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

PRESENT:

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

COMPLAINT NO.: CMP/200213/0005428

DATED THIS 3RD DAY OF JANUARY, 2023

COMPLAINANT..... **SUPRIYA RAJGOPAL,**
#13, 'Suraksha', 24th Main,
JP Nagar, 2nd Stage,
Mysore - 570008.

(In person)

V/S

RESPONDENT..... **M/S. INFRANY VENTURES,**
No. 2, Patel Complex,
Opp. Daady's Southborg,
Kammasandra Road,
Hebbagudi, Electronic City Post,
Bengaluru - 560100.

(Ex-parte)

PROJECT NAME & REGISTRATION NO. **INFRANY TRINITY**
PR/KN/170831/001784

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Infrany Trinity" developed by "Infrany Ventures" for the relief of refund of the amount paid along with interest.

Brief facts of the complaint are as under:-

2. The complainant had booked flat bearing No. Wing-1-P-201 in the project of respondent by entering into the sale and construction agreement on 11/08/2016 for a total sale consideration of Rs.44,54,718/-(Rupees Forty

Four Lakhs Fifty Four Thousand Seven Hundred and Eighteen only) and paid Rs.22,27,358/-(Rupees Twenty Two Lakhs Twenty Seven Thousand Three Hundred and Fifty Eight only) to the respondent from 07/04/2016 to 28/09/2017. The respondent was supposed to handover the possession of the apartment to the complainant by December 2017 including six months grace period. Despite the substantial total sale consideration has been paid to the respondent, the respondent failed to handover the possession of the apartment even after five years and thus failed to abide by the terms and conditions of the sale and construction agreement. The complainant submits that all his efforts to getting update or progress in construction went in vain as the respondent was not reachable through all modes of communication. The complainant prays this Authority for refund of entire amount paid to the respondent along with interest due to the enormous delay caused by the respondent. 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, payment receipt, Site photographs, Gmail conversations and Bank loan details.

5. Hearings were conducted on 18/07/2022, 25/07/2022, 05/08/2022, 19/08/2022 and 12/09/2022.

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 findings on 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 11/08/2016. 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*

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 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/200213/0005428 is hereby allowed.

1. The respondent is directed to pay the amount of Rs.22,27,358/-(Rupees Twenty Two Lakhs Twenty Seven Thousand Three Hundred and Fifty Eight only) with interest at the rate of 9% p.a from 07/04/2016 till 30/04/2017.
2. Further, the respondent is directed to pay the amount of Rs.22,27,358/-(Rupees Twenty Two Lakhs Twenty Seven Thousand Three Hundred and Fifty Eight 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