

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/190117/0001899**

**DATED THIS 7<sup>th</sup> DAY OF MARCH, 2023**

**COMPLAINANT.....**

**NAZIA AHMAD,**  
2D West, Klassik Bench Mark,  
Bannerghatta Road,  
Near Meenakshi Temple,  
Bengaluru - 560076.

(Rep. By Sri. Kamaluddin Ahmed)

**V/S**

**RESPONDENT.....**

**DS & JAKS CONSTRUCTIONS,**  
12/1, Needs 3 Project 276,  
Next to Klassic Benchmark Appts,  
Kalena Agrahara, SOS Post,  
Kammanahalli Main Road,  
Near Meenakshi Temple,  
Off. Bannerghatta Road,  
Bengaluru - 560076.

(Rep. By Sri. K.S. Uday, Advocate)

**PROJECT NAME &  
REGISTRATION NO:**

**NEEDS 3 PROJECT 276  
PRM/KA/RERA/1251/310/  
PR/171026/000453**

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

1. This complaint is filed under section 31 of the RERA Act against the project "Needs 3 Project 276" developed by "M/s. DS & JAKS Constructions" for the relief of interest on delay period.

*12/3*

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2. This matter is remanded from Hon'ble Karnataka Appellate Tribunal on 17/01/2022 for fresh consideration in view of M/s. Newtech Promoters and Developers Pvt. Ltd., Vs. State of UP & Ors etc.,
3. During hearing, on 21/04/2022 the complainant has filed an amended application to amend the prayer for the relief of refund with interest.

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

4. The complainant had booked a flat bearing No. 202 in second floor in the C-Block in the project of respondent and he had entered into an agreement for sale and construction agreement dated 18/05/2015 for a total sale consideration of Rs.67,65,410/-(Rupees Sixty Seven Lakhs Sixty Five Thousand Four Hundred and Ten only) with the respondent and paid Rs.64,27,141/-(Rupees Sixty Four Lakhs Twenty Seven Thousand One Hundred and Forty One only) to the respondent on 21/01/2015 to 08/12/2018. The respondent had agreed to handover possession of the said apartment on 01/07/2018 including 6 months grace period. However, the respondent had failed to complete the project and to handover possession of the said apartment to the complainant as agreed. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and filed statement of objections as under:-
6. It has denied all the allegations made against it as false. It contends that, the complainant approached the respondent and offered to purchase one of the apartment proposed to be constructed over the aforesaid property. Accordingly, after negotiations the respondent entered into an agreement of sale and construction with complainant on 08/03/2015 for a total consideration of Rs.67,65,410/- (Rupees Sixty Seven Lakhs Sixty Five Thousand Four Hundred and Ten only). On entering into the agreement the

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complainant had paid an advance towards sale consideration of Rs.12,53,082/- (Rupees Twelve Lakhs Fifty Three Thousand Eighty Two only). Further, it is specifically agreed between the parties that, further payments to be made as per the schedule at clause 3. Clause 9 of the agreement stipulates that the payments are to be made strictly as mentioned at clause 3 and other payments and clause 10 provides for levy of 24% interest of delayed payments. Apart from the initial payments, there was lot of delay in payments by the complainant. Such delay from the complainant also attributes to the delay in construction. Therefore, the complainant cannot turn around and state that, the delay is solely attributable to the respondent and seek damages as per section 18 of the Act, which has come into force subsequent to the complainant entering into the agreement with the respondent to purchase the flat.

7. Further, it is submitted that, initially the BBMP had give permission for 8 floors on 11/07/2014 and based on such permission it started construction too. Thereafter the respondent to make use of the transfer of development rights which was assigned to it by the BBMP, the respondent vide letter dated 13/03/2015, applied for modified plan for 9 to 14 floors, by submitting the TDR certificates to the BBMP and also by paying security deposit of Rs.1,17,826/- (Rupees One Lakh Seventeen Thousand Eight Hundred and Twenty Six Only). Based on the said TDR guidelines, the respondents once again on 21/07/2017 made a representation to the BBMP for approval of the plan for upper floors i.e., from 9 to 14<sup>th</sup> floor. The said representation was followed up by one more reminder letter dated 09/08/2017, again on 21/11/2017, 12/01/2018 and 02/02/2018. Hence, prayed to dismiss the complaint.
8. In support of his claim, the complainant has produced in all 4 documents such as copies of agreement to sell, construction agreement, payment receipts and memo of calculation.



