

**PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5**

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

**Dated: 8<sup>TH</sup> JANUARY, 2024**

**COMPLAINT NO: 00618/2023**

**COMPLAINANT:**

**1. MR. S. K. MALLICK**

**2. MRS. SAHANAN SUBRAMANYA**

**Both residing at  
No. 18, Kamadenu, 2A Main,  
OMBR Layout, Bhuvanagiri,  
Near George College,  
BENGALURU-560043.**

**(Parties in person)**

**Vs**

**RESPONDENT:**

**M/s VAISHNAVI ANUSHKA  
INFRASTRUCTURE LLP,  
No.2/2, Walton Road,  
Off Vittal Mallya Road,  
BENGALURU-560001**

**(By Mrs. Anuparna Bordoloi  
Advocate)**

**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA Act against the project "VAISHNAVI SERENE" developed by M/s VAISHNAVI ANUSHKA INFRASTRUCTURE LLP for the relief of refund with interest.

2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/309/PR/180905/0001990.



3. This project is situated at, Sy. No. 21 & 22, k 101, IVRI Road, Behind CRPF, Ramagondanahalli, Ananthapura Village, Yelahanka Hobli, Bengaluru North Bengaluru Urban.

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

4. The complainants have booked 2 units Flat No. 3-416 and 5-B-412 with the respondent on 14-09-2020 and entered into an Agreement of Sale for which the complainants have paid an amount of Rs. 8,26,000/- (Rupees Eight lakhs Twenty Six thousand only). Subsequently on 27-01-2021 the complainants have requested to the respondent to cancel flat No. 5-B-412 and to adjust the amount paid for flat 3-416 and respondent transferred Rs. 4,11,600/- to the Unit 3-416. The complainants have paid an amount of Rs. 9,26,000 (Nine lakhs Twenty Six thousand only) to the respondent and various dates.

5. The Respondent had received the amount of Rs. 9,26,000/- (Rupees Nine lakhs Twenty six thousand only) and also issued receipts No. 1369 & 1370 dated 13-12-2010 for Rs. 25,000/- each, receipts No. 1516 & 1517 dated 7-01-2020 for Rs. 50,000/- each, receipts No. 1592 & 1593 dated 23-01-2020 for Rs. 1,32,200/- and Rs. 1,30,800/- respectively and receipts No. 1607 & 1608 dated 28-01-2020 for Rs. 2,07,200/- and Rs. 2,05,800/- respectively for having received the amount from the Complainants. The complainants have paid an amount of Rs. 1,00,000/- (Rupees One lakh only) on 27-08-2022 and the respondent has received the same and confirmed by e-mail.

6. The complainants further submitted that the respondent had sold the flat No. 3-416 without notice to the complainants. The complainants intention was retain flat No. 3-416 as it was good ventilation and privacy for their ageing parents. But, after lengthy discussion with the respondent, the respondent offered to complainants new unit flat No. 7-B-221 in lieu of flat No. 3-416 and the complainants have no paid an

additional amount of Rs. 1,00,000/- (Rupees one lakh only) on 27-09-2022 for new unit flat No. 7-B-221.

7. The respondent through e-mail dated 11-01-2023 demanded an amount of Rs. 1,76,383/- (Rupees One lakh Seventy six thousand Three hundred eighty three only) interest on delayed payments from 01/10/2022 till 10/01/2023 against the flat No. 7-B-221 to be paid on or before 25-01-2023. The amount of Rs. 1,00,000/- (Rs. 50,000/- each) paid to the respondent for flat No. 3-416 and 5-B-412 was deducted by the respondent out of total amount of Rs.8,26,000/- and the balance amount of Rs.7,26,000/- was adjusted against the flat No. 7-B-221.

8. After registration of the complaint, notice was issued to both complainants and respondent to appear before the Authority. The complainants appeared before the Authority and submitted documents in respect of their claim. The copies of the documents also sent to the respondent through Registered Post Acknowledgement due. The Respondent filed its written submissions together with supporting documents.

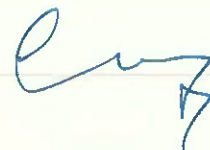
9. In support of their claim, the complainants have produced documents such as Memo of Calculation date 13-12-2023, receipts, agreement of sale, e-mail correspondence letters and acknowledgement for having served on the respondents. This matter is heard on 13-12-2023 and on 20-12-2023.

**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.

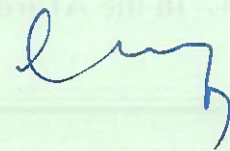
### REASONS

12. **My answer to Point No.1:-** From the materials available on record, it is apparent that the respondent had received an amount of Rs. 9,26,000/- (Rupees Nine lakhs Twenty six thousand only) on various dates and the respondent had also acknowledged the same. It is clearly shown on the documents available on records that the respondent had received total amount of 9,26,000/- (Rupees Nine lakhs Twenty six thousand only) from the Complainants.

13. The respondent had sold the flat No.3-416 without knowledge of the complainants. The complainants have paid an amount of Rs. 1,00,000/- for new flat No. 7-B-221 on 27-8-2022. After that, the respondents have not responded to the complainants and not given proper information. It is the duty of the respondent to give possession of the flat for which the amount has been received. The respondent himself assured to the complainant that the flat No. 3-416 is sold out in lieu of the said flat No. 7-B-221 will be given. Trusting the respondent the complainants have paid additional amount of Rs. 1,00,000/- on 27/08/2022 for flat No.7-B-221.

