

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 2ND NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220118/0008819

COMPLAINANT.....

**MR. RAVI PRAKASH RAI
229, 1ST FLOOR, 12TH MAIN
LAKKASANDRA EXTENSION
WILSON GARDEN
BANGALORE-560030.**

(By Mr.S. Venkatesh Shastry, Advocate)

V/S

RESPONDENT.....

**MR.BASAVARAJ MALLIKARJUN YERAGAL
107, NEELA GANGA NILAYA
NEAR ST. PETERS SCHOOL
NAGADEVANAHALLI
BANGALORE-560056**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "SAI PRITHVI ELITE" for the relief of refund with interest.

Brief facts of the complaint are as under:-

2. The complainant had booked an apartment in the project of the respondent by entering into Agreement of Sale on 19/12/2017 and paid an amount of Rs.26,75,000/- (Rupees Twenty Six Lakh Seventy Five Thousand only) (including Housing Loan from LIC-HFL) being sale consideration amount to the respondent on various dates. The project has been registered under

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RERA and was valid till 30/09/2018 and further extended by the Authority till 30/9/2019. The respondent had assured the complainant that the flat will be handed over by the end of March 2018. Even after a delay of more than 4 years, the respondent has not handed over the possession of the said Unit as agreed. Thus the complainant approached this Authority for refund of the amount with interest till date. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent never appeared before the Authority either personally or through his counsel and has also not contested the matter by filing statement of objections nor producing documents on his behalf.
4. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, Payment receipts, 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:-**
 - a. Whether the complainant is entitled for the relief claimed?
 - b. 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

1. **My answer to point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the

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possession of the apartment to the complainant, the builder has not handed over the possession of the flat even after a delay of more than four years. The respondent has also not applied for extension of RERA registration of the project beyond 30/9/2019. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 19/12/2017. There seems to be no possibility of completing the project or handing over the possession in near future.

8. 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.
9. 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.
10. From the averments of the complaint and the copies of documents produced by the complainant, it is obvious that complainant has paid 75% sale consideration amount to the respondent. Having accepted the said amount and failing to keep up promise to handover possession of the apartment, certainly entitles the complainant herein for refund with interest. The complainant vide their memo of calculation as on 24/08/2022 has claimed that the respondent has to refund with interest an amount of Rs.39,66,556/-. Despite several opportunities were given, the respondent failed to attend the hearing either personally or through counsel and abstained from the hearing. Having regard to all these aspects, this

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Authority concludes that the complainant is entitled for refund with interest as claimed in his memo of calculation as on 24/08/2022.

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

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	30-04-2017	0	0	30-04-2017	0
2				TOTAL INTEREST (I1)	0

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	1941	24-08-2022	8.15	10.15 as on 01-05-2017	0
2	05-09-2017	7,75,000	1814	24-08-2022	8.15	10.15 as on 01-09-2017	3,90,941
3	15-12-2017	19,00,000	1713	24-08-2022	8.1	10.1 as on 01-12-2017	9,00,615
4	TOTAL AMOUNT	26,75,000				TOTAL INTEREST (I2)	12,91,556

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 24-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
26,75,000	12,91,556	0	39,66,556

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12. Accordingly the point raised above is answered in the Affirmative.
13. **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/220118/0008819** is hereby allowed. Respondent is directed to pay a sum of **Rs.39,66,556/- (Rupees Thirty Nine Lakh Sixty Six Thousand Five Hundred and Fifty Six only)** calculated at MCLR + 2% from 05/09/2017 till 24/08/2022 towards refund with interest to the complainant, 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 complainant is 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, K-RERA

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