

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

Dated 2nd NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER MRS.NEELMANI N RAJU

COMPLAINT No: CMP/201207/0007223

COMPLAINANT....

**MANJAPPA U K
NO.48, SHAMBHAVI NILAYA
8TH MAIN, VINAYAKA LAYOUT
DODDANAKUNDI EXT
MARATHAHALLI
BANGALORE-560037
(In Person)**

V/S

RESPONDENT.....

**IT ESTATES
NO.90, LE-CHATEAU
INFANTRY ROAD
BANGALORE-560001.
(Ex-parte)**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act, against the project '**GARDEN RESIDENCY**' developed by "**IT ESTATES**" in the limits of No.108/3, Kachanayakanahalli, Jigani, Hobli, Anekal Taluk, Bengaluru for the relief of refund with interest.

2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/308/PR/171201/001625 valid till 31/03/2018.

3. Brief facts of the complaint:- The complainant has booked a Flat No.308 D Block, in the project known as "GARDEN RESIDENCY" by entering into an agreement for sale, dated 23/06/2014 under buyback

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scheme with respondent. In pursuance of the aforesaid agreement for sale, the complainant has paid a total amount of Rs.26,06,861/- including loan from SBI to the respondent till date towards the aforesaid flat thereof. The developer had expressed his willingness to purchase the property back from the complainant or any other third party and return the total amount paid by the purchaser with an additional amount of Rs.4,00,000/- at a later date, which is not less than 24 months from the date of sale agreement. The respondent is not answering the calls nor replying to emails. It is also learnt that the respondent has resold the flat allotted to me to another person.

4. In terms of aforesaid sale agreement, the respondent was supposed to complete the project by 23/6/2016 and handover the flat to the complainant. The respondent had also agreed to pay pre-EMIs to the Bank. However, the respondent has resold the flat to some other person without refunding the total amount paid by me with interest. The respondent has also stopped paying pre-EMI to the Bank. Due to which the complainant has received summons from DRT court for non-payment of loan. The complainant has sought relief of refund with interest. Hence, this complaint.

5. After registration of the complaint, several notices and summons were sent to the respondent on his address for appearance before the Authority. The respondent failed to appear before the Authority and never attended the hearings. Finally paper publication was issued in local Kannada daily newspaper "HOSA DIGANTHA" on 24th September 2022 for the appearance of the respondent. In spite of paper publication, the respondent did not appear before the Authority and hence, has been placed as ex-parte.

6. The complainant has submitted written submission and memo of calculation for refund with interest as on 27/5/2022.



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7. This matter was heard on 02/06/2022, 30/06/2022, 20/07/2022, 24/08/2022, 20/09/2022 and 13/10/2022. The case was finally posted for orders on 13/10/2022.

8. In support of his claim, the complainant has submitted documents such as (a) Agreement of Purchase (b) Statement of Accounts from SBI (c) Payment receipts (d) Memo of calculation as on 27/5/2022 (d) Paper publication published in "Hosa Digantha" Kannada daily dated 24.09.2022.

9. On the above averments, the following points would arise for our consideration:

1. Whether the complainant is entitled to the relief claimed?

2. What order?

10. Our findings on the above points are as under:

1. In the Affirmative

2. As per final order for the following:

FINDINGS

11. Our findings on Point No.1:

From the materials placed on record, it is apparent that in spite of entering into an agreement for purchase and to purchase the property back from the purchaser and return of total amount paid by the purchaser, the respondent failed to abide by the terms and conditions of the agreement.

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

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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".

12. 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, flat, 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.

13. 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.

14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise as agreed and not paying pre-EMIs to the Bank certainly entitles the complainant herein for refund

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with interest. The complainant has submitted his memo of calculation as on 27/5/2022 claiming refund with interest for Rs.45,53,020/-. Despite several opportunities that were given to the respondent and notice was published in the local Kannada daily newspaper for his personal appearance, the respondent failed to appear before the Authority. This conduct of the respondent clearly goes to show that he has taken the complainant for a ride and deprived him of owning his own flat. The Authority upholds the refund amount claimed by the complainant vide his memo of calculation as on 27/5/2022.

15. 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 | 20-06-2014 | 27,000 | 1045 | 30-04-2017 | 6,957 |
| 2 | 18-08-2014 | 17,79,861 | 986 | 30-04-2017 | 4,32,725 |
| 3 | 20-01-2015 | 8,00,000 | 831 | 30-04-2017 | 1,63,923 |
| 4 | | | | TOTAL INTEREST (I1) | 6,03,605 |

| 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 | 26,06,861 | 1852 | 27-05-2022 | 8.15 | 10.15 as on 01-05-2017 | 13,42,554 |
| 2 | TOTAL AMOUNT | 26,06,861 | | | | TOTAL INTEREST (I2) | 13,42,554 |

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| Memo Calculation | | | |
|------------------------------|---|-------------------------------|--|
| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2) AS ON 27-05-2022 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
| 26,06,861 | 19,46,159 | 0 | 45,53,020 |

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

17. **Our findings on Point No.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following order:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/201207/0007223** is hereby allowed. Respondent is directed to pay a sum of Rs.45,53,020/- (Rupees Forty Five Lakh Fifty Three Thousand and Twenty only) towards refund with interest calculated at 9% from 20/06/2014 to 30/04/2017 and MCLR + 2% from 01/05/2017 to 27/05/2022 to the complainant within 60 days from the date of this order. The interest accruing from 28/05/2022 till the date of final payment will be calculated and paid likewise. Failing which, the complainant is at liberty to enforce this order in accordance with law.

(Neelmani N Raju)

Member-2
K-RERA