

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

CORUM:

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT NO.: CMP/211110/0008533

DATED THIS 16TH DAY OF NOVEMBER, 2022

COMPLAINANT.....

NAVEEN P NAIKER,
18th Cross, SIR. MV Nagar,
TC Palya, Ramamurthy Nagar,
Bengaluru – 560016.

(In person)

V/S

RESPONDENT.....

SANCHAYA LAND AND ESTATE PVT. LTD.,
No. 479, HMT Layout,
RT Nagar, Near R T Nagar Bus Depot,
Bengaluru – 560032.

(Ex-parte)

**PROJECT NAME &
REGISTRATION NO.**

**THE GREENS PHASE 1
PRM/KA/RERA/1251/308/
PR/171015/000701**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project “The Greens Phase - 1” developed by “Sanchaya Land and Estate Pvt. Ltd.,” for the relief of refund the amount paid with interest.

Brief facts of the complaint are as under:-

2. The complainant had booked a two bedroom apartment bearing flat No. 005 on 5th floor, Maple Block, B Tower in the project of respondent wherein the complainant entered into an agreement for sale on 13/01/2015 for a total sale consideration of Rs.19,50,000/- (Rupees Nineteen Lakhs Fifty Thousand only) and paid Rs.19,50,000/- (Rupees Nineteen Lakhs Fifty Thousand only) to the respondent on various dates. The respondent has assured to handover possession of the apartment on 01/12/2015. However, the respondent failed to complete the project as per the agreement date. Further, complainant contends that they have not occupied the flat and there is no response from the builder that he will construct the building within agreed timeline. Hence, this complaint.
3. After registration of the complaint, in pursuance of the notice, the respondent has never appeared before this Authority and not contested the matter by filing objections and producing documents etc.,
4. In support of his claim, the complainant has produced in all 3 documents such as copies of sale agreement dated 13/01/2015, Payment receipts and memo of calculation.
5. Hearings were conducted on 19/08/2022, 12/09/2022, 26/09/2022, 17/10/2022 and finally on 14/11/2022.
6. Heard complainant.
7. **On the above averments, the following points would arise for my consideration:-**
 1. Whether the complaint is entitled for the relief claimed?
 2. What order?

8. **My answer to the above points is as under:-**

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

REASONS

9. **My answer to point No. 1:-** From the materials available on records, it is apparent that in spite of entering into an sale agreement to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project. Hence, the builder has failed to abide by the terms of the sale agreement dated 13/01/2015. There seems to be no possibility of completing the project or handing over possession in near future.
10. In the judgement reported in Civil Appeal No. 3581-3590 of 2020 at para No. 23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

"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 case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who

Ans

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wishes to withdraw from the Project or claim return on his investment."

11. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only as the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
12. From the averments of the complaint and the copy of agreement between the parties, it is obvious that the complainant has already paid the full sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the complainant herein for refund with interest.
13. Moreover, though the notice and summons were served on the respondent, he has failed to appear before the Authority nor submitted any written arguments. In the absence of any documents or statement to the contrary by the respondent side, there is no other go except to accept the claim of complainant which is cogent with documentary evidence. Considering all these facts, this Authority concludes that the complainant is entitled for the relief claimed.
14. Accordingly, the point raised above is answered in the Affirmative.
15. **My answer to point No.3:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we 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/211110/0008533 is hereby allowed.



1. The respondent is directed to pay the amount of Rs.19,50,000/- (Rupees Nineteen Lakhs Fifty Thousand Only) with interest at the rate of 9% p.a from 08/11/2014 till 30/04/2017.
2. Further, the respondent is directed to pay the amount of Rs.19,50,000/- (Rupees Nineteen Lakhs Fifty Thousand Only) with interest at the rate of SBI MCLR+2% from 01/05/2017 to till the date of entire realisation.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.


(H.C. KISHORE CHANDRA)
CHAIRMAN
K-RERA

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

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