

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

COMPLAINT NO.: CMP/220512/0009453

DATED THIS 3RD DAY OF APRIL, 2023

COMPLAINANT.....

KANTHARAJU C,
No. 198, 5th Cross,
AG Boraiah Road, Sri Ranga Nagar,
Banashankari III Stage,
Bengaluru South - 560085.

(In person)

V/S

RESPONDENTS.....

1. ESS AND ESS INFRASTRUCTURE PRIVATE LIMITED.,

#1112, Second Floor, G & H Block,
Gaganachumbi Double Road,
Kuvempunagar,
Mysore - 570023.

(Rep. By Sri. Somashekara, Adv.,)

2. SREE SAPTHAMATHRUKA 5 & NANDI NAGAR,

ESSENN Infra Township Pvt. Ltd.,
Sri Chambers, No. 53, 2nd Floor,
Opp. Nettekallappa Bus Stop,
Subbaramachetty Road, Basavanagudi,
Bengaluru - 560004.

(Rep. By Smt. Bharathi G, Adv.,)

**PROJECT NAME &
REGISTRATION NO.**

**SREE SAPTHAMATHRUKA 5 &
NANDI NAGARA
PRM/KA/RERA/1268/378/
PR/2111125/004553**

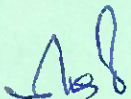
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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "Sree Sathamathruka 5 and Nandi Nagara" developed by "ESS and ESS Infrastructure Private Limited" situated at Sy. No. 1/1, 37/9, 37/10, 70, 2/5,, 2/1, 2/2, 2/4, 3/1, 34/2, 37/4, 20/3, 38/4, 21/2, 35/1A, 35/1B2, 35/1C of Madapura Village, Varuna Hobli, Mysore for the relief of refund the amount paid with interest.
2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1268/378/PR/211125/004553 valid till 15/10/2026.

Brief facts of the complaint are as under:-

3. The complainant had booked a plot bearing No. 366A in the project "Sree Sathamathruka 5 & Nandi Nagara" of respondent. On 20/04/2012 he had paid an advance of Rs.11,000/- (Rupees Eleven Thousand only) and remaining balance of Rs.1,00,000/- (Rupees One Lakhs Only) 18/06/2013, Rs.1,00,000/- (Rupees One Lakhs Only) on 04/01/2014, Rs.1,00,000/- (Rupees One Lakhs Only) on 17/12/2012 and paid Rs.1,50,000/- (Rupees One Lakhs Fifty Thousand Only) through cheque bearing No.406334. So, totally he had paid Rs.4,61,000/- (Rupees Four Lakhs Sixty One Thousand Only) to the respondent. Till today there is no progress in the said project. Hence, he has decided to exit from the project. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent No.1 and 2 have appeared before this Authority through their respective counsels and filed statement of objections as under:-
5. He has denied all the allegations made against him by the complainant as false. The respondent contends that, complainant was fully aware regarding the delay of the project even on the last day of payment of Rs.1,00,000/- (Rupees One Lakhs Only) on 04/01/2014. The present dispute of complainant is after more than 8 years inspite of getting a final confirmation



of allotment of site on 11/06/2022. The respondent asked him to get the site registered and to pay hiked amount of Rs.100/- (Rupees Hundred only) per square feet considering the present market value of site, cost of materials and getting all statutory clearances. The letter with detailed reason is sent to the complainant for delay in project and hiked amount of Rs.100/- (Rupees Hundred only) per square feet on 06/11/2022.

6. Further he contends that, the government took about 4-5 years for approval and all revenue approvals including land conversion work and layout plan approval work were fully stopped. In the absence of approvals, the respondent could not proceed with the development work with respect to layout formation. There was no written contract of refund of money with interest of procurement of site knowing well that finalising of project would take minimum 6-7 years. Further due to COVID – 19 pandemic there is a delay. Infact, the respondent was ready to register the site in the name of the complainant only after the payment of last instalment of Rs.2,70,000/- (Rupees Two Lakhs Seventy Thousand Only). Even, the respondent is ready to register the site in the name of complainant in the month of March 2023. Hence, prayed to dismiss the complaint.
7. In support of his claim, the complainant has produced in all 4 documents such as copies of Sale Agreement, Construction Agreement, Email letters seeking refund and memo of calculation.
8. On the other hand, the respondent has produced in all 5 documents such as copy of agreement of sale of undivided share of land, agreement of construction dated 15/11/2016, certificates for extension of registration of project dated 18/08/2021 and 08/01/2021 issued by the KRERA, one intimation addressed by the respondent to the complainant and the board resolution authorizing the representative to represent the matter.
9. Hearings were conducted on 10/06/2022, 20/06/2022, 04/07/2022, 18/07/2022, 26/09/2022, 17/10/2022 and finally on 18/11/2022.



