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

Dated 31st December 2022

Present

SHRI. H.C. KISHORE CHANDRA, CHAIRMAN

COMPLAINT No: CMP/171031/0000175

COMPLAINANT....

SARITA KAMATH
Flat No; 82, Tower-A-5
Ashwatha CHS
Pirojshanagar
Mumbai City-400079
(Maharastra)

(represented by Mr. Ashok Hegde, Authorized representative)

V/S

RESPONDENT.....

S. Prasanna Kalkura
Surekha Kalkura
Sagri Builders & Developers
Om Nivas, Sagri
Kunjibettu Post
Udupi-576102

(Ex-parte)

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JUDGEMENT

1. The aforesaid complainant has filed this complaint against the project **"Omkar Residential Apartments"** developed by respondent promoter of **"Sagri Builders and Developers"** for the relief of refund with interest.

2. The promoter has developed this project in the limits of Sy.No. 76-3, Shivalli Village of Udupi Taluk within Kunjubettu Ward of Udupi City Municipality.

3. On perusal of available records and during the proceedings held on 30/9/2022, it has come to the notice of the Authority that this project is not registered in RERA. Accordingly, this Authority has passed an interim order dated 3rd October 2022 directing the respondent-promoter to register the aforesaid project under RERA as required under section-3 of the RERA Act.

4. The gist of the complaint is that the complainant herein had purchased a flat measuring 1260 sq.ft. on the ground floor in the project named **"Omkar Residential Apartments"** situated in Sy.No: 76-3, Shivalli Village, Udupi vide an agreement for sale dated 12th March 2015. Further, as per the said agreement, the developer had agreed to hand over the possession of the said flat latest by 4 months from the date of the agreement of sale i.e. by July 2015. However, the developer has failed to complete the construction and hand over the possession of the flat even after more than 2 years.

5. It is contended the complainant has paid an amount of Rs.20.00 lakhs out of sale consideration of Rs.21.50 lakhs to the respondent. It is alleged that the developer has not registered the project and RERA and is refusing to refund the money paid or complete the project. Having lost confidence with

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the developer, the complainant has sought for the relief of refund with interest.

6. After registration of the complaint, in pursuance of notice served, the respondent advocate was present before the Authority only on 20/6/2022 but was remained absent during the proceedings held on 10/6/2022, 29/7/2022 , 29/08/2022, 12/9/2022, 30/9/2022 and on 28/10/2022. The complainant's representative appeared before this Authority on 29/7/2022, 29/8/2022 and on 28/10/2002. He was absent on 10/6/2022, 20/6/2022, 30/9/2022, and granted exemption from appearance on 12/9/2022. Though the respondent's advocate present before the Authority on 20/6/2022, but he neither even filed vakalat nama nor contested the matter by filing statement of objections and producing documents on its behalf etc., and hence placed ex-parte.

7. In support of her claim, the complainant has produced documents such as (1) agreement of sale dated 12.3.2015 (2) details of payments (3) memo of calculation

8. On the above averments, the following points would arise for my consideration:-

1. Whether the complainant is entitled for the relief claimed?
2. What order?

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

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

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FINDINGS

10. My findings on point No.1:- It is undisputed that the respondent has failed to handover possession of the apartment to the complainant herein within agreed time. As per the terms of agreement of sale between the parties, the possession of the apartment had to be handed over on or before 30.5.2016. When the respondent has failed to handover possession as agreed by him, the complainant approached this forum for refund with interest.

In pursuance of notice, the respondent is remained absent but was present before the Authority during the proceedings held on 20/6/2022 and has not taken any interest to participate in the proceedings by filing vakalat nama, statement of objections, furnishing documents in support of his defence etc. Hence, the respondent has not resisted the claim of the complainant in any manner. The complainant has furnished agreement of sale and payment receipts. On going through the materials placed on record, it apparent that the complainant has entered into agreement of sale on 12.3.2015 and has paid the substantial sale consideration of Rs.**17,80,000**/- (Rs.Seventeen lakhs eighty thousand only) to the respondent. As per the memo of calculation submitted by the complainant, the amount shown as Rs.**17,80,000**/- whereas the complainant has claimed Rs.20,00,000/- in her complaint. The memo of calculations filed by the complainant for Rs.17,80,000/- as on 18.8.2022 is as below:

Principal Amount	Interest	Refund from promoter	Total balance amount
17,80,000	**12,71,915**	**0**	**30,51,915**

Perused the agreement of sale dated 12.3.2015 and details of payment. It is apparent from the records that the complainant has paid a sale consideration of Rs.**17,80,000**/-.

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The judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022,Civil Appeal 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.*

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.

In the absence of any resistance by the respondent and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant. Considering all these aspects, the point raised above is answered in the Affirmative.

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14.**My findings on point no.2**. In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I 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/171031/0000175** is hereby allowed as under:

1. The respondent is hereby directed to refund the entire amount of Rs. **17,80,000**/- (Rupees Seventeen lakhs eight thousand only) within 60 days from the date of this order along with interest calculated at the rate of 9% per cent from **12.3.2015 till 30.4.2017**. Further at the rate of SBI MCLR + 2 per cent from **1.5.2017** till the date of realization.

2. Failing which the complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.

(H.C. Kishore Chandra)
Chairman
K-RERA

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