

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

Dated 22nd September 2022

Present

Shri. H.C. Kishore Chandra, Chairman

Complaint No.	CMP/200127/0005274
Complainants	M.S. Sushruta & Anuradha Shankar 21/1, 13 th Main Road, "A" Block Subramanyanagar Bengaluru-560 021 (represented by Sri. Manjunath, Advocate)
Respondent	Smart Value Homes(Peenya Project) Private Limited 2 nd Floor, Trade World Office Kamala Mills Compound, Senapati Bapat Marg, Lower Parel MUMBAI-400 013. (represented by Sri. Deepak Poonamiya, Advocate)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project **New Haven Bengaluru Phase II** developed by **"Smart Value Homes(Peenya Project) Private Limited"** for the relief of refund with interest.
2. This project has been registered under RERA bearing registration no. PRM/KA/RERA/1251/309/PR/170916/000146

2. The brief facts of the complaint is as under:-

The complainants submits that they have jointly filed application dated 10.3.2014 for purchase of flat bearing No. elite-310082 in the project **"New Haven Peenya"**. The complainants have entered into an agreement of sale and construction both dated 17.05.2014 with the respondent in the project

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to purchase the apartment No.31092 in part of tower No.31, "New Heaven", on 8th floor for a sale consideration of Rs.59,77,536/- subject to terms and conditions enumerated in the agreements. The complainant alleged in the complaint that the respondent ought to have been handed over the possession of the apartment on or before 31.12.2016 but till date it was not delivered. The complainants have paid totally a sum of Rs.56,96,119/- in instalment basis by availing home loan to purchase aforesaid apartment. The respondent has issued cancellation letter without any cogent reasons. The respondent has committed breach of contract and trust. Therefore, the complainants have filed this complaint seeking relief of refund of amount with interest. Hence the complaint.

3. After registration of the complaint, in pursuance to service of notice, the respondent appeared before this Authority through its counsel Sri. Deepak Poonamiya and filed written submissions as under:

4. The respondent denies the entire allegations made against them by the complainant as false.

5. It is submitted that the respondent has developed the project "New Heaven" on land bearing sy.nos. 2/3, 2/4, 3/2, 3/3 and 4/2 situated at Seshagirirao Palya, Dasanapura Hobli, Nelamangala Taluk, Bengaluru totally measuring 25 acres 21 guntas.

6. It is submitted that the complainants applied for allotment of flat through application dated 10.3.2014 and also remitted Rs.5,97,754. It is pertinent to note that pursuant to the application form, the respondent issued allotment letter dated 18th March 2014 to allot the flat No: 31082 in Tower No; 31 of Phase-II in New Heaven Project to the complainant for a total consideration of Rs.52,76,504. The complainant thereafter made payment of Rs.5,97,755/- towards the time linked payment of the said flat.

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7. It is submitted that the complainants have jointly entered into an agreement for sale as well as construction agreement both dated 17.05.2014. It is further submitted that as per the construction agreement, the respondent shall endeavour to hand over possession on or before 31.12.2016 but subject to force majeure circumstances and reasons beyond control of the respondent as per clause 10 of the agreement of construction.

8. The respondent contends that because of force majeure reasons such as demonetization, shortage of supply of building materials, sand, lorry owners strike and act of god, the he could not complete the project as agreed.

9. It is submitted that the respondent has obtained Occupation Certificate dated 28.02.2018 from the Huskur Grama Panchayath office. Thereafter completion of construction and after receipt of OC, respondent had offered possession of the apartment to the complainants through letter dated 11.05.2018 and after making the balance payment.

10. It is submitted that the respondent had approached the Hon'ble High Court of Karnataka in W.P. No; 52988/2017 against the Panchanyath Development Officer, Huskur Gram Panchayath, praying for a writ of mandamus directing the respondents therein, to respond to the representations made by the respondent or issue e-khatha for the individual flats. The Hon'ble High Court of Karnataka in their order dated 23.04.2019 disposed of the petitions reserving liberty to the respondent to herein approach the court, if the respondents therein failed to consider the representation.

11. It contends that, several buyers have taken possession of their respective apartments and are in occupation. The complainants have paid Rs.50,12,682/- towards sale price of apartment and a sum of Rs.06,83,437/- towards the taxes as on 05.12.2017. The complainants did not heed to several reminders directing them to pay balance of Rs.03,33,566/- and to take possession of the apartment, and as such the respondent has issued a

cancellation letter dated 14.05.2019. It contends that the respondent has not received the legal notice dated 16.12.2019 alleged to have been got issued by the complainants through their Advocate to the respondent.

