

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**

**PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN**

**DATED 31<sup>ST</sup> DAY OF MAY 2023**

**COMPLAINT No: CMP/UR /201203/0007139**

**COMPLAINANT:**

**TANMAYA MISHRA  
L-37, PHASE-1, BASANTI  
COLONY, ROURKELA  
SUNDARGARH  
ODISHA-769012**

**(BY SRI. MAHESH S.  
KUMAR, ADVOCATE)**

**V/S**

**RESPONDENT:**

**M/S NANDHINI HOTELS  
PRIVATE LIMITED  
REPRESENTED BY  
RUPESH ANAND  
#114/2, LALBAGH FORT  
ROAD, MINERVA CIRCLE  
BENGALURU-560004**

**(Ex-parte)**

**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA Act against the project "PRAKRUTHI SOLITAIRE" developed by " M/S NANDHINI HOTELS PRIVATE LIMITED" for the relief of refund with interest.
2. This project is not registered in RERA. This Authority has passed an interim order dated 18<sup>th</sup> October 2022 directing the respondent-promoter to register the project under RERA immediately as required under section 3 of the Real Estate(Regulation and Development) Act, 2016 within two weeks from the date of this order. Further, show cause notices were issued

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on 20/10/2022 and on 17/1/2023 directing the respondent-promoter to appear before this Authority on the said dates and to submit explanation/written submission if any on his behalf to defend his case. The respondent-promoter failed to do so.

- 3. The brief facts of the case is as under:** The complainant herein had booked a flat No: I-603 in the project "PRAKRUTHI SOLITAIRE" developed by respondent-promoter in Sy.No: 11/2 & 130/5, Ananth Nagar, Kammasandra, Electronic City Phase II, Bengaluru-560 100. The total sale consideration of the said flat is Rs.46,00,000/- (Rs. Forty six lakhs only). The complainant has paid an amount of Rs.4,60,000 on 8.7.2016 and Rs.36,80,000/- on 23/8/2016 altogether **Rs.41,40,000/-** to the respondent-promoter. The complainant has also entered into an Memorandum relating to deposit of title deeds on 27.8.2016 State Bank of Mysore, constituted under the State Bank of India(Subsidiary Banks) Act, 1959 having its Head Office at Kempegowda Road, Bengaluru-560 254 and having a Branch State Bank of Mysore, Bommasandra at site No.114, Kachanayakanahalli, Bommasandra, Jigani Hobli, Anekal Taluk, Bengaluru-560105(hereinafter called as "Mortgagee". The Mortgagors have deposited on 22.8.2016 the documents of title mentioned in the Schedule II(hereunder referred to as the schedule property" with the Mortgagee with an intention to create mortgage in favour of the Mortgagee for the purpose of securing repayment to the Mortgagee of all the amounts. Thereafter, original copy of agreement executed by M. Muniyappa and others and M/s Nandhini Hotels Private Limited in favour of Tanmaya Mishra on 8.7.2016. Subsequently, the construction agreement entered into by M/s Nandini Hotels Private Limited in favour of the complainant on 9/7/2016. As per the memo of calculation furnished by the complainant on 20.11.2022, the respondent-promoter is required to hand over the possession of the said flat was 30.3.2017. As on date, the respondent-promoter has neither



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handed over the possession of the flat nor any communication from the builder in this regard. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent had abstained from appearance before the Authority during the proceedings held on 12/8/2022, 17/10/2022, 9/12/2022, 10/1/2023, 3/2/2023 and has not contested the matter by filing statement of objections, producing documents if any on his defence but remained continuously absent on all the dates of hearings.

5. In support of his claim, the complainant has produced documents such as memo of calculation, payment receipts & transaction details, cost break up and demand letter dated 19.7.2016 and GPA in favour of Poornima S.

6. Heard the complainant. This matter was heard on 12/8/2022, 17/10/2022, 9/12/2022, 10/1/2023, 3/2/2023

**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**

**9. Findings to point No.1:-** It is the case of the complainant that he has entered into an agreement of sale dated 8/7/2016 and construction agreement dated

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9/7/2016 in respect of flat bearing No. I-603 in the project "PRAKRUTHI SOLITAIRE" of the respondent. 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 8/7/2016. Hence, he has filed this complaint seeking refund of the amount.

10. In pursuance of notice, the respondent-promoter has continuously remained absent on all the dates of hearings and subsequently, the respondent has failed to file statement of objections, furnishing documents if any on his behalf.

11. At this juncture, my attention is drawn towards the decision of 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 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.*

*(Signature)*



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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 /plot in accordance with sale agreement.

13. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021(arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, it is held as under:

*"Section-18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund or the amount with interest at such rate as may be prescribed in this behalf"*

14. 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 in spite of several opportunities given to him.

15. Though several notices were served upon the respondent, the respondent remained continuously absent on all the dates of hearings. Subsequently, the respondent has failed to file statement of objections and furnishing documents if any, in support of his 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.

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16. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

**Memo Calculation submitted by the complainant as on 20.11.2022**

PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 22.9.2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
41,40,000	25,96,329	0	67,36,329

**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/UR/201203/0007139** is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **67,36,329/-** (Rupees Sixty seven lakhs thirty six thousand three hundred twenty nine only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 8/7/2016 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**