

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 6

Dated 3rd OCTOBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/220318/0009156

COMPLAINANTS.....

**MRS. MAMTA NAYAK &
MR. ASHOK NAYAK
D/2, DISHA APARTMENT
44 CH AREA BISTUPUR
JAMSHEDPUR-831001.
DISTRICT: JAMTARA
STATE: JHARKHAND**

**(By Mr.K. Chethan Kumar &
Advocates)**

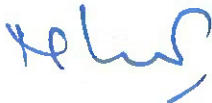
V/S

RESPONDENTS.....

**SUPERTECH LIMITED
SUPERTECH HOUSE
B-28, 29 SECTOR 58
NOIDA-201301
GHAZIABAD DISTRICT
STATE: UTTAR PRADESH**

**NASEER SUBHAN
NO.39, BELLAHALLI VILLAGE
YELAHANKA, BENGALURU NORTH
PINCODE: 562149
BENGALURU URBAN**

**MOHIT ARORA &
SANJAY ARORA
1114, 11TH FLOOR
HEMKUNT CHAMBER
89, NEHRU PLACE
NEW DELHI-110019**



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D K CHOWDRY
SY.NO.39, KANNUR KOGILU MAIN ROAD
BELLAHALLI, YELAHANKA
BENGALURU NORTH-562149
BENGALURU URBAN
OM PRAKASH YADAV
SUPERTECH HOUSE
B-28, 29 SECTOR 58
NOIDA-201301
GHAZIABAD DISTRICT
STATE: UTTAR PRADESH

(By Mr.Appu Kumar & Another,
Advocates)

J U D G E M E N T

This complaint is filed under section 31 of the RERA Act against the project "Supertech Micasa" for the relief of refund with interest.

Brief facts of the complaint are as under:-

1. The complainants have booked an apartment in the project "Supertech Micasa" of the respondent and entered into Buyer Developer agreement of sale and construction on 24/06/2014 and Addendum to Buyer Developer Agreement dated 19/8/2014 and paid an amount of Rs.98,98,910/- (Rupees Ninety Eight Lakh Ninety Eight Thousand Nine Hundred and Ten only) (including loan from HDFC) to the respondent till date. As per the Buyer Developer agreement dated 24/6/2014, the respondent was supposed to hand over the possession of the flat by the end of August 2016 with a grace period of six months. Even after 5 years, the respondent has not finished the project and failed to handover the possession of the apartment. The complainants contend that they are facing huge financial burden of paying monthly house rent and EMIs. Hence, this complaint.

2. After registration of the complaint, in pursuance of several notices, the respondents failed to appear before the Authority. After summons was issued, on

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8/9/2022 advocate for the respondent appeared before the Authority, filed vakalat, but again remained absent for the hearing on 29/9/2022. But did not file statement of objects nor produced any documents on their behalf.

3. In support of their claim, the complainants have produced in all 7 documents such as copies of Buyer Developer Agreement, Addendum to the Builder Buyer Agreement, Tripartite Agreement, Provisional statement of account from HDFC, Statement of Account for the period 01/04/2014 to 07/02/2022, Photographs of entire Project and memo of calculation for refund with interest as on 24/08/2022.

5. Heard arguments of both sides.

6. 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?

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

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

REASONS

8. My answer to point No.1:- From the materials placed on record, it is apparent that inspite of entering into Buyer and Developer agreement the builder has failed to handover the possession of the flat even after a delay of more than four years. Hence, the builder has failed to abide by the terms of the Buyer and



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Developer agreement dated 24/06/2014. There seems to be no possibility of completing the project or handing over the possession in near future.

9. 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.

10. 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.

11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have already paid the sale consideration amount. Having accepted the said amount and failing to keep up promise to handover possession of the apartment, certainly entitles the complainants herein for refund with interest. The complainants have submitted their memo of calculation as on 24/08/2022 claiming an amount of Rs.1,79,35,409/- as refund including interest. The respondent has neither filed statement of objections nor memo of calculation on its behalf. A thorough verification of the documentary proof submitted by the complainants reveals that their claims are genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund of an amount of Rs.1,79,35,409/- including interest as on 24/08/2022 as claimed by them in their memo of calculation.

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

MWS

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| 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 | 30-05-2014 | 3,50,000 | 1066 | 30-04-2017 | 91,997 |
| 2 | 25-07-2014 | 20,27,980 | 1010 | 30-04-2017 | 5,05,050 |
| 3 | 27-09-2014 | 24,93,738 | 946 | 30-04-2017 | 5,81,690 |
| 4 | 14-05-2015 | 14,88,037 | 717 | 30-04-2017 | 2,63,076 |
| 5 | 13-08-2015 | 15,72,175 | 626 | 30-04-2017 | 2,42,674 |
| 6 | 11-12-2015 | 10,38,333 | 506 | 30-04-2017 | 1,29,549 |
| 7 | 28-03-2016 | 5,35,240 | 398 | 30-04-2017 | 52,526 |
| 8 | | | | TOTAL INTEREST (I1) | 18,66,562 |

| 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 | 95,05,503 | 1941 | 24-08-2022 | 8.15 | 10.15 as on 01-05-2017 | 51,30,666 |
| 2 | 27-03-2018 | 3,93,407 | 1611 | 24-08-2022 | 8.35 | 10.35 as on 01-03-2018 | 1,79,715 |
| 3 | 16-03-2022 | 8,25,685 | 161 | 24-08-2022 | 7.3 | 9.3 as on 15-03-2022 | 33,871 |
| 4 | TOTAL AMOUNT | 1,07,24,595 | | | | TOTAL INTEREST (I2) | 53,44,252 |

| Memo Calculation | | | |
|------------------------|---|----------------------------|------------------------------------|
| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2) AS ON 24-08-2022 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
| 1,07,24,595 | 72,10,814 | 0 | 1,79,35,409 |

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13. Accordingly the point raised above is answered in the Affirmative.
14. **My answer to point No.2:-** In view of the above discussion, 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/220318/0009156** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,79,35,409/- (Rupees One Crore Seventy Nine Lakh Thirty Five Thousand Four Hundred and Nine only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 30/5/2014 to 30/4/2017 and MCLR + 2% from 01/05/2017 till 24/08/2022 to the complainants within 60 days from the date of this order. The interest due from 25/08/2022 up to the date of final payment will be calculated likewise and paid to the complainant. The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.


(Neelmani N Raju)
Member-2, KRERA