

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 FULL BENCH

PRESENT

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

SMT. NEELMANI N RAJU, HON'BLE MEMBER

SHRI. GURIJALA RAVINDRANADHA REDDY, HON'BLE MEMBER

COMPLAINT NO.: CMP/210327/0007843

DATED THIS 24th DAY OF MAY, 2023

COMPLAINANT.....

SIVAKUMAR ATHMANATHAN,

Flat No.302,
Shravanthi Woods Apartments,
14 Nobo Nagar, Khalina Agrahara,
Bannerghatta Road,
Bengaluru - 560076.

(Rep. By M/s. Mento Associates, Advocates)

V/S

RESPONDENTS.....

1. RR ENTERPRISES,

2. MR. M. RAMU,

Managing Partner, RR Enterprises,
(Both respondent 1 and 2 are present in person)

3. MR. SRINIVAS REDDY,

(Respondent No. 1 to 3 are at)
001, Roshan Palace Apartment,
92/A, 1st Cross, Kathriguppe,
BSK 3rd Stage,
Bengaluru - 560085.

(Respondent No.3 is 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 "Roshan Platinum Apartment" developed by "RR Enterprises" on No.

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1337/83/1 & 83/2 Arkere Village, Begur Hobli Ward No. 193, Bengaluru
Urban for the relief of refund with interest.

2. This project has been registered under RERA bearing Registration No. PRM/KA/RERA/1251/310/PR/171015/000847 valid till 30/09/2018. The Authority has further extended its registration for a further period of 12 months i.e., till 30/09/2019.

Brief facts of the complaint are as under:-

3. The complainant has booked an apartment bearing No.402 in the project 'Roshan Platinum Apartment' of the respondent by entering into an agreement of sale dated 27/08/2019 and paid an amount of Rs.50,00,000/- (Rupees Fifty Lakhs Only) to the respondents. The total sale consideration of said apartment is Rs.1,12,00,000/- (Rupees One Crore Twelve Lakhs Only). The complainant had arranged the housing loan from LIC F and SBI but respondents were not willing to register the property. Hence, the complainant cancelled the agreement which was agreed by respondents and they have refunded the amount of Rs.10,00,000/- (Rupees Ten Lakh only) to the complainant. Now, the balance of Rs.40,00,000/- (Rupees Forty Lakh only) with interest and compensation is due from the respondents. Further, the complainant has filed written submissions taking one more contention that the cancellation of sale and construction agreements dated 27/08/2019 was solely due to reasons on the part of respondent as they were unable to come forward for registration though the complainant was ready to pay the balance sale consideration. In fact, as on the date of sale and construction agreements the complainant had paid a sum of Rs.50,00,000/- (Rupees Fifty Lakh only) in favour of respondents as an advance towards purchase of the said flats. The payment of part advance sale consideration of Rs.10,00,000/- (Rupees Ten Lakh only) towards GT Infra trade was made on instructions of respondent No.1. Both the respondents have acknowledged the said payment of Rs.10,00,000/- (Rupees Ten Lakh only) towards Respondent No.1. Hence, this complaint.

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4. After registration of the complaint, in pursuance of the notice, the respondent No.1 has appeared before this Authority and filed statement of objections as under:-
5. He has denied the entire allegations made by the complainant against him as false. He contends that the complainant has paid in total a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) to RR Enterprises the respondent No.2. In that sum, Rs.5,00,000/- (Rupees Five Lakhs only) has already been returned through cheque bearing No. 217756 dated 02/12/2020. So, now the balance is only Rs.35,00,000/- (Rupees Thirty Five Lakhs only). The complainant had informed the respondent that he wishes to cancel his booking on 26/01/2020 through e-mail that he could not continue with the purchase of the flat. Because, he has approached LIC housing finance and SBI for home loan. The complainant alleges that both the financiers were not able to disburse the home loan since they were demanding the property be registered in the name of complainant and then only they will disburse the home loan. In fact, the complainant has not requested RR enterprises for any documents required for bank loan. The apartment was not ready for registration at that time and no bank / financier would force the developer for registration, would instead release 90% funds from the home loan and would asked for registration only after the developer confirms that the said flat is ready for registration and occupation.
6. Further, he contends that, he is ready to refund the money to the complainant after following the refund terms in the agreement i.e., if purchaser chooses to cancel his booking which states that 20% of the sale consideration of both agreement to sale and construction agreement needs to be deducted from the amount paid to the developer along with deduction of taxes. The respondent was unable to resale the flat of complainant due to covid 19 pandemic. The respondent had finished 90% of construction of the flat when the complainant had booked in August 2019 and the respondent had paid huge interest towards his construction loan. Hence, prayed to dismiss the complainant.