10. Heard both parties.
11. **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?
12. **My answer to the above points is as under:-**
1. In the Affirmative.
 2. As per final order for the following

REASONS

13. **My finding on point No. 1:-** The complainant has approached this Authority with the grievance that, the respondent had not completed the project since long time and sought for refund of amount paid to the respondent with interest.
14. On the other hand, it is the contention of the respondent that there is a delay in completion of the project due to delay in getting necessary approvals from the Government and COVID-19 pandemic. Now also they are ready to execute registered sale deed with regard to site No.366A in favour of complainant provided he has to pay additional charge of Rs.100/- (Rupees Hundred only) per square feet.
15. From the materials available on records, it is apparent that in spite of receiving substantial sale consideration, the builder had not completed the project since long time. Further, RERA registration certificate obtained by the respondent clearly goes to show that completion period for the said project is in the year 2026. Undisputedly, the complainant has paid an amount of Rs.4,61,000/- (Rupees Four Lakhs Sixty One Thousand Only) in the year 2012 – 2014. Further, the respondent has hiked the price of site at Rs.100/- per square feet and asking the complainant to pay additional charge. In this regard, the respondent wrote a letter dated 06/11/2022 by

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assigning reason for delay in project and for raising price of the site. The respondent had hiked the price of the site on the grounds of present market value of the site, cost of materials and getting all statutory clearances. It is pertinent to note that, the complainant is no way concerned for hiking the price on the grounds of present market value of the site, cost of materials and getting all statutory clearances. There seems to be no possibility of completing the project or handing over possession in near future.

16. 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 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."

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17. 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.,
18. From the averments of the complaint and the copy of allotment letter, payment receipts, it is obvious that the complainant has already paid substantial sale consideration amount. Having accepted the said amount and failure to complete the project even after more than 10 years certainly entitles the complainant herein for refund with interest.
19. The complainant has filed his memo of calculation as on 06/01/2023 claiming an amount of Rs.9,01,458/- (Rupees Nine Lakhs One Thousand Four Hundred and Fifty Eight only) as refund with interest. Despite of several opportunities were given, the respondent has not filed his memo of calculation. A thorough verification of documentary evidence submitted by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide his memo of calculation dated 06/01/2023 in view of the non-co-operation of the respondent.
20. 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	20-04-2012	11,000	1836	30-04-2017	4,979
2	29-06-2012	150,000	1766	30-04-2017	65,317
3	17-12-2012	100,000	1595	30-04-2017	39,328
4	18-06-2013	100,000	1412	30-04-2017	34,816
5	04-01-2014	100,000	1212	30-04-2017	29,884
6				TOTAL INTEREST (11)	174,324

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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	461,000	2076	06-01-2023	8.15	10.15 AS ON 01-05-2017	266,134
2	TOTAL AMOUNT	461,000				TOTAL INTEREST (I2)	266,134

MEMO CALCULATION

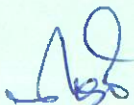
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 06-01-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
461,000	440,458	0	901,458

21. Considering all these facts, this Authority concludes that the complainant is entitled for the relief claimed.
22. Accordingly, the point raised above is answered in the Affirmative.
23. **My finding on 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/220512/0009453 is hereby allowed.

1. The respondent is directed to pay the amount of Rs.9,01,458/- (Rupees Nine Lakhs One Thousand Four Hundred and Fifty Eight Only) towards refund with interest calculated at 9% from 20/04/2012 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 06/01/2023 to the complainant within 60 days from the date of this order.



2. The interest due from 07/01/2023 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

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