

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 11th January 2024

COMPLAINT NO: CMP/221020/0010120

COMPLAINANT...

**PRABHAT KUMAR NONIA
No. 302, Sai's Yahvi Apartments,
Kodigehalli Main Road,
Near Hoodi Railwa Station,
Bangalore-560048.
STATE: KARNATAKA.**

(Mr. Bopanna, P.C, Advocate)

Vs

RESPONDENT.....

**SPT Residential
2nd Floor, MCC Towers, Opp. To Sigma
Tech Park,
Ramagondanahalli,
Whitefield, Bangalore-560066.
(Dhirendra N Katti, Advocate.)**

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Connected Living" developed by SPT Residential for the relief of refund along with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/446/PR/180728/001949 valid till 30-09-2018 and extended till 30-09-2019.

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3. This project is situated at, Sy. No. 77/2, Doddagattinabbe Village, Kasaba Hobli, Bengaluru East, Bengaluru Urban.

Brief facts of the complaint are as under:-

4. The complainant had booked a flat bearing no. 01 in the project of the respondent namely "Connected Living" for a total sale consideration of Rs.1,00,50,000/- (Rupees One Crore Fifty Thousand only). At the time of entering into an agreement of sale, the complainant had paid a sum of Rs.45,50,000/- (Rupees Forty Five Lakhs Fifty Thousand only) to the respondent. The complainant had applied for housing loan in State Bank of India for Rs.40,00,000/- (Rupees Forty Lakhs only) and the said finance company released the same to the respondent. The respondent was supposed to handover the possession of the said flat to the complainant on 13-06-2021. There is no response from the respondent, the complainant met respondent to get possession of his flat but there is a delay in project completion. The complainant decided to cancel his booking and both were entered a mutual agreement dated 16-03-2022 for full and final settlement of the entire amount. The respondent has paid Rs.48,45,374/- (Rupees Forty Eight Lakhs Forty Five Thousand and Three Hundred and Seventy Four only) to the complainant on the various dates and he has promised to pay remaining amount by 25-06-2022. But the respondent has from time to time defaulted the payment timelines. During multiple reminders the respondent had failed to refund the balance amount. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notices, the respondent advocate has appeared before the Authority and filed his

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vacalathnama but the advocate of responded didn't file his any documents and statement of objection on its behalf etc.,.

6. In support of his claim, the complainant has produced documents such as copy of sale agreement dated 20-06-2020, payment receipts, bank statement, copy of booking cancelation dated 03-01-2022, copy of agreement of refund dated 16-03-2022 and memo of calculation as on 22/07/2023.

7. This matter is heard on 16-08-2023 and 03-10-2023.

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:-** 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 not handed over the possession of the flat nor refunded the amount with interest till date as agreed.

11. 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,

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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.

12. 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

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an allottee who wishes to withdraw from the project or claim return on his investment.”

13. 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.
14. 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.
15. From the averments of the complaint and documents of the complaint, it is obvious that the complainant 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 of agreement of refund dated 16-03-2022 certainly entitles the complainant for refund of entire amount with interest.
16. The complainant has filed his memo of calculation as on 11-01-2024 claiming a refund of Rs.37,58,131/- (Rupees Thirty Seven Lakhs Fifty Eight Thousand One Hundred and Thirty One 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

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verification of the memo of calculation filed by the complainant reveals that his claim is genuine.

17. In response to the notice, the respondent has not taken any interest to participate in the proceedings and to resist the claim of complainant. Hence, the claim of complainant remained unchallenged and his claim is corroborated with cogent materials. There is no reason to discard the claim of complainant.

18. Having regard to all these aspects as mentioned above, this Authority concludes that the complainant is entitled for refund along with interest as claimed vides his memo of calculation 11-01-2024.

