

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 24th DAY OF JANUARY 2024

COMPLAINT No: CMP/UR/220719/0009762

COMPLAINANT..

KAUSTAV BARAT
541-55, 1ST FLOOR
BLESS-ON VILLA
ANNASANDRA PALYA
10TH CROSS
OLD AIRPORT ROAD
BENGALURU URBAN-560017
(REP BY SUKANYA R
ADVOCATE)

V/s

RESPONDENTS....

1. M/S SIGMA BUILDERS
SY.NO. 223, ATTIBELE
SARJAPURA ROAD
INDLABLE VILLAGE
ATTIBELE HOBLI
ANEKAL TALUK
BENGALURU RURAL-560107

(EX-PARTE)

2. BALAJI T
MANAGING PARTNER

3. CHANDRASEKHAR T
PARTNER

4. RAMGOPAL REDDY P
PARTNER

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ADDRESS OF R2 TO R4
M/S SIGMA BUILDERS
SY.NO. 233
ATTIBELE SARJAPUR ROAD
INDLABLE VILLAGE
ATTIBELE HOBLI
ANEKAL TALUK
BENGALURU RURAL-560107

(RESPONDENTS 2 TO 4
ABSENT)

PROJECT NAME

SERENITY

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**SERENITY**" developed by "**M/s SIGMA BUILDERS**" for the relief of refund with interest.
2. This project is not registered in RERA. This Authority has passed an interim order dated 21st March 2023 directing the respondent to register the project as required under section 3 of the ACT within two weeks from the date of receipt of the said order. But the respondent has failed to do so.
3. The promoter has developed this project in the limits of Indlabele Village, Attibele Hobli, Anekal Taluk, Bengaluru-562107.
4. The gist of the complaint is that the complainant had booked two flats bearing no. B-207 on 21/12/2016 and C-005 on 17/2/2017



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respectively in the project "SERENITY" of the respondent. The complainant had entered into an agreement of sale with the respondent on 21/12/2016 for the purchase of flat No.B-207 for a total sale consideration of Rs.56,25,000/- (Rs. Fifty six lakhs twenty five thousand only) and the complainant has paid an amount of Rs.1,60,000/- towards booking advance. For the said flat, the complainant has availed loan of Rs.39,37,500/- from HDFC Housing Finance Limited and the said amount has been directly transferred to the respondent's account on 27/12/2016 which has been duly acknowledged by the respondent.

5. For the booking of his second flat no.C-005, the complainant has entered into an agreement of sale dated 17/2/2017 for a total sale consideration of Rs.45,00,000/- (Rs. Forty five lakhs only). The complainant has entered into an tripartite agreement dated 17/2/2017 with the builder and LIC Housing Finance Limited for loan towards purchase of the said flat. The complainant has availed loan of Rs.36,00,000/- from LIC Housing Finance Limited and the said LIC Housing Finance Limited has directly transferred to the respondent's account which has been duly acknowledged by him. Since from 2019, the Pre-EMIs has been given by respondent/builder to the banks. Soon after 3 months, Pre-EMI has been discontinued from the respondent to the banks. So, both the loan account became default. Thereafter, from 2019, a sum of Rs.6.95,552/- around three years of EMIs has been paid by the complainant to the said banks. It is contended that till date the respondent has not made any development in the project. As per the terms of agreements of sale, the respondent was required to hand over the possession of the said flats to the complainants within

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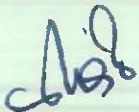
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December 2017. Further, the respondent has undertaken to complete construction and handover possession by executing a sale deed in respect of the said flats within December 2017 complying with all the conditions of approvals with a grace period upto 2018. Even after completion of the stipulated timeline, the respondent has miserably failed to hand over the possession of the schedule properties to the complainant. Having lost confidence with the respondent, the complainant has approached this form for the relief of direction to the respondent to refund the amount paid along with interest. Hence, this complaint.

