

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 6**

**PRESIDED BY MRS. NEELMANI N RAJU, HON'BLE MEMBER**

**Dated 24<sup>th</sup> MARCH 2023**

**COMPLAINT NO: CMP/210727/0008167**

**COMPLAINANTS.....**

**MR. ANIL STHANUNATHAN IYER  
& MRS. UMA IYER  
NO.901, NANDITA CHS  
15<sup>TH</sup> ROAD, BANDRA WEST  
MUMBAI - 400 050.  
STATE: MAHARASHTRA**

**(BY MR.ASHWIN R.A., MR. AJAY R.A.  
ADVOCATES)**

**V/S**

**RESPONDENT.....**

**1.VASWANI WHITEFIELD PROJECTS  
PRIVATE LIMITED  
VASWANI VICTORIA 30,  
VICTORIA ROAD  
BANGALORE-560047.**

**2.MR. DAMACHARLA JANARDHAN RAO  
NO.3-6, TURPUNAIDUPALEM  
TANGUTUR MANDALAM  
PRAKASAM DISTRICT  
STATE: ANDHRA PRADESH  
PIN CODE: 523 272.  
(Ex-Parte)**

**\* \* \* \* \***

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

1. This complaint is filed under section 31 of the RERA Act against the project "**VASWANI EXQUISITE PHASE I**" developed by M/s Vaswani Whitefield Projects Private Limited situated at ITPL Main Road, Next to Zuri Hotel, Hoodi, Bengaluru East for the relief of refund with interest.

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2. This project is registered under RERA bearing registration No.PR/KA/RERA/1251/446/PR/171015/000784 valid till 31/12/2021. The Authority gave Covid Extension for 9 months valid till 30/9/2022.

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

3. The complainants submit that it was represented to them that the Respondent-2 is the Land Owner and the respondent company earlier known as Vaswani Technology Park Private Limited was the developer. Respondent-2 and his agent approached the complainants that the Unit No.D-205 in the project is their share. The complainants paid a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to Respondent-2 towards booking amount for an apartment in the project on the assurance from the Respondent-2 that the said amount is collected to block the unit and is refundable if the complainants decide to cancel the booking if they do not proceed further for any reason and if they are not satisfied with the property documents. The respondent-2 has also acknowledged receipt of Rs.5,00,000/- vide email dated 27/3/2021.
4. The complainants submit that after thorough verification through their Advocate, they were not interested to proceed further with the purchase of the apartment and lost confidence when they saw the draft agreement of sale wherein the developer was not made a party as confirming party to the agreement of sale. The complainants have approached this Authority seeking refund of booking amount of Rs.5,00,000/- with interest from Respondent-2. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice and summons, the respondent has not appeared before the Authority either through its counsel/representative or in person and has not filed any statement of objections or produced any documents on its behalf.

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6. Despite several notices and summons sent to the given address, the respondents failed to appear before the Authority. During the process of the hearing, the Authority also noticed that the summons sent to the address of the respondent has been returned as the person is not available in this company and continued to remain absent from the hearings. Finally paper publication was issued in local Telugu daily newspaper "**Ee-NAADU**" on 10/03/2023 for the appearance of the respondents before the Authority. In spite of paper publication, the respondents did not appear before the Authority and hence, have been placed as **EX-PARTE**.
7. This matter was heard on 01/09/2022, 20/09/2022, 16/11/2022, 11/01/2023, 15/01/2023 and 21/03/2023. The case was finally posted for orders on 21/03/2023.
8. In support of their claim, the complainants have uploaded documents such as copies of brochure of the project Vaswani Exquisite, JDA dated 30/07/2013, statement of account issued by ICICI Bank in respect of the complainants showing details of payment made to Respondent-2, email dated 7/4/2021, draft agreement of sale dated 7/4/2021, email correspondence with the Respondent-2, email dated 9/4/2021 seeking refund, Legal Notice dated 28/5/2021, reply dated 13/6/2021 from Respondent-2 to legal notice, paper publication dated 10/03/2023 in Telugu newspaper "Ee Naadu" and memo of calculation for refund with interest as on 27/08/2022.
9. Heard arguments of the complainant side.
10. On the above averments, the following points would arise for our consideration:
  1. Whether the complainants are entitled to the relief claimed?
  2. What order?



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11. Our findings on the above points are as under:

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

**REASONS**

**12. Our findings on Point No.1:-**

From the materials placed on record, it is apparent that in spite of accepting booking amount towards the sale of an apartment (out of land owner share) to the complainants, and though the Respondent-2 was informed that the complainants after verification of the property documents and the draft agreement of sale were not willing to proceed further and requested the respondent-2 to refund the booking amount, the respondents have failed to refund the amount with interest to the complainants till date. The respondents have also failed to appear before the Authority for the hearings. Hence the respondents have failed to abide by the terms and conditions as agreed.

13. In case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, flat, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

14. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

15. From the averments of the complaint and the terms and conditions in the agreement, it is obvious that the complainants have paid a sum of Rs.5,00,000/- as booking amount to the Respondent-2.

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Though the respondent vide his email dated 27/3/2021 has acknowledged the receipt of the amount from the complainants. Though the complainants on verification of the property documents and draft agreement of sale, denied to proceed any further and requested for refund of the booking amount, the respondent has failed to refund the amount with interest. Having accepted the said amount and failure to refund the amount with interest to the complainants, certainly entitles the complainants herein for refund with interest. The complainants have submitted their memo of calculation as on 27/08/2022 claiming refund with interest for Rs.5,66,246/- (Rupees Five Lakh Sixty Six Thousand Two Hundred and Forty Six only).

16. During the process of the hearing, the Authority noticed that despite notices and summons were sent to the respondent, the respondent did not appear before the Authority either through its counsel nor in person. Even after notice was published in the local Telugu daily newspaper on 10/03/2023 for his personal appearance, the respondents have not appeared before the Authority to participate in the proceedings by filing their statement of objections and producing documents on their behalf and file their memo of calculation. This conduct of the respondents clearly goes to show that they have taken the complainants for a ride and deprived them of owning their own apartment and have not at all disputed the claim of the complainants in any manner. Therefore, the claim of the complainants remained unchallenged and it is corroborated with the cogent evidence. These being the facts, in the absence of any resistance by the respondent, there is no option left to this Authority except to uphold the refund amount claimed by the complainants vide their memo of calculation as on 27/08/2022.

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

HLW

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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	30-04-2017	0	0	30-04-2017	0
2				TOTAL INTEREST ( I1 )	0

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	0	1944	27-08-2022	8.15	10.15 as on 01-05-2017	0
2	25-03-2021	5,00,000	520	27-08-2022	7.3	9.3 as on 10-03-2021	66,246
3	TOTAL AMOUNT	5,00,000				TOTAL INTEREST ( I2 )	66,246

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 27-08-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
5,00,000	66,246	0	5,66,246

18. Accordingly, the point raised above is answered in the Affirmative.

19. My answer to point No.2:- In view of the above discussion, I 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/210727/0008167** is hereby allowed. Respondent is directed to pay a sum of **Rs.5,66,246/- (Rupees Five Lakh Sixty Six Thousand Two Hundred and Forty Six only)** towards refund with interest

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calculated at and MCLR + 2% from 25/03/2021 till 27/08/2022 to the complainants within 60 days from the date of this order. The interest due from 28/08/2022 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

No order as to the costs.

  
(Neelmani N Raju)  
Member, KREERA

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