14. The respondent had by e-mail dated 11-01-2023 demanded an amount of Rs. 1,76,393/- for flat No. 7-B-221 and also an amount of Rs. 1,00,000/- Rs. 50,000/- each for flat. 3-416 and 5-B412. Due to financial reasons one flat No. 5-B-412 was cancelled by the complainants and flat 3-416 was sold out by the respondent only. Looking to the attitude of the respondent the complainants decided to withdraw from the project. The complainants have requested the respondent to refund the entire amount of Rs. 9,26,000/- with interest.

15. The complainants have filed Memo of Calculation, Sale Agreement, Receipts, Bank statement postal receipt and other relevant documents in support of their claim and served the same on the respondent.



16. The respondent had filed its written argument along with documents. The respondent in its written argument stated that as the delay in payment from the complainant invariably affected the progress of construction for which promoter incurred huge financial loss. The complainants responsibility to discharge their obligations as per section 19 of the RERA Act. The responsibility of the complainants make necessary payments in the manner and within the time as specified in the Agreement of Sale and shall pay at the proper time and place. But, the respondent had sold the flat No. 3-416 without intimating to the complainants. Its clearly show that, the respondent intentionally sold the flat No. 3-416 to get more consideration. But, the respondent suppressed this matter in its written arguments. It is the duty and responsibility of the respondent to which flat the complainants advanced the amount that flat is to be given possession and collect the amount for booking flat only no additional amount can be collected from the customer. The respondent has also no right to deduct an amount for cancellation of the flat, that too when the respondent himself sold the flat allotted to the complainants. The complainants have never said to the respondent to cancel or sell flat No. 3-416. When there is no acceptance for selling the flat No. 3-416 from the complainants, the respondent has no right to deduct the amount, which was with the respondent.

17. Section 18(1) of RERA Act clearly stated that, 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.

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 etc., in accordance with sale agreement.



19. From the averments of the complaint and the documents submitted by the complainants, it is evident that the complainants have paid an amount of Rs. 9,26,000/- (Rupees Nine lakh Twenty six thousand only) and the respondent had also acknowledged the same.

20. The complainants have filed their memo of calculation as on 13-12--2023 claiming a refund of Rs. 12,68,009/- (Rupees Twelve lakhs Sixty eight thousand nine only) including interest. The respondents have not resisted the said memo of calculation filed by the complainants and they have not submitted their Memo of calculation in spite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainants it reveals that complainants claim is genuine.

21. Having regard to all these aspects as mentioned above, this Authority concludes that the complainants are made prima facie case entitled for refund with interest as claimed vide their memo of calculation dated 13-12-2023.

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

**Memo of Calculation for Refund submitted by the  
Complainants as on 13-12-2023.**

SL. NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	0	0	30-04-2017	0
2				TOTAL INTEREST (1)	0



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

SL. NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTER EST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	2417	13-12-2023	8.15	10.15 as on 01-05-2017	0
2	13-12-2019	25,000	1461	13-12-2023	8.2	10.2 as on 10-12-2019	10,206
3	13-12-2019	25,000	1461	13-12-2023	8.2	10.2 as on 10-12-2019	10,206
4	07-01-2020	50,000	1436	13-12-2023	8.2	10.2 as on 10-12-2019	20,064
5	07-01-2020	50,000	1436	13-12-2023	8.2	10.2 as on 10-12-2019	20,064
6	20-01-2020	1,30,800	1423	13-12-2023	8.2	10.2 as on 10-12-2020	52,013
7	22-01-2020	2,05,800	1421	13-12-2023	8.2	10.2 as on 10-12-2020	81,723
8	22-01-2020	1,32,200	1421	13-12-2023	8.2	10.2 as on 10-12-2020	52,496
9	22-01-2020	2,07,200	1421	13-12-2023	8.2	10.2 as on 10-12-2020	82,279
10	27-08-2022	1,00,000/-	473	13-12-2023	8.0	10.2 as on 10-12-2022	12,958
11	TOTAL AMOUNT	9,26,000				TOTAL INTEREST	3,42,009

**MEMO OF CALCULATION**

PRINCIPLE AMOUNT (A)	INTEREST (B) 12+13 AS ON 13-12-2023	REFUND FROM PROMOTER	TOTAL BALANCE AMOUNT (A+B+C)
9,26,000	3,42,009	0	12,68,009

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

24. **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**


25. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/00618/2023** hereby allowed.

1. Respondents are directed to pay a sum of **Rs. 12,68,009/- Rupees Twelve lakhs Sixty eight thousand nine only)** till 13-12-2023 calculated as per MCLR + 2% towards refund with interest to the complainants within 60 days from the date of this order.

2. The interest due from 14-12-2023 up to the date of final payment will be calculated likewise and paid to the complainants.

The complainants are at liberty to initiate action in accordance with law, if the respondents fails to comply with this order.

No order as to the costs.

  
**(G R REDDY)**  
**Member, K-RERA**