

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 23<sup>RD</sup> January 2023**

**Present**

**Shri. H.C. Kishore Chandra, Chairman**

**COMPLAINT No: CMP/220711/0009738**

**COMPLAINANTS....**

1. **VAISHALI AJAY THETE &**
2. **AJAY B THETE**  
No.10, G-3, Shrishti Residency  
60 Feet Road, S.V. Layout  
RMV 2<sup>nd</sup> Stage, Sanjaynagar  
Bengaluru-560 094.

(By Mr. Amit Anand, Advocate  
Pai & Anand Law Associates )

**V/S**

**RESPONDENTS.....**

1. **M/s Trishul Developers**  
**Office at "Mittal Towers"**  
Office No.109, "B" Wing,  
1<sup>st</sup> Floor, No. 6, M.G. Road  
**Bengaluru-560 001.**  
**Represented by its partners:**  
Niraj Mittal, O.P. Mittal, Uma  
Mittal & Jyoti Mittal
2. **R. Narayanaswamy**  
No.117, Basaveshwara Nilaya  
Muneshwara Temple Road  
Jakkur, **BENGALURU-560 064.**
3. **R. Basavaraju**  
No.117, Basaveshwara Nilaya  
Muneshwara Temple Road  
Jakkur, **BENGALURU-560 064.**

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4. **R. Adinarayana**

No.117, Basaveshwara Nilaya  
Muneshwara Temple Road  
Jakkur, **BENGALURU-560 064**

5. **R. Nagaraj**

No.117, Basaveshwara Nilaya  
Muneshwara Temple Road  
Jakkur, **BENGALURU-560 064**

( **By Sri. M.Uma Shankar,  
Kavita Damodaran, Poojith  
Prasad D, Advocates** )

**JUDGEMENT**

1. The aforesaid complainants have filed this complaint under Section 31 of RERA Act against the project "**Mittal Palms**" developed by "**Trishul Developers**" and sought for the relief of refund with interest.

2. The promoter has developed this project in the limits of Sy.No. 31,32,33, Shivanahalli Village, Jakkur Hobli, Bengaluru North, Bengaluru Urban.

3. This project is registered under RERA Act vide registration no. PRM/KA/RERA/1251/309/PR/180328/000585.

4. Respondent no.1 is the company, respondents 2 to 5 are the landowners.

5. The gist of the complaint is that the complainants have entered into an agreement to sell and construction both dated **02.07.2013** towards the

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purchase of the flat bearing no. A-501 , 5<sup>th</sup> floor in A-Block in the project “**Mittal Palms**”. The complainants have paid an amount of Rs.**81,86,750** (Rs. Eighty one lakhs eighty six thousand seven hundred fifty only) out of sale consideration of Rs.**86,37,745/-** (Rs. Eighty six lakhs thirty seven thousand seven hundred forty five only) to the respondent. The complainants have also entered into tripartite agreement with the allottee, respondents and State Bank of India, Banaswadi RACPC. The respondent would endeavor to hand over the possession of the said flat to the complainants within 30 months as per construction agreement. It contends that there has been delay of more than 8 years. The complainants having lost confidence with the respondents desires to exit from the project and sought for the relief of entire refund along with interest. Hence, this complaint.

6. After registration of the complaint, in pursuance of the notice, the respondents have appeared before this Authority through their counsel and filed objections as under:

7. The respondents have denied all the allegations made against it by the complainants as false. It is contended that the sale agreement is not duly stamped as required under the Karnataka Stamp Act 1957 and this Hon'ble Tribunal ought to impound the sale agreement relied on by the complainant and to direct the complainants to pay the stamp duty along with penalty to rely on the document.

8. Further, as per the construction agreement, the respondent would endeavor to construct and deliver the apartment bearing No.501-A to the complainant

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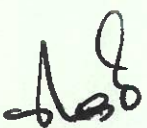
within 30 months from the date of commencement subject to clause 9 of the said agreement. As per clause 9 of the agreement stipulates that the date of delivery of the completed apartment subject to Force Majeure i.e in the present case, orders passed by the statutory authorities.

9. The respondent had applied for and obtained necessary permissions and consents including from the Airport Authority of India, BWSSB, State environment impact assessment authority, BESCOM, Police Department, Jakkur Flight Club, BSNL, KSPCB etc.

10. It is contended that the respondent has decided to develop the project in the particular property and when it applied for the sanction plan, the property had access from the 16<sup>th</sup> main road i.e 18 meters road connecting the property to the main road. Accordingly the sanction plan was duly granted.

