand over possession of the unit no. B-401 in the "erstwhile project " **PEBBLEBAY-KORAMANGALA - NOW KNOWN AS GREEN VIEW KORAMANGALA** " " to the complainant within 30/6/2019 with a grace period of 6 months i.e. by 30/12/2019. In cases wherein the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for the relief in accordance with Section 18 of the Act.
9. In support of his claim, the complainant has produced documents such as (1) copy of agreement for sale dated 1/6/2017 (2) details of payment made to the respondent (3) memo of calculation.
10. In support of his defence, the respondent has not filed any documents.
11. 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?
12. **Findings on the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following:

FINDINGS

- 13. 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.B-401 in the erstwhile project “ **PEBBLEBAY-KORAMANGALA – NOW KNOWN AS GREEN VIEW KORAMANGALA** of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale dated 1/6/2017 for a total sale consideration of Rs.2,18,92,250/- (Rs. Two crore eighteen lakhs ninety two thousand two hundred fifty only). The respondent had promised to hand over the possession of the said flat within 30/6/2019 with a grace period of 6 months i.e. by 30/12/2019. However, the respondent has failed to abide by the terms and conditions enumerated in the agreement of sale dated 1/6/2017 and miserably failed to hand over the said unit within the stipulated timeline as agreed.

14. Looking to the averments of agreement, parties herein have entered into an agreement of sale dated 1/6/2017. 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 1/6/2017, the respondent was supposed to handover the possession of the said flat to the complainant within 30/6/2019 with a grace period of 6 months i.e. by 30/12/2019. But the respondent had not completed and handed over the possession of the said flat to the complainant till date.

15. 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:



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“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 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.

16. 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.

17. 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,

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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.

18. 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.

19. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant on 19/12/2022. The complainant has claimed an amount of Rs.1,54,46,824/- (Rs. One crore fifty four lakhs forty six thousand eight hundred twenty four only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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

Memo Calculation submitted by the complainant as on 19/12/2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 19/12/2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
95,00,000	59,46,824	0	1,54,46,824

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

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

Date of agreement of sale	1/6/2017
Date of construction agreement	Nil
Sale consideration	Rs.2,18,92,250/- (Rs. Two crore eighteen lakhs ninety two thousand two hundred fifty only)
Amount paid	Rs.95,00,000/- (Rs. Ninety five lakhs only)
Promised date of possession as per agreement of sale	30/6/2019 with a grace period of 6 months i.e. by 30/12/2019
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

23. Despite of several notices served upon the respondent, the Authorized Representative of the respondent did appear before this on 18/4/2023. Thereafter, 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 respondent and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant. Accordingly, the points raised above is answered in the Affirmative.

24. 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/220826/0009954 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. 1,54,46,824/- (Rupees One crore fifty four lakhs forty six thousand eight hundred twenty four only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate 9% from 26/8/2016 to 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 19/12/2022.
2. The interest due from 20/12/2022 shall be calculated likewise and paid to the complainants till the date of entire realization.
3. 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

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