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7. In support of his claim, the complainant has produced in all 10 documents such as copy of Agreement of sale dated 27/08/2019, construction agreement dated 27/08/2019, tripartite agreement dated 10/10/2019, payment receipts, E-mail conversations dated 15/10/2019, 16/10/2019 and 21/10/2021, legal notice dated 01/02/2021, RPAD acknowledgements, print out showing respondents engaged with GT Infra Trade, screenshot of statement of respondent in proceeding bearing 8263 about the completion of the project in the year 2018 and email showing the written arguments furnished on respondent.
8. Respondent No.1 has filed a copy of other purchasers sanction letter.
9. This matter was heard on 10/11/2021, 14/2/2021, 02/02/2022, 03/03/2022, 08/06/2022, 10/08/2022, 18/10/2022, 19/10/2022, 08/11/2022, 03/01/2023 and finally on 14/02/2023.
10. Heard both parties.
11. **On the above averments, the following points would arise for our 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. **Our findings on point No. 1:-** Contention of complainant is that, so far they have paid a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) to the respondents out of total sale consideration of Rs.1,12,00,000/- (Rupees One Crore Twelve Lakhs only). The respondents were supposed to handover the possession of the apartment in favour of complainant on or before November

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2019 as per the terms of agreement of sale dated 27/08/2019. According to the complainant due to non co-operation of respondents in providing required documents for availing home loan from bank / financier, he could not get the loan.

14. According to the respondents, the complainant never asked them for required documents availing home loan. Though the flat was 90% ready, the complainant himself had cancelled the booking. Hence, they are ready to refund the amount after deducting the admissible charges.
15. From the materials available on record, it is obvious that the complainant has already paid substantial sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the complainant herein for refund with interest.
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

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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."

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., in accordance with sale agreement.
18. The complainant has filed his memo of calculation as on 13/04/2023 claiming an amount of Rs.54,83,817/- (Rupees Fifty Four Lakhs Eighty Three Thousand Eight Hundred Seventeen only) as refund with interest. Despite of several opportunities were given, the respondents have not filed their memo of calculation. A thorough verification of documentary evidence submitted by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted vide their memo of calculation dated 13/04/2023 in view of the non-co-operation of the respondents.
19. Therefore, it is incumbent upon the respondents 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	30-04-2017	0	0	30-04-2017	0
2		0		TOTAL INTEREST (I1)	0

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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	0	944	01-12-2019	8.15	10.15 as on 01-05-2017	0
2	01-05-2017	0	944	01-12-2019	8.15	10.15 as on 01-05-2017	0
3	06-08-2019	500,000	117	01-12-2019	8.6	10.6 as on 10- 07-2019	16,989
4	07-08-2019	500,000	116	01-12-2019	8.6	10.6 as on 10- 07-2019	16,843
5	27-08-2019	4,000,000	96	01-12-2019	8.45	10.45 as on 10-08-2019	109,939
6	TOTAL AMOUNT	5,000,000				TOTAL INTEREST (I2)	143,771

Refund Interest Calculation From 01/05/2017 (After RERA)

S.NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	5,000,000	01-12-2019	500,000	4,500,000	367	02-12-2020	8.2	10.2 as on 10-11-2019	461,515
2	4,500,000	02-12-2020	500,000	4,000,000	862	13-04-2023	7.3	9.3 as on 10-11-2020	878,531
3								TOTAL INTEREST (I3)	1,340,046

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 13-04-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
5,000,000	1,483,817	1,000,000	5,483,817

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

21. **Our findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we proceed to pass the following order.

[Signature]

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ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/210327/0007843 is hereby allowed.

1. Respondent No.1 and 2 are hereby directed to pay the amount of Rs.54,83,817/- (Rupees Fifty Four Lakh Eighty Three Thousand Eight Hundred and Seventeen Only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at SBI MCLR+2% from 06/08/2019 till 13/04/2023.
2. The interest due from 14/04/2023 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.

(G.R. REDDY)

Member
K-RERA

(NEELMANI N RAJU)

Member
K-RERA

(H.C. KISHORE CHANDRA)

Chairman
K-RERA