

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

Dated 13TH APRIL 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/190318/0002451

COMPLAINANTS.....

**MR. KASHINATH J NAIK
REPRESENTED BY
SRI. MANJUNATH J NAIK
DYANESHWAR BUILDING
GF-01, NEAR MES COLLEGE
AMAN COLONY
VIDYANAGAR, ZUARINAGAR
GOA - 403726
DISTRICT: SOUTH GOA**

(IN PERSON)

V/S

RESPONDENT.....

**1. MR.V. NANDAGOPAL & OTHER
PARTNERS
M/S TRANSCITY DEVELOPERS
32, 2ND FLOOR, 13TH CROSS
BASHYAM CIRCLE
SADASHIVANAGAR
BANGALORE-560080.**

(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 "ORCHID PARADISE, TRANS PRAGATHI, TRANS TRUPTHI" developed by M/s Transcity Developers, Bangalore on Plot No.217, Malmachanahalli Village, Jangamakote Hobli, Sidlaghatta Taluk, Chikkaballapur District for the relief of handover developed sites or refund of money.
2. This project is not registered under RERA.
3. **Brief facts of the complaint are as under:-**

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The complainant on the basis of the advertisement given by the respondent booked four plots in the name of himself and wife Mrs.Hemalatha K Naik in three different projects and entered into agreement of sale on 01/08/2013 (for two Plots bearing No.844 and 916 at Orchid Paradise New Phase I Extension), 11/09/2013 (for Plot No.02 at Trans Pragathi) and 26/11/2014 (for Plot No.258 at Trans Trupthi). and has paid an amount of Rs.19,65,000/- (Rupees Nineteen Lakh Sixty Five Thousand only) to the respondent towards sale consideration of the plots. The respondent has failed to register the sale deed of the plots to the complainant nor refunded the money with interest. The complainant though visited the respondent's office several times, the respondent made false promises to provide plots. The respondent has refused to refund the money paid and has stopped answering calls. Even after nine years, the respondent has failed to give possession of the plots and register the sale deed in favour of the complainant as agreed and has cheated the complainant. Hence, this complaint.

4. After registration of the complaint, several notices and summons were sent to the respondent on his old and new addresses for appearance before the Authority. The respondent failed to appear before the Authority and never attended the hearings. Finally paper publication was issued in local Kannada daily newspaper "**HOSA DIGANTHA**" on 13/03/2023 for the appearance of the respondent. In spite of paper publication, the respondent did not appear before the Authority and hence, has been placed as **ex-parte**.
5. In support of his claim, the complainant has produced copies of agreement of sale (in respect of all the four plots), payment receipts, statement of account issued by the Transcity Developers, Paper publication published in "Hosa Digantha" Kannada daily dated 13/03/2023 and memo of calculation as on 07/04/2023.



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6. This matter was heard on 14/12/2022, 11/01/2023, 15/02/2023 and 6/4/2023.
7. Heard arguments of the complainant side.
8. On the above averments, the following points would arise for my consideration:
 1. Whether the complainant is entitled to the relief claimed?
 2. What order?
9. My findings on the above points are as under:
 1. In the Affirmative.
 2. As per final order for the following –

REASONS

10. **My finding on Point No.1:-** From the materials placed on record, it is apparent that in spite of entering into an agreement for sale and accepting substantial sale consideration amount towards the sale of the plot to the complainant, the builder has not completed the project as per agreement and has delayed the project and has failed to handover the plots to the complainant till date. The builder has also failed to appear before the Authority for hearings despite notices/summons sent to them and paper publication done in local Kannada daily newspaper on 13/03/2023. Hence, the builder has failed to abide by the terms of agreement for sale. There seems to be no possibility of completing the project or handing over the possession of the plots in the near future.
11. At this juncture, our attention is drawn towards the judgement of 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:

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"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. 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.

13. 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.

14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid full sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to hand over possession of the plots certainly entitles the complainant herein for refund with interest. The complainant has submitted his memo of calculation as on 07/04/2023 claiming refund with interest of Rs.35,61,356/- (Rupees Thirty Five Lakh Sixty One Thousand Three

M. W.

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Hundred and Fifty Six only) calculated from 27/07/2013 to 07/04/2023.

15. Despite several opportunities given to the respondent and notice was published in the local Kannada daily newspaper for their personal appearance, the respondent failed to appear before the Authority. This conduct of the respondent clearly goes to show that they have taken the complainant for a ride and deprived him of owning his own flat. The Authority upholds the refund of amount claimed by the complainant vide his memo of calculation as on 07/04/2023.

16. 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	27-07-2013	30,000	1373	30-04-2017	10,156
2	01-08-2013	4,50,000	1368	30-04-2017	1,51,791
3	17-08-2013	2,15,000	1352	30-04-2017	71,674
4	23-07-2014	5,00,000	1012	30-04-2017	1,24,767
5	24-11-2014	1,93,750	888	30-04-2017	42,423
6	27-09-2016	3,31,250	215	30-04-2017	17,560
7		17,20,000		TOTAL INTEREST (I1)	4,18,371

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	17,20,000	2167	07-04-2023	8.15	10.15 as on 01-05-2017	10,36,479
2	30-07-2017	2,45,000	2077	07-04-2023	8.15	10.15 as on 01-07-2017	1,41,506
3	TOTAL AMOUNT	19,65,000				TOTAL INTEREST (I2)	11,77,985

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 07-04-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
19,65,000	15,96,356	0	35,61,356


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

18. **Our findings on Point No.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, we 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/UR/190318/0002451** is hereby allowed. Respondent is directed to pay a sum of Rs.35,61,356/- (Rupees Thirty Five Lakh Sixty One Thousand Three Hundred and Fifty Six only) towards refund with interest calculated at 9% from 27/07/2013 to 30/04/2017 and MCLR + 2% from 01/05/2017 to 07/04/2023 to the complainant within 60 days from the date of this order. The interest accruing from 08/04/2023 till the date of final payment will be calculated and paid likewise. Failing which, the complainant is at liberty to enforce this order in accordance with law.

No order as to the costs.


(Neelmani N Raju)
Member, KREERA