

ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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

Dated 11th Day of May 2023

COMPLAINT No: CMP/200909/0005718

COMPLAINANT....

**ABHISHEK PACHISIA
No. 13, AECS Layout
2nd Main Road
Bengaluru Urban-560 094.**

(In Person)

V/S

RESPONDENTS.....

- 1. M/s Bharat & Bharath
Properties
No: 17, 4th Floor, Shah
Sultan Complex
Cunningham Road
Bengalure Urban-560052.**

(ABSENT)

- 2. Bharat C
Partner
M/s Bharat & Bharath
Properties
#538, 1st Cross, 31st Main
Banagirinagar, BSK 3rd Stage
Bengaluru Urban-560085**

**(By Sri.C.K. Nandakumar
Advocate for R-2)**

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JUDGEMENT

1. This complaint is filed under section 31 of RERA Act against the project "**PEARL PERIDOT**" developed by "**M/s BHARAT & BHARATH PROPERTIES**" for the relief of refund with interest.
2. This project is registered in RERA bearing registration no. PRM/KA/RERA/1251/308/PR/171031/001087.
3. The promoter has developed this project at Pearl City, Muthanallur Village, Sarjapur Road, Bengaluru-560 099.
4. The gist of the complaint is that the complainant herein booked residential apartment no. **303** situated in the third floor in the project "**PEARL PEDRIDOT**" and thereafter by entering into an agreement of sale and construction agreement both dated 04/12/2015. The complainant has paid an amount of Rs.2,00,000 /- on 4/12/2015, Rs.3,00,000/- on 19/2/2016, Rs.33,00,000/- on 02/03/2016, Rs.7,00,000/- on 31/3/2016, altogether Rs. **45,00,000/- (Rs. Forty five lakhs only)** to the respondent as per the payment receipts produced by the complainant which has been duly acknowledged by the respondent. The complainant has also entered into tripartite agreement with himself, the builder and the HDFC Bank to avail loan towards purchase of the said apartment. The builder was to handover the said apartment to the complainant within December 2016 with a grace period of 6 months i.e. by June 2017. It is contended that contrary to the assurance and the agreement, the project was not completed and not handed over the possession of the apartment to the complainant. He has issued a legal notice to the respondents on 14.3.2019 and 05/02/2020 demanding the possession of the apartment or in the

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alternative to refund the amount with interest. The legal notice has been duly served on the respondent. In spite of the receipt of the legal notice, the respondent wilfully did not comply with the demand made in the notice. The complainant has approached this Authority for the relief of direction to the respondents to refund the amount with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of notice, the respondent nos. 1 absented himself from appearance before the Authority during the proceedings held on 1/8/2022, 8/8/2022, 29/8/2022, 2/9/2022 and on 17/10/2022 whereas respondent-2 did appear before this Authority through his counsel and filed vakalatnama. Subsequently, neither the counsel for respondent-2 nor the respondent no. 1 have contested the matter by filing statement of objections and producing documents if any on their behalf.

6. In support of his claim the complainant has produced documents such as (1) copy of agreement to sell and construction both dated 4/12/2015 (2) proof of payments (3) Memo of calculation.

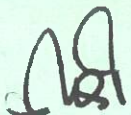
7. On the above averments, the following points would arise for my consideration:-

1. Whether the complainant is entitled for the relief claimed?
2. What order?

8. Findings to the above points are as under:-

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

FINDINGS



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9. Findings to point No.1:- It is the case of the complainant that he has entered into an agreement of sale and construction agreement both dated 4/12/2015 in respect of apartment bearing No. 303 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 December with grace period of 6 months i.e. by June, 2017 as per construction agreement dated 4/12/2015. 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 4/12/2015. Hence, he has filed this complaint seeking refund of the amount.

10. In pursuance of notice, the respondent nos. 1 continuously remained absent on all the dates of hearings whereas the respondent no.2 did appear before this Authority and filed Vakalatnama. Thereafter, both these respondents have failed to file statement of objections, furnishing documents if any on their behalf.

11. At this juncture, it is necessary to reproduce the judgement of the 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 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

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*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 only 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 not submitted any memo of calculation.

14. Though several notices were served upon the respondents, the respondent no. 1 remained continuously absent on all the dates of hearings whereas respondent no.2 who did appear before this Authority through its counsel and filed vakalatnama. Subsequently, both these respondents have failed to file statement of objections and furnishing documents if any, in support of their defence and hence not contested the matter. In the absence of any resistance by the respondents and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant. 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:



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Memo Calculation submitted by the complainant as on 25.8.2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 25.8.2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
45,00,000	29,00,896	0	74,00,896

16. Findings to 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/200909/0005718** is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **74,00,896/-** (Rupees Seventy four lakhs eight hundred ninety six only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 4/12/2015 to 30.4.2017. Further, at the rate SBI MCLR + 2% from 1.5.2017 till the date of realization.
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