11. All of a sudden, by an order dated 10.5.2013, the BDA has de-notified the lands adjacent to the said property, in which the 16<sup>th</sup> main road had been formed by BDA. As a result, the original landowners sought to block the road which was the access to the property. The respondent has challenged the order of the de-notification in W.P. No. 18300-304/2014 before the Hon'ble High Court of Karnataka and the Hon'ble High Court of Karnataka by order dated 16.4.2014 has granted interim order of status quo.

12. Further, the BBMP issued an order dated 28.8.2014, cancelling the sanctioned plan on the ground that the property has lost its road access. The respondent has challenged the BBMP's action, before the Hon'ble High Court





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of Karnataka in W.P. No. 53809-13/2015 and the Hon'ble High Court of Karnataka vide its order dated 8.4.2021 has allowed the writ petition.

13. Further, in writ petition No.18300-304/2014, the respondents have entered into an agreement/compromise with the land owners and in lieu of the arrangements the land owners have released the relinquished the land pertaining to 12.2 meter- wide road through which respondents shall have an access to the property. Accordingly, the Hon'ble High Court of Karnataka has disposed of the above said writ petition.

14. It is contended that the Hon'ble High Court of Karnataka vide its order dated 8.4.2021 allowed the writ petition no. 53809 -13/2015 setting aside the order dated 28.8.2014 cancelling the sanction plan dated 26.4.2010 which was subsequently modified on 26.11.2011 and 21.02.2013. The respondents having secured the road access and the sanction plan being restored, undertakes to complete the project and hand over the possession of the disputed flat to the complainants. The respondents state that they had not committed any default in delivery of the project. Hence, prays to dismiss the complaint.

15. In support of their claim the complainants have produced documents such as (1) copy of agreement to sell and construction both dated 02.07.2013 (2) copy of the building license dated 26.4.2010 (3) copy of commencement certificate dated 13.12.2011 (4) copy of sanction letter, arrangement letter and tripartite agreement dated nil. (5) copy of proof of payments along with receipts (6) copy of SBI's email dated 19.12.2020 (7) copy of SBI's

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16. In support of their defence, the respondents have produced documents such as (1) RERA registration certificate (2) copy of agreement to sell and construction dated 02.07.2013 (3) copy of order dated 04.09.2018 (4) copy of relinquishment deed dated 12.4.2018 (5) copy of order dated 8.4.2021.

17. Heard both the parties.

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

1. Whether the complainants are entitled for the relief of refund with interest as claimed?
2. What Order?

19. Our findings to the above points are as under:-

1. In the affirmative
2. As per final order

**FINDINGS**

20. **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 **2<sup>nd</sup> January 2016**. When the respondent has failed to handover possession as agreed by them, the complainants have approached this forum for refund of amount with interest.

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21. 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.*

22. 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.

23. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to handover possession of apartment even after 8 years in completion of the project, certainly entitles the complainant herein refund with interest. The complainant has claimed Rs.68,67,126/- as delay period interest in their memo of calculation as on 05.09.2022. The respondent has filed objections to the memo of calculation contending that it would endeavor to construct and deliver the flat

Asd



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bearing No.501-A to the complainants within 30 months from the date of commencement by 2<sup>nd</sup> January 2016. However, this assurance was unequivocally subject to clause 9 of the said agreement. Clause 9 of the agreement stipulates that the date of delivery of the completed apartment is subjected to variation on account of Force Majeure and in the present case orders passed by the statutory authorities and hence claimed that the respondents are not liable to pay any amount to the complainants as sought for in their memo of calculation. But he has nowhere mentioned the quantum due from him.

24. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund and interest. Accordingly point raised above is answered in the Affirmative.

25. **My findings on point No. 2:-** In view of the above discussion, 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 **CMP/220711/0009738** is hereby allowed as under:

1. Respondent no.1 is directed to pay the entire amount of **Rs.81,86,750/- (Rupees Eighty one lakhs eighty six thousand seven hundred fifty only)** along with interest calculated at the rate of 9% per cent from **13.6.2013** till **30.4.2017**. Further at the rate of SBI MCLR + 2 per cent from 1.5.2017 till the date of realization.



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2. Respondent-1 is directed to pay the aforesaid amount to the complainant within 60 days from the date of this order, failing which the complainant is at liberty to enforce this order in accordance with law.

No order as to costs.

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

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