

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 5**

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

**Dated 10<sup>th</sup> January 2024**

**COMPLAINT NO: CMP/00322/2023**

**COMPLAINANTS...**

1. Srihari Venkataraman  
2. Anusha Srihari  
Prestige Falcon City,  
Konankunte Cross,  
Kanakpura Road,  
Bangalore-560062.  
STATE: KARNATAKA.  
(In Person)

V/s

**RESPONDENTS.....**

1. Exd Projects Pvt. Ltd.,  
No. 9/10, Ground Floor,  
Prestige Towers,  
Residency Road,  
Bangalore-560025.  
(Ex-parte)

2. Mohan Babu R  
Honnakalasapura Village,  
Kasaba Hobli,  
Anekal Taluk,  
Bangaluru Urban-562106.  
(Ex-parte)

3. S Y Shambaiah  
Sy. No. 69/1, Gudigattanahalli,  
Sarjapur Hobli,  
Anekal Taluk,  
Bangaluru Urban-560125.  
(Ex-parte)

4. C Chandrasekar  
Sy. No. 69/1, Gudigattanahalli,  
Sarjapur Hobli,  
Anekal Taluk,  
Bangaluru Urban-560125.  
(Ex-parte)

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**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA Act against the project "Five Rings" developed by M/s. Exd Projects Pvt. Ltd., for the relief of refund along with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/308/PR/171102/002143 valid till 30-09-2022.
3. This project is situated at, Doddakarena Halli Village, Kasaba Hobli, Nelamangala, Bangalore.

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

4. The complainants had booked a flat bearing No. A-520 in the project of the respondent namely "Five Rings" for a total sale consideration of Rs.22,25,006/-(Rupees Twenty Two Lakhs Twenty Five Thousand and Six only). At the time of entering into an agreement of sale, the complainant had paid sum of Rs. 2,60,406/-(Rupees Two Lakhs Sixty Thousand and Four Hundred and Six only) from their own account and also paid loan amount of Rs.11,16,803/-(Rupees Forty One Lakhs Sixty Thousand only) advanced by HDFG Bank. The respondent was supposed to handover possession of the said flat to the complainant on or before 31-12-2020. The complainant came to know that the respondent had failed to carry out the construction work and they had tried to contact numerous times to the respondent through phone and email conversation

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but there is no response from the respondent. The respondent had send email on 03-01-2023 to the complainants and agrees to refund the amount as early as possible to him. But the respondent didn't pay the amount to the complainant. 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 notice, the complainants had appeared before the Authority and filed memo of calculation, agreements of sale and tripartite, payment receipts and copies of email conversation between both the parties etc. The respondent 1, respondent 2, respondent 3 & respondent 4 did not appear before this Authority and remained absent. Hence, all the respondents were placed as ex-parte.

6. In support of their claim, the complainants have produced documents such as copy of agreement of sale and tripartite, payment receipts and copies of email between both the parties, memo of calculation dated 02-07-2023, bank statement and details of home loan.

1. This matter is heard on 30-08-2023 and 28-11-2023.

**2. 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?

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

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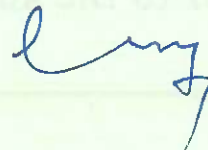
1. In the Affirmative.
2. As per final order for the following.

**REASONS**

4. **My answer to Point No.1:-** From the materials available on record, it is apparent that in spite of entering into sale agreement having received a substantial sale consideration from the complainant, the respondent has neither registered the flat and nor refunded the amount with interest till date.
5. 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.*

6. 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,



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*“ 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.”*

7. 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

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interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

8. 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.

9. 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.

10. The complainant has filed his memo of calculation as on 02-07-2023 claiming a refund of Rs.21,20,076/- (Rupees Twenty One Lakhs Twenty Thousand and Seventy Six only) including interest. The respondent no.1 has not resisted the said memo of calculation filed by the complainant and he has not submitted his memo of calculation in spite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainant reveals that his claim is genuine.

11. In response to the notice, the respondent no.1, respondent no.2 respondent no.3 and respondent no.4 have not taken any interest to participate in the proceedings and to resist the claim of complainant. Hence, the claim of complainant remained

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unchallenged and his claim is corroborated with cogent materials.

There is no reason to discard the claim of complainant.

12. 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 his memo of calculation 02-07-2023.

13. Therefore, it is incumbent upon the respondent to refund the amount with interest which is 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	10-09-2016	45,000	232	30-04-2017	2,574
2	27-10-2016	59,550	185	30-04-2017	2,716
3		1,04,550		TOTAL INTEREST ( I1 )	5,290

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%
1	01-05-2017	1,04,550	2253	02-07-2023	8.15	10.15 as on 01-05-2017
2	31-01-2018	8,004	1978	02-07-2023	8.1	10.1 as on 01-01-2018
3	28-05-2018	5,00,000	1861	02-07-2023	8.35	10.35 as on 01-05-2018
4	02-06-2018	1,12,452	1856	02-07-2023	8.45	10.45 as on 01-06-2018
5	04-06-2018	1,34,931	1854	02-07-2023	8.45	10.45 as on 01-06-2018
6	08-06-2018	4,04,794	1850	02-07-2023	8.45	10.45 as on 01-06-2018
7	11-07-2018	35,400	1817	02-07-2023	8.45	10.45 as on 01-07-2018
8	03-09-2018	77,078	1763	02-07-2023	8.65	10.65 as on 01-09-2018
9	TOTAL AMOUNT	13,77,209			TOTAL INTEREST ( I2 )	21,20,076

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

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15. **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/00322/2023** is hereby allowed as under.

1. The respondent is directed to pay a sum of **Rs.21,20,076/- (Rupees Twenty One Lakhs Twenty Thousand and Seventy Six only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 10/09/2016 to 30/04/2017 and at MCLR + 2% from 01/05/2017 till 02/07/2023.
2. The interest due from 03/07/2023 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