

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 6<sup>th</sup> February 2023**

**Present**

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

**COMPLAINT No: CMP/200730/0006277**

**COMPLAINANT....**

**JOE ULFRIC S  
SANDS GATEWAY  
Sy.No. 520/4, Sarjapura  
Village, Anekal Taluk  
Bengaluru Rural-562125**

**(In Person)**

**V/S**

**RESPONDENT.....**

**SANDS INFRA TECH DEVELOPERS  
INDIA PRIVATE LIMITED  
No.5, Sands Plaza, 1<sup>st</sup> Floor  
Vignanagar Main Road  
New Thippasandra  
**BENGALURU URBAN-560 037****

**(By Mr. Satish Kumar, Ashwath B  
R. Santosh Kumar Associates,  
Advocates)**

*Asf*

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**JUDGEMENT**

1. The aforesaid complainant had filed this complaint under section 31 of RERA Act against the project "**SANDS GATEWAY**" developed by "**SANDS INFRATECH DEVELOPERS INDIA PRIVATE LIMITED**" and sought for the relief of refund of amount paid to the builder along with interest.
2. This project is registered in RERA bearing registration no. PRM/KA/RERA/1251/308/PR/180425/001550.
3. The promoter has developed this project at Sy.No: 520/4, Old No. 520/2, Sompura Gate, Sarjapura Village, Sarjapura Hobli, Anekal, Bengaluru Rural.
4. The gist of the complaint is that the complainant herein booked residential flat no.105 situated in the Ground floor in the project "**SANDS GATEWAY**" on 14.6.2014 and thereafter by entering into an agreement of sale and construction both dated 7.8.2014. The complainant has paid an amount of Rs.49,70,909/- (Rs. Forty nine lakhs seventy thousand nine hundred nine only) out of sale consideration of Rs.50,80,166/- (Rs. Fifty lakhs eighty thousand one hundred sixty six only). It was agreed by the builder to hand over flat on or before 31.8.2015 with grace period of 4 months. It is contended that property handover has been delayed for more than 6 years. The builder is not providing OC for the property and no rental compensation provided till date. There was major deviation from the original look, amenities and design of the building. The complainant has incurred over 10 lakhs of loss in the last 6 years due to delay in

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property handover. Having lost confidence with the builder, the complainant decided to exit from the project and sought for the relief of entire refund of the amount paid to the respondent along with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of notice, the respondent did not appear before this Authority during the proceedings held on 17/6/2022, 1/7/2022, 5/8/2022, 10/10/2022, 28/10/2022, 14/11/2022 and on 28/11/2020. But whereas its counsel was present on 15/7/2022 but has not contested the matter by filing objections and producing documents on its behalf. The respondent's counsel states that he will seek instructions. During the hearing held on 10.10.2022 it was decided to give final opportunity to file objections but he did not file it. Despite final opportunity being given he remained absent.

6. In support of his claim the complainant has produced documents such as (1) copy of agreement to sell and construction both dated 7.8.2014 (2) summary of disbursement history (3) statement of account (4) certificate for interest paid.

7. **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?

8. **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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**REASONS**

9. **My Answer to point No.1:-** It is the case of the complainant that he has entered into an agreement of sale and construction both dated 7.8.2014 in respect of unit bearing No. 105. The agreement entered into between the respondent and the complainant stipulates that, the respondent was required to hand over the possession of the said apartment on or before on or before 31.8.2015 with grace period of 4 months. It is his case that the developer has not performed in completing the project despite the complainant has paid substantial sale consideration to the respondent. Hence, the builder has failed to abide by the terms of the agreement of sale dated 7.8.2014. He has filed this complaint seeking refund of the amount on the ground that unit bearing no.105 in the project "**SANDS GATEWAY**" was booked in the year 2014 and it was agreed by the builder to hand over the same by 31.8.2015 with grace period of 4 months, but still the builder has not handed over the unit even after a lapse of over 6 years as agreed.
10. In pursuance of notice, the respondent has appeared before this Authority on 15/7/2012 through its counsel and filed Vakalath. But subsequently the respondent has failed to file statement of objections, furnishing documents on its behalf.
11. 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*

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*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.*

12. 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.
13. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant. The Promoter-respondent has not submitted any memo of calculation.
14. Though the respondent has appeared before this Authority through its counsel, subsequently it has failed to file statement of objections and furnishing documents in support of its defence and hence not contested the matter. 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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15. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

**Memo Calculation submitted by the complainant as on 12.8.2022**

PRINCIPLE AMOUNT (A)	INTEREST ( B = I1 + I2 + I3 ) AS ON 21-10-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
49,70,909	37,95,264	0	87,66,173

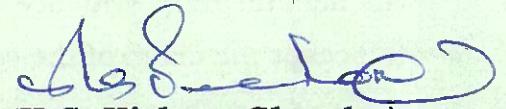
16. **My Answer to point no.2.** In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I proceed to pass the following order:

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/200730/0006277** is hereby allowed as under:

1. The respondent is hereby directed to refund the entire amount of Rs. **49,70,909/-** (Rupees Forty nine lakhs seventy thousand nine hundred nine only) within 60 days from the date of this order along with interest calculated at the rate of 9% from 14.6.2014 to 30.4.2017. Further, at the rate SBI MCLR + 2% from 1.5.2017 till the date of realization.
2. 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