6. After registration of the complaint, in pursuance of the notice, the respondents did not before this Authority during the hearings held on 21/9/2022, 14/10/2022, 2/11/2022, 17/11/2022, 9/12/2022, 12/0/2023, 9/2/2023, 13/3/2023, 15/6/2023, 19/6/2023, 11/7/2023, 31/7/2023, 24/8/2023, 4/11/2023 and on 1/12/2023 and they been continuously remained absent on all the aforesaid dates of hearings and hence, they have been placed as Ex-Parte. Subsequently they have not participated in the proceedings by filing statement of objections, producing documents etc. on their behalf.
7. In support of his claim, the complainant has produced documents such as (1) copies of agreements of sale 21/12/2016 and 17/2/2017 (2) payment receipts from builder (3) copy of legal notice to builder (4) copy of legal notice to LIC limited (5) copy of legal notice to HDFC Limited (6) copy of legal notice issued by HDFC Limited to the complainant (7) copy of postal acknowledgement to builders (8) memo of calculation
8. The respondent in support of his defence has not produced any documents;



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9. Heard arguments of both the parties. The written arguments filed by the complainant has been taken note of.
10. 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?
11. **Findings on the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following:

FINDINGS

12. Findings on point No.1:- The complainant has approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainant had booked two flats bearing Nos; B-207 and C-005 in the project "SERENITY" of the respondent-promoter. Accordingly, both the parties have entered into agreements of sale dated 21/12/2016 and 17/2/2017 for a total sale consideration of Rs.56,25,000/- and Rs.45,00,000/- respectively. The respondent had promised to hand over the possession of the said flats within 12 months i.e. by December 2017. It is contended that even after completion of the stipulated timeline, the respondent has miserably failed to handover the possession of the schedule properties to the complainant as agreed.

13. Looking to the averments of agreement, parties herein have entered into an agreements of sale dated 21/12/2016 and 17/2/2017. The agreement of sale is key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with



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law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreements of sale dated 21/12/2016 and 17/2/2017 the respondent was supposed to handover the possession of the said flats to the complainants by December 2017. But the respondent had not completed and handed over the possession of the said flats to the complainants till date.

14. 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:

"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.

15. 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:

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"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.

16. 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, 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 /plot in accordance with sale agreement.

18. 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 dated 19/12/2023 submitted by the complainant. The complainant has claimed an amount of Rs.1,43,17,269/- (Rs. One crore forty three lakhs seventeen thousand two hundred sixty nine only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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



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Memo Calculation submitted by the complainant as on 19/12/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 19/12/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
83,93,052	59,24,217	0	1,43,17,269

20. Despite of several notices served upon the respondent, he did not appear before this Authority and has been continuously remained absent on all the dates of hearings. Subsequently, he has failed to file statement of objections and furnishing documents in support of his 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.

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

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

Date of agreements of sale	21/12/2016 & 17/2/2017
Date of construction agreement	Nil
Sale consideration	Rs.56,25,000/- (Rs. Fifty six lakhs twenty five thousand only) for flat no. B-207 and Rs.45,00,000/-(Rs. Forty five lakhs only) for flat no.C-005
Amount paid	Rs.83,93,052/- (Rs. Eighty three lakhs ninety three thousand fifty two only) towards both the flats
Promised date of possession as per agreement of sale	December 2017
Date of occupancy certificate	Nil

1/19

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Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

23. Accordingly, the point 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:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: CMP/UR/220719/0009762 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. 1,43,17,269 (Rupees One crore forty three lakhs seventeen thousand two hundred sixty nine only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 21/12/2016 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 19/12/2023.
2. The interest due from 20/12/2023 shall be calculated likewise and paid to the complainant till the date of entire realization.

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3. The respondent is directed to foreclose the entire loan amount standing in the name of the complainant i.e. HDFC Housing Finance Limited & LIC Housing Finance Limited with all pending EMIs, interest, penalties etc., and issue No Objection Certificate to the complainant.
4. The Secretary, KRERA shall initiate proceedings u/s 59(1) of the Act against the respondent-promoter for violation of section 3 of the Act to register the project.
5. The complainant is 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
K-RERA