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9. On the other hand, the respondent has produced in all 17 documents such as copy excel sheet to evidence the delay payments made by the complainant, RERA registration certificates, letter dated 11/03/2016 written to the commissioner BBMP with regard to the TDR certificate, letter sent to the sub-registrar, Mahadevapura, with respect to guideline value, letter dated 09/08/2017, written by the respondent to the commissioner BBMP, requesting for transfer of development rights and utilization certificate for the project DS and JAKS constructions, application dated 07/08/2017, made by the respondent to the commissioner, BBMP for issue of utilization certificate, letter dated 21/11/2017, written to the commissioner BBMP seeking permission to go on with the work as per the modified plan submitted by the respondent, letter dated 12/01/2018 written to the commissioner BBMP submitting certain documents for FAR eligibility as per the revised plan, letter dated 02/02/2018 written to the additional director of town planning, BBMP requesting for modified plan approval against TDR, letter dated 21/07/2018, 10/08/2018 and 26/11/2018 written to commissioner of the BBMP, requesting for issue of TDR certificates and subsequent utilization. License bearing No. BBMP/Addl.Dir/JD South/0537/13-14, dated 13/03/2015, issued by the BBMP, the receipt for having paid Rs.1,71,826/- towards scrutiny fee, receipt dated 25/06/2018, issued by BBMP, payment receipts made by the respondent to the BBMP and the email conversations between the complainant and the respondent.
10. Hearings were conducted on 18/04/2022, 21/04/2022, 06/05/2022 and finally on 26/08/2022.
11. Heard both parties.
12. **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?

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

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

**REASONS**

14. **My answer to point No. 1:-** The complainant has approached this Authority with the grievance that the respondent had not handed over possession of his apartment bearing No. 202 as agreed and there is a delay in completion of the project work.
15. On the other hand, it is the contention of the respondent is that apart from the initial payments, there was lot of delay in payments by the complainant. The delay in payments on the part of the complainant attributes to the delay in construction.
16. From the materials available on record, it is apparent that in spite of entering into an agreement of sale to handover the possession of said apartment, the builder had 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 18/05/2015. There seems to be no possibility of completing the project or handing over possession in near future.
17. 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*

*Adh*



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*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 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."*

18. 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.
19. From the averments of the complaint and the copy of agreement of sale 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.
20. The complainant has filed his memo of calculation as on 09/09/2022 claiming an amount of Rs.1,08,80,157/- (Rupees One Crore Eight Lakh Eighty Thousand One Hundred and Fifty Seven only) as refund with interest. Despite of several opportunities were given, the respondent has not filed their memo of calculation. A thorough verification of documentary evidence submitted by the complainant reveals that her claim is genuine.
21. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide their

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memo of calculation dated 09/09/2022 in view of the non-co-operation of the respondent.

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

**Interest Calculation till 30/04/2017 (Before RERA)**

S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	21-01-2015	600,000	830	30-04-2017	122,794
2	08-03-2015	753,082	784	30-04-2017	145,582
3	27-05-2015	2,029,623	704	30-04-2017	352,320
4	04-06-2015	338,271	696	30-04-2017	58,052
5	27-06-2015	338,271	673	30-04-2017	56,134
6	24-07-2015	338,271	646	30-04-2017	53,882
7	10-08-2015	338,270	629	30-04-2017	52,464
8	04-09-2015	338,270	604	30-04-2017	50,379
9	21-09-2015	338,271	587	30-04-2017	48,961
10	17-03-2016	338,270	409	30-04-2017	34,114
11	20-05-2016	338,271	345	30-04-2017	28,776
12				<b>TOTAL INTEREST ( I1 )</b>	<b>1,003,458</b>

**Interest Calculation from 01/05/2017 (After RERA)**

S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	6,088,870	1957	09-09-2022	8.15	10.15 as on 01-05-2017	3,313,604
2	08-12-2018	338,271	1371	09-09-2022	8.7	10.7 as on 01-11-2018	135,954
3	TOTAL AMOUNT	6,427,141				TOTAL INTEREST ( I2 )	3,449,558

**Memo Calculation**

PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 09-09-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
6,427,141	4,453,016	0	10,880,157

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23. 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 answer to point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/190117/0001899 is hereby allowed.

1. The respondent is directed to pay the amount of Rs.1,08,80,157/- (Rupees One Crore Eight Lakh Eighty Thousand One Hundred and Fifty Seven Only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 21/01/2015 to 20/05/2016 and at SBI MCLR+2% from 01/05/2017 till 09/09/2022.
2. The interest due from 10/09/2022 up to the date of final payment will be calculated likewise and paid to the complainant.
3. 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