

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/220618/0009648

COMPLAINANTS....

**PUSHPALATHA R BANTWAL &
SHAILESH KUMAR B R**

Flat No. B1401, Maurishka Park
Kodiabail, Opp: Sharada Vidyalaya
High School

DAKSHINA KANNADA-575003.

**(BY Mr. SHAILESH KUMAR B R
AUTHORIZED REPRESENTATIVE))**

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**

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LIMITED 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/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 complainants herein have booked residential flat no.**709** situated in the seventh floor, **A-Block** in the project "**FIVE RINGS**" by entering into an agreement to sell dated **23.6.2018**. The complainant has paid an amount of Rs.**9,10,751/-** (Rs. Nine lakhs ten thousand seven hundred fifty one only) out of sale consideration of Rs.**15,05,872/-** (Rs. Fifteen lakhs five thousand eight hundred seventy two 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 builder had promised to complete the project within the stipulated timeline. Thereafter. The complainants have decided to cancel their deal and has sought refund from the builder. Though the builder has agreed to cancel the flat but for refund the builder has given many false commitments. The builder has initially agreed to pay by November 2021 but has postponed for next 3 month and finally he had promised to pay by May 2022. The complainants have been following up with them but there was no positive response. Therefore, the complainants have sought for the relief of refund of amount paid to the respondent along with interest. Hence, this complaint.

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5. After registration of the complaint, in pursuance of 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.
6. In support of their claim the complainants have produced documents such as (1) copy of agreement to sell dated 23.6.2018 (2) memo of calculation.
7. **On the above averments, the following points would arise for my consideration:-**
1. Whether the complainants are 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

REASONS

9. **My Answer to point No.1:-** It is the case of the complainants that they have entered into an agreement to sell dated 23.6.2018 in respect of unit bearing No. 709. The agreement entered into between the respondent and the complainants stipulates that, the respondent was required to hand over the possession of the said apartment on or before December 2020 with grace period of 6 months. It is their case that the complainants vide email dated 7th April 2022 addressed to the respondent-promoter requested for cancellation of booking and



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sought for refund of the amount paid by them. The builder having confirmed and accepting the cancellation, agreed to refund the amount but failed refund the amount. Since the developer failed to return the entire amount paid by the complainants and hence they have filed this complaint before this Authority seeking refund of the amount on the ground that they have cancelled their unit bearing no.709 in the project "FIVE RINGS". since the promoter failed to abide by the terms and conditions of agreement to sell dated 23.6.2018.

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:

"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

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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 complainants have paid the substantial sale consideration and are entitled to get their 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 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. The respondent having accepted the cancellation request of the complainants failed to return the amount and is delaying in making payment to the complainants. Therefore, as per Section 18 of the ACT, the promoter is liable to refund the amount received along with interest. 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 Calculation submitted by the complainant as on 28.9.2022

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PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 28.9.2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
9,10,751	4,21,620	0	13,32,371

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/220618/0009648** is hereby allowed as under:

1. The respondent is hereby directed to pay an amount of Rs. **13,32,371/-** (Rupees Thirteen lakhs thirty two thousand three hundred seventy only only) towards refund along with interest to the complainants within 60 days from the date of this order calculated at the rate of SBI MCLR + 2% from **16.12.2017 till 28.9.2022**. Further, the interest due from **29.9.2022** up to the date of final payment will be calculated likewise and paid to the complainant.
2. The complainants are 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