

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

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT NO. CMP/220805/0009856

DATED 30TH MARCH 2023

COMPLAINANT:

SHARNABASAPPA N.

No.22/2B, 1st Floor, Munikrishna
BLD, 21ST Cross, 80 Feet Road
MTS Layout
BENGALURU URBAN-560060

(IN PERSON)

V/s

RESPONDENT:

**BASAVARAJ MALLIKARJUN
YEREGAL**

Developer
No.107, Neela Ganga Nilaya
Near St. Peters School
Nagadevanahalli
BENGALURU URBAN-560 056.

(EX-PARTE)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "**Sai Prithvi Elite**" developed by "Basavaraj Mallikarjun Yeragal" for the relief of refund of amount with interest.

2. This project is registered in RERA bearing registration no. PRM/KA/RERA/1251/310/PR/180131/001379 valid from 21.8.2017 till 30.9.2018.

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3. The promoter has developed this project in the limits of No.212, Arunachalam layout, Bandemata Road near KST Club, Bengaluru South, Bengaluru Urban.

4. **Brief facts of the complaint are as under:** The complainant had booked an apartment bearing no. 414 in the third floor in the project of the respondent "SAI PRITHVI ELITE" wherein he has entered into an agreements to sell and construction both dated 16.8.2016 for a total sale consideration of Rs.27,85,300/- (Rs. Twenty seven lakhs eighty five thousand three hundred only) and has paid an amount of Rs.20,78,290/- (Rs. Twenty lakhs seventy eight thousand two hundred ninety only) on various dates. The respondent was to hand over the possession of the said apartment on or before 18 months with a grace period of 6 months i.e. by 16.8.2018 as per construction agreement dated 16.8.2016. However, the respondent failed to hand over the project within the stipulated timeline as agreed. It is contended that the project is stalled since the last 3 years. Despite the complainant having made payments within the timeline as per the agreement, the respondent has not handed over the said apartment and failed to abide by the terms and conditions of the agreement to sell and construction agreement both dated 16.8.2016. Therefore, the complainant has approached this Authority for a direction to the respondent to refund the amount paid along with interest. Hence, this complaint.

5. After registration of the complaint, notices have been sent to the respondent. The respondent has neither appeared before this Authority during the hearings held on 27/10/2022, 14/11/2022, 19/12/2022 nor contested the matter by filing objections or producing documents on its behalf and hence he has been placed as Ex-parte.

6. Heard the complainant.

6/12/22

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7. The complainant in support of his claim has produced documents such as
(a) copies of agreements to sell and construction both dated 16.8.2016 (b)
receipts of payments made to the respondent.

8. 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?

9. **Findings on the above points are as under:**

1. In the Affirmative
2. As per final order

FINDINGS

10. **Findings on point no.1:** It is the case of the complainant that he has entered into an agreement of sale and construction agreement both dated 16.8.2016 in respect of unit bearing No. 414 of the project. 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 within 18 months with grace period of 6 months i.e. by 16.8.2018 as per construction agreement dated 16.8.2016. It is his case that the developer has not completed the project despite the complainant having paid substantial sale consideration to the respondent. Hence, the builder has failed to abide by the terms of the agreement of sale dated 16.8.2016 Hence, he has filed this complaint seeking refund of the amount.

11. It is necessary to reproduce the extract of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022,Civil Appeal

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Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni
& others:

"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 if the promoter fails to complete or provide possession of an apartment 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 failed to file any objections on the memo of calculation.

14. Though the notice is served on the respondent, he has neither appeared before this Authority during the hearings nor contested the

As

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matter by filing statement of objections and furnishing documents in support of its defence. Therefore, the claim of the complainant remained unchallenged. The complainant has established his claim by producing cogent documentary evidence. 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 26.10.2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 26.10.2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
20,78,290	9,65,813	0	30,44,103

16. Findings on 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/220805/0009856 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs.30,44,103/- (Rupees Thirty lakhs forty four thousand one hundred three only) within 60 days from the date of this order along with interest calculated at the rate of 9% from 23.5.2016 to 30.4.2017. Further, the interest shall be calculated at SBI MCLR +2% from 01.5.2017 till the date of payment.

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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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