

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/220204/0008960

COMPLAINANTS.....

**MR.S.M. PRASANNA KUMAR
C-18, BLOCK NO.2
INCOME TAX COLONY
NEAR HMT WATCH FACTORY
JALAHALLI
BENGALURU-560013.**

(BY MS. SHYLAJA M N, ADVOCATE)

V/S

RESPONDENT.....

**M/S TRANSCITY DEVELOPERS
32, 2ND FLOOR, 13TH CROSS
BASHYAM CIRCLE
SADASHIVANAGAR
BANGALORE-560080.**

(EX-PARTE)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project **"TRANS NORTH EDGE"** developed by **M/s Trans City Developers, Bangalore** on Plot No.217, Chowdasandra Village, Jangamakote Hobli, Sidlaghatta Taluk, Chikkaballapur District for the relief of refund of money with interest.
2. This project is not registered under RERA.
3. **Brief facts of the complaint are as under:-**

The complainant has purchased a plot bearing No.217 in the project of the respondent for a total sale consideration of Rs.6,00,000/- (Rupees Six Lakh only) and entered into agreement of sale on

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16/11/2016 and has paid Rs.2,10,000/- (Rupees Two Lakh Ten Thousand only) to the respondent, for which the respondent has issued acknowledgement for having received the amount from the complainant. The respondent had agreed to deliver the possession of the plot within one month from the date of obtaining approval from the District Town and Country Planning Authority. The respondent neither executed sale deed in favour of the complainant nor delivered the possession of the plot till date. The complainant submits that he wants to withdraw from the project and as such, he has approached this Authority for direction to the respondent to refund the amount paid by the complainant with interest. 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, Paper publication published in "Hosa Digantha" Kannada daily dated 13/03/2023 and memo of calculation as on 27/07/2022.
6. This matter was heard on 25/8/2022, 20/10/2022, 10/1/2023, 14/2/23 and 6/4/2023.
7. Heard arguments of the complainant side.
8. On the above averments, the following points would arise for my consideration:

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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 plot 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 plot 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:

"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

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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 plot certainly entitles the complainant herein for refund with interest. The complainant has submitted his memo of calculation as on 27/7/2022 claiming refund with interest of Rs.3,30,256/- (Rupees Three Lakh Thirty Thousand Two Hundred and Fifty Six only) calculated from 16/11/2016 to 27/7/2022.
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

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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 27/7/2022.

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	16-11-2016	2,10,000	165	30-04-2017	8,543
2		2,10,000		TOTAL INTEREST (I1)	8,543

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	2,10,000	1913	27-07-2022	8.15	10.15 as on 01-05-2017	1,11,713
2	TOTAL AMOUNT	2,10,000				TOTAL INTEREST (I2)	1,11,713

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 27-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
2,10,000	1,20,256	0	3,30,256

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

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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/220204/0008960** is hereby allowed. Respondent is directed to pay a sum of Rs.3,30,256/- (Rupees Three Lakh Thirty Thousand Two Hundred and Fifty Six only) towards refund with interest calculated at 9% from 16/11/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 to 27/07/2022 to the complainant within 60 days from the date of this order. The interest accruing from 28/7/2022 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