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 BENCH - 4

CORUM:

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

COMPLAINT NO.: CMP/220330/0009292

DATED THIS 25TH DAY OF NOVEMBER, 2022

COMPLAINANT.....

SHIVANAND BIRADAR,
No.2285, Sir. M. Vishweshwaraiah Layout,
3rd Block, Maruthi Nagar,
Bengaluru – 560056.
(In person)

V/S

RESPONDENTS.....

1. **BASAVARAJ MALLIKARAJUN YERAGAL,**
DEVELOPER
No. 107, Neela Ganga Nilaya,
Near St. Peters School,
Nagadevanahalli,
Bengaluru – 560056.
(Represented by Gautham Nettar, Adv.,)

2. **GOUTHAM RAJENDRA MEHTA,**
LANDLORD-1
M/s. Prithwi & Co.,
#9 & 10, 3rd Floor,
Sri Puttannachetty Complex,
Bull Temple Road, Basavanagudi,
Bengaluru – 560004.

3. **N. BIMAL KUMAR,**
LANDLORD-2
M/s. Prithwi & Co.,
#9 & 10, 3rd Floor,
Sri Puttannachetty Complex,
Bull Temple Road, Basavanagudi,
Bengaluru – 560004.

(R-2 & 3 are ex-parte)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Sai Prithvi Elite" developed by "Basavaraj Mallikarajun Yeragal" registered as PRM/KA/RERA/1251/310/PR/180131/001379 for the relief refund of entire amount with interest.

Brief facts of the complaint are as under:-

2. The complainant had booked a flat bearing No. 233 in the project of respondent wherein the complainant entered into an agreement for sale and construction agreement on 29/04/2016 for a total sale consideration of Rs.31,27,425/-(Rupees Thirty One Lakhs Twenty Seven Thousand Four Hundred and Twenty Five only) and paid Rs.12,67,674/- (Rupees Twelve Lakhs Sixty Seven Thousand Six Hundred and Seventy Four only) to the respondent on various dates. The respondent has assured to handover possession of the apartment within 24 months with a grace period of 6 months. However, the respondent failed to handover the project as per the agreement and did not complete the project in time. Further complainant submits that they have not occupied the flat and there is no response from the builder that he will construct the building within timeline. There is no progress in the project since three years. Therefore, complainant prays this Authority to direct the respondent to refund the amount paid with interest. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent No. 1 has appeared before the Authority through its counsel and not contested the matter by filing objections or any other documents. Respondent No. 2 and 3 have never appeared before this Authority and not contested the matter.

4. Heard arguments of both the parties.

5. **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?

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

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

REASONS

7. **My findings on point No. 1:-** From the materials available on records, it is apparent that in spite of entering into an agreement for sale and construction agreement to handover the 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 unit in favour of complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale dated 29/04/2016. There seems to be no possibility of completing the project or handing over possession in near future.

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

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 copy of agreement between the parties, it is obvious that the complainant has already paid the substantial 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.

11. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest.

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

13. **My 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

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/220330/0009292 is hereby allowed.

1. The respondents are directed to pay the amount of Rs.12,67,674/- (Rupees Twelve Lakhs Sixty Seven Thousand Six Hundred and Seventy Four only) with interest at the rate of 9% p.a from 22/12/2015 till 30/04/2017.

2. Further, the respondents are directed to pay the amount of Rs.12,67,674/- (Rupees Twelve Lakhs Sixty Seven Thousand Six Hundred and Seventy Four only) with interest at the rate of SBI MCLR+2% from 01/05/2017 to till the date of entire realisation within 60 days from the date of this order.

3. The complainants are 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