

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/210423/0007922**

**DATED THIS 25<sup>th</sup> DAY OF JANUARY, 2023**

**COMPLAINANT.....**

**PRAKASH KUMBHAKAR,**  
#51, 2<sup>nd</sup> Floor, 9<sup>th</sup> A Cross,  
Manjunath Nagar,  
Ramamurthynagar,  
Bengaluru - 560016.

(Rep. By. Sri. Amit Anand, Adv.,)

**V/S**

**RESPONDENT.....**

**VENKAT ESTATES PRIVATE LIMITED,**  
Flat No. 254, 5<sup>th</sup> Floor,  
Garden Apts Vittal Mallya Road,  
Bengaluru - 560001.

(Rep. By. Sri. Ravikumar T.K. Adv.,)

**PROJECT NAME &  
REGISTRATION NO.**

**VENKAT WINDSOR EAST**  
**PRM/KA/RERA/1251/446/**  
**PR/171123/000477**

**J U D G E M E N T**

1. This complaint is filed under section 31 of the RERA Act against the project "Venkat Windsor East" developed by "Venkat Estates Private Limited" for the relief of refund with interest.

**Brief facts of the complaint are as under:-**

2. The complainant had booked a apartment bearing No. 203, in A Block, 2<sup>nd</sup> Floor in the project of respondent wherein the complainant had entered into an agreement for sale and construction agreement on 04/09/2017 for a

*6/10/23*

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total sale consideration of Rs.36,00,000/- (Rupees Thirty Six Lakhs only) and paid Rs.32,40,000/- (Rupees Thirty Two Lakhs Forty Thousand only) to the respondent on 01/08/2017, 06/09/2017, 08/12/2017, 02/01/2018, 05/01/2019 and 09/09/2019. As per agreement of sale and construction agreement dated 04/09/2017, the respondent has assured to handover possession of the apartment on 04/03/2020. However, the respondent failed to complete the project as per the agreement date, the complainant seeks for the relief of refund with interest. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and has filed statement of objections as under:-
4. It has denied all the allegations made against it as false. The respondent contends that, the construction of the project is carried out throughout the week and year without any lame excuses because otherwise the consequential effect of delay in completion is abnormal particularly on respondent in terms of financial and legal implications which has geometric effect and which can swallow the company. The exceptions for this objective are only external factors which are "Force Majeure" in nature and which are beyond the control of the respondent.
5. The respondent submits that the complainant has entered into agreements with the respondent on 04/09/2017 to purchase the flat bearing No.203 in the project of the respondent for a total sale consideration of Rs.36,00,000/- on the basis of certain terms and conditions. Later, the complainant had entered into triple party agreement with Syndicate Bank along with respondent for purchase of above said flat for an amount of Rs.36,00,000/-.
6. The respondent further submits that as per sale agreement and construction agreement dated 04/09/2017 entered during the construction period at a highly discounted price with an expectation of immediate cash flows; the complainant is required to comply with the payment schedule and

198

# ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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accordingly make payments to the respondent for timely completion of the construction work. The complainant has not complied with the payment terms throughout the agreement period, with illegal intension of cancelling the agreements at some point of time so as to "invest Rs.32.40 Lakhs and claim / earn Rs.62.49 Lakhs" through misuse and abuse of law.

7. The complainant has wilfully delayed many instalments and did not respond or reply for any demand notices and present amount outstanding as per agreements is Rs.3,60,000/- which has been overdue for more than three years and the interest for all the delayed payments has attracted an interest of Rs.6,56,000/-. In each demand notice it has been communicated that if payments are delayed by large number of customers it will result in delayed completion of the project and it amounts to "Force majeure" effect on the project and serious enough that it renders it impossible for the respondent to perform its contractual obligations. The respondent submits that the project construction has never been stopped except landowner obstruction and COVID 19 situation and the respondent is aware of multiple repercussions it has on the project if the construction is stopped / delayed.
8. The respondent further submits that 12% of Rs.32.40 lakhs (i.e. Rs.3.89 Lakhs) that has been received from the complainant has been remitted to the Government account by way of GST which has to be claimed back as refund from the GST authorities in case of cancellation of sale agreement with the complainant. This GST can be paid back to the complainant on receipt of refund from the GST authorities.
9. The respondent submits that due to non-cooperation of customers and non-payment of sale consideration as per payment schedule as specified in agreements by the majority of flat buyers, the project has run into cost escalation of 20% on cost of the project. This cost escalation amounting to Rs.7.20 lakhs, to the extent of his share has to be compensated by the complainant to the respondent. The respondent has totally utilized the amounts received from the complainant and has additionally invested

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several crores in the project to fill up the short fall and to complete the project. At this stage if the complainant insists on refund of amount invested by him it will not be possible as it has been invested in the construction. The respondent further submits that amount can be refunded after resale of the said flat and realising the amount therefrom.