19. 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 | 1851 | 26-05-2022 | 8.15 | 10.15 as on 01-05-2017 | 0 |
| 2 | 06-06-2020 | 1,00,000 | 719 | 26-05-2022 | 7.55 | 9.55 as on 10-05-2020 | 18,812 |
| 3 | 20-06-2020 | 44,50,000 | 705 | 26-05-2022 | 7.3 | 9.3 as on 10-06-2020 | 7,99,354 |
| 4 | 17-07-2020 | 40,00,000 | 678 | 26-05-2022 | 7.3 | 9.3 as on 10-07-2020 | 6,91,002 |
| 5 | TOTAL AMOUNT | 85,50,000 | | | | TOTAL INTEREST (12) | 15,09,168 |

Refund Interest Calculation From 01/05/2017 (After RERA)

| S. NO | AMOUNT PRINCIPLE | REFUND DATE | REFUND AMOUNT | BALANCE | NO OF DAYS | NO OF DAYS TILL | MCLR INT. X% | INTEREST RATE X+2% | INTEREST @X+2% |
|-------|------------------|-------------|---------------|-----------|------------|-----------------|--------------|----------------------|----------------|
| 1 | 85,50,000 | 26-05-2022 | 30,00,000 | 55,50,000 | 1 | 27-05-2022 | 7.5 | 9.5 as on 15-05-2022 | 1,444 |
| 2 | 55,50,000 | 27-05-2022 | 13,40,934 | 42,09,066 | 3 | 30-05-2022 | 7.5 | 9.5 as on 15-05-2022 | 3,286 |
| 3 | 42,09,066 | 30-05-2022 | 5,04,440 | 37,04,626 | 39 | 08-07-2022 | 7.5 | 9.5 as on 15-05-2022 | 37,604 |
| 4 | 37,04,626 | 08-07-2022 | 1,13,000 | 35,91,626 | 73 | 19-09-2022 | 7.7 | 9.7 as on 15-06-2022 | 69,677 |

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| | | | | | | | | | |
|----|-----------|------------|----------|-----------|-----|------------|------|------------------------|----------|
| 5 | 35,91,626 | 19-09-2022 | 2,00,000 | 33,91,626 | 87 | 15-12-2022 | 8 | 10.0 as on 15-09-2022 | 80,841 |
| 6 | 33,91,626 | 15-12-2022 | 2,00,000 | 31,91,626 | 127 | 21-04-2023 | 8.6 | 10.6 as on 15-12-2022 | 1,17,714 |
| 7 | 31,91,626 | 21-04-2023 | 2,50,000 | 29,41,626 | 11 | 02-05-2023 | 8.7 | 10.7 as on 15-04-2023 | 9,485 |
| 8 | 29,41,626 | 02-05-2023 | 3,52,556 | 25,89,070 | 234 | 22-12-2023 | 8.7 | 10.7 as on 15-04-2023 | 1,77,603 |
| 9 | 25,89,070 | 22-12-2023 | 5,00,000 | 20,89,070 | 19 | 10-01-2024 | 8.75 | 10.75 as on 15-11-2023 | 11,690 |
| 10 | 20,89,070 | 10-01-2024 | 3,49,963 | 17,39,107 | 1 | 11-01-2024 | 8.75 | 10.75 as on 15-11-2023 | 512 |
| 11 | | | | | | | | TOTAL INTEREST (I3) | 5,09,856 |

| Memo Calculation | | | |
|------------------------|--|----------------------------|------------------------------------|
| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2 + I3) AS ON 11-01-2024 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
| 85,50,000 | 20,19,024 | 68,10,893 | 37,58,131 |

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

21. **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

22. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/221020/0010120** is hereby allowed as under.

1. The respondent is directed to pay a sum of **Rs.37,58,131/- (Rupees Thirty Seven Lakhs Fifty Eight Thousand One Hundred and Thirty One only)** towards refund with interest to the complainant within 60

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days from the date of this order, calculated at MCLR + 2%
from 01/05/2017 till 15/11/2023.

2. The interest due from 16/11/2023 up to the date of final payment will be calculated as per MCLR + 2% and paid to the complainant.
3. The complainant is hereby directed to cooperate with the respondent for cancellation of agreement of sale agreement dated 20-06-2020 on receipt of entire amount as directed to be refunded by the respondent.
4. 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