12. It is submitted that the respondent is ready to execute sale deed in respect of apartment in favour of the complainants and ready to pay compensation for delay, if any, which is attributable to the respondent as per the terms of the agreements.

13. It is submitted that the respondent has sent several reminders insisting upon the complainants to make balance payment and to take possession of the said flat. The complainants did not pay the balance amount of Rs.3,32,566/- and to take possession of the flat, the respondent as a process issued a cancellation letter dated 14.05.2019 for non-payment of the amounts. The complainants even did not respond to the email dated 3rd March 2020 sent by the respondent. Under the aforesaid circumstances, respondent is contending that complaint is not maintainable, hence prays to dismiss the complaint with exemplary cost.

14. In support of their claim, the complainants have submitted documents such as (a) agreement for sale dated 17.5.2014 (b) agreement of construction dated 17.05.2014 (c) Project approval issued by Nelamangala Town Planning Authority letter dated 20.10.2012 (d) RERA registration certificate, (e) payment receipts dated 10.03.2014, 24.04.2014, 11.06.2014, 01/03/2017 and 5.12.2017 (f) copy of tripartite agreement of loan dated 23.02.2017 (g) Demand note made for final instalment deposits dated 11.5.2018 (h) copy of offer of possession letter dated 11.5.2018 (i) cancellation letter dated 16.5.2019 issued by the respondent (j) copy of letter dated 26.05.2019 issued by respondent to attend the association meeting (k) copy of postal receipt of legal notice dated 18/12/2019 (c) copy of 2nd reminder letter dated 30.06.2020 demanding outstandings even after issued letter for cancellation.

15. In support of defence, the respondent has submitted documents such as (a) Application form dated 10.03.2014 (b) Agreement for sale/construction both dated 17.05.2014, (c) Occupancy Certificate dated 28.02.2018 (d) Offer



for possession letter dated 11.05.2018 (e) copy of the Order dated 23rd April 2019 passed in Writ Petition No: 52988 of 2017 (f) email dated 3rd March 2020 sent by respondent to complainant (g) Board resolution dated 18th September 2017 in favour of Mr. Umakanth, authorized representative of respondent.

16. Heard both the parties.

17. On the above averments, the following points would arise for my consideration.

18. 1. Whether the complainants are entitled to the relief claimed?

2. What order?

19. My findings on the above points are as under:

1. In the Affirmative

2. As per final order for the following findings.

20. **My findings on point no.1:**

From the materials placed on record, it is apparent that in spite of entering into an agreement for sale to hand over possession of an apartment, the builder has not completed the project as per agreement and has delayed the project and has not handed over the apartment to the complainant till date. Hence the builder has failed to abide by the terms of agreement for sale. There seems to be no possibility of completing the project or handing over the possession in near future.

At this juncture, our attention is drawn towards the judgement of 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".

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, plat, building as the case may be with interest such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants has already paid substantial sale consideration. Having accepted the said amount and failure to keep up promise to hand over possession of apartment certainly entitles the complainant herein for refund with interest.

Having regard to all the aspects, this Authority concludes that the complainant is entitled for refund with interest. Therefore it is incumbent upon the respondent to refund the amount with interest.

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

21. My findings on point no.2: In view of the above discussion, the complaints deserves to be allowed. Hence, I proceed to pass the following order:

Ans

ORDER

1. In exercise of the powers conferred with the Authority u/s 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/200127/0005274** filed u/s 31 of the Act is hereby allowed.
2. The respondent is hereby directed to refund the amount of Rs.**56,96,119/-** (Rupees fifty six lakhs ninety six thousand one hundred and nineteen only) to the complainant along with interest at the rate of 9% per annum from 10.02.2014 till 30.4.2017. Further, respondent is directed to pay interest calculated at the rate of SBI MCLR + 2% per annum from 1.5.2017 till the date of realization.
3. The respondent shall refund the amount to the complainant with interest within 60 days from the date of this order, failing which, the complainant is at liberty to enforce this order in accordance with law.



(H.C. Kishore Chandra)

Chairman
K-RERA

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Received of the Treasurer of the
Board of Directors of the
City of New York the sum of

Five hundred and no/100 Dollars
for the purchase of the
City of New York
for the year 1914

Witness my hand and the seal of the
City of New York this 1st day of
January 1914

John P. Sweeney