10. The respondent submits that all the above facts were brought to the notice of the complainant which he conveniently ignored and with illegal intention of extorting huge money from the respondent through abuse of law he approached this Hon'ble Karnataka RERA by suppressing all the facts.

11. The respondent further submits that 47 out of 70 customers have taken possession of their representative flats from the respondent, and the respondent applied for occupancy certificate before B.D.A authorities in February, 2021 and have not completed the procedure and not issued the occupancy certificate to the respondent. After considering all "Force majeure" conditions mentioned above, it is submitted that there is no delay in completion of the project from the part of respondent and also the respondent has obtained the chartered engineers and architects certificates for completion of the project.

12. Respondent further submits that It is pertinent to quote a complaint decided by Hon'ble UP RERA in which it has been ordered that if a flat is cancelled in which overdue instalments are there buyer will not get booking amount and interest amount and also his amount would be payable after the flat is resold. Even now the respondent is ready and willing to execute regular sale deed in favour of the complainant along with possession of flat on receipt of total payment that is due by the complainant to the respondent. Hence, prayed to dismiss the complaint.

13. In support of his claim, the complainant has produced in all 21 documents such as copies of

(i) Marketing brochure

(ii) Agreement to sale and construction agreement dated 04/09/2017

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- (iii) The NOC dated 04/01/2018 issued by Oriental Bank of Commerce
- (iv) The receipts issued by the respondent acknowledging the payment received from the applicant.
- (v) The letter dated 08/07/2020 of the Canara Bank
- (vi) The purported demand notice dated 13/07/2020 of the respondent.
- (vii) The letter dated 10/12/2020 of the respondent.
- (viii) The legal notice of the applicant along with postal receipt
- (ix) The reply of the respondent to the legal notice.
- (x) Statement of calculation of compensatory damages for loss of opportunity.
- (xi) Order sheet dated 30/03/2021, in consumer complaint No.27 of 2021
- (xii) Public notice
- (xiii) Possession notice under section 13(4) of the SARFAESI Act, 2002
- (xiv) Latest brochure of Venkat Windsor East Project
- (xv) Certificate of extension of the project by K-RERA valid upto 31/04/2021
- (xvi) Completion details of project downloaded from website of K-RERA dated 25/08/2022 along with photograph
- (xvii) Project details downloaded from website of K-RERA
- (xviii) Photographs taken on the project site dated 27/08/2022
- (xix) Picture of the protest dated 06/08/2022
- (xx) A video clipping of the news covered by the republic news downloaded from youtube.
- (xxi) Memo of calculation

14. Respondent has not produced any documents on his behalf.

15. Hearings were conducted on 22/07/2022, 12/08/2022, 29/08/2022, 16/09/2022 and 27/09/2022.

16. Heard both parties. Both the parties have filed rejoinder.

*Handwritten signature*



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17. **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?

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

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

**REASONS**

19. **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 04/09/2017. There seems to be no possibility of completing the project or handing over possession in near future.

20. 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*

*Asst*

*Asst*

*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."*

21. 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.
22. From the averments of the complaint and the copy of agreement between the parties, it is obvious that the complainant has already paid 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.
23. Moreover, in the absence of any documents to the contrary by the respondent side, there is no other go except to accept the claim of complainant which is corroborated with documentary evidence. Considering all these facts, this Authority concludes that the complainant is entitled for the relief claimed.
24. Accordingly, the point raised above is answered in the Affirmative.
25. **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

*Ad*

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**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/210423/0007922 is hereby allowed.

1. The respondent is hereby directed to refund the amount of Rs.32,40,000/- (Rupees Thirty Two Lakhs Forty Thousand Only) with interest at the rate of SBI MCLR+2% from 01/08/2017 to till the date of entire realisation.
2. 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