

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

Dated 17th February 2023

COMPLAINT No: CMP/201130/0007165

COMPLAINANT....

KUSH MOHNOT
D-5-14, Hermes Heritage
Phase-2, Shastri Chowk
Yerwada, **Pune-411006**
MAHARASTRA

(IN PERSON)

V/S

RESPONDENT.....

EXD PROJECTS PRIVATE LIMITED
#9/10, Ground Floor, Prestige
Towers, Residency Road
Bengaluru Urban-560 025.

**(BY SRI. SATHISH KUMAR, ASHWATH
B, ADVOCATES)**

JUDGEMENT

1. This complaint is filed under section 31 of RERA Act against the project "**FIVE RINGS**" developed by "**EXD PROJECTS PRIVATE**

Ans

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LIMITED for the relief of refund of balance amount paid to the builder along with interest.

2. This project is registered in RERA bearing registration no. PRM/KA/RERA/1251/308/PR/171102/002143.
3. The promoter has developed this project at Sy.No: 69/1, Gudighattanahalli, Sarjapura Hobli, Anekal Taluk, Anekal, Bengaluru Urban.
4. The gist of the complaint is that the complainant herein had booked residential flat no. **A-012** situated in the ground floor floor, A-block in the project "**FIVE RINGS**" by entering into an agreement to sell dated 02/07/2018 with the respondent. The complainant has paid an amount of Rs. **12,17,761/-** (Rs. Twelve lakhs seventeen thousand seven hundred sixty one only) out of sale consideration of Rs. **21,43,968/-** (Rs. Twenty one lakhs forty three thousand nine hundred sixty eight only) to the respondent. It was agreed by the builder to hand over flat on or before December 2020 with a grace period of 6 months. The complainant has availed loan at HDFC Bank Limited and loan was approved for an amount of Rs. 18,93,000/-. At the time of booking the builder had promised the complainant that no EMI till possession but till date he has not repaid even a single EMI. On 24.9.2020 the complainant had addressed a letter to the respondent-promoter stating that while booking the apartment the respondent-promoter has promised to refund Pre-EMI paid to HDFC bank on monthly basis besides possession of the apartment was

Asst

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committed by December 2020. The project is stalled for the last 15 months. The builder has not completed the project within the stipulated timeline as per agreement of sale dated 2/7/2018. Having lost confidence with the builder, the complainant has sought for the relief of cancellation of the flat, settlement of loans and balance amount paid with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent did not appear before this Authority during the proceedings held on 19/8/2022, 16/9/2022, 27/09/2022 whereas its counsel was present on 28/10/2022 but has not contested the matter by filing objections and producing documents on its behalf etc.
6. In support of his claim the complainant has produced documents such as (1) copy of agreement of sale dated 2.7.2018 (2) statement of accounts (3) memo of calculation (4) cancellation letter from the complainant addressed to respondent-promoter dated 24.9.2020.
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 dated 02/07/2018 in respect of unit bearing No.**A-012**. 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 December 2020 with grace period of 6 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 02.07.2018. He has filed this complaint seeking refund of the amount on the ground that unit bearing no.**A-012** in the project "**FIVE RINGS**" was booked in the year 2018 and it was agreed by the builder to hand over the same by December 2020 with grace period of 6 months, but still the builder has not handed over the unit within the stipulated timeline as agreed.
10. In pursuance of the notice, the respondent has appeared before this Authority on 28/10/2022 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:

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"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.

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. On perusal of the memo of calculation filed by the complainant, it is seen that the respondent-promoter has already refunded an amount of Rs.50,000/- on 24.1.2022 and Rs.1,00,000/-on 23.2.2022 totalling Rs.1,50,000/- out of Rs.12,17,76 paid by the complainant. The promoter-

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respondent has not submitted any memo of calculation in spite of sufficient opportunity given to him.

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.
15. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Memo of Calculation submitted by the complainant as on 9.2.2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 9.2.2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
12,17,761	5,41,207	1,50,000	16,08,968

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:

Ans

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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/201130/0007165** is hereby allowed as under:

1. The Respondent is directed to pay the amount of Rs. **16,08,968/-** (Rupees Sixteen lakhs eight thousand nine hundred sixty eight only) towards refund along with interest to the complainant within 60 days from the date of this order calculated at the rate of SBI MCLR + 2% from **2.8.2018 till 9.2.2023**. Further, the interest due from **10.2.2023** up to the date of final payment will be calculated likewise and paid to the complainant.
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

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