

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 3rd DAY OF JUNE 2023

COMPLAINT No: CMP/UR/ 211120/0008612

COMPLAINANT....

**PRASHANTHA PADIYAR
NANDA GOKULA, PANDESHWARA
VILLAGE, SASTHAN
UDUPI-576226
KARNATAKA.**

**(By Mr.NAGENDRA BHAT & CO
CHARTERED ACCOUNTANT)**

V/S

RESPONDENT.....

**AMRITH SHENOY
SHREE LAKSHMEE HOMES &
INFRASTRUCTURES
ANANTH, RANGANATH SHENOY
COMPOUND
VOLAKADU, UDUPI-576101**

(Exparte)

JUDGEMENT

1. This complaint is filed under section 31 of RERA Act against the project "VOYAGER" developed by " **M/S SHREE LAKSHMEE HOMES AND INFRASTRUCTRES**" for the relief of refund with interest.
2. This project is not registered in RERA. This Authority has passed an interim order dated 30th November 2022 directing the respondent-

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promoter to register the project as required under Section 3 of the RERA Act, 2016, within two weeks from the date of receipt this order. The promoter was also given an opportunity to submit his explanation within three weeks as to why penalty proceedings u/s 59(1) of the ACT should not be initiated for violation of Section 3 of the Act. But the respondent has failed to do so.

3. The promoter has developed this project in the limits of Sy.No: 87A-11A and 87A-11B, Voyager, Moodanadamboor Village, Ambalpaday Gramapanchayath, Udupi Taluk.
4. The gist of the complaint is that the complainant herein booked an apartments bearing no: 504 and 505 situated on the fifth floor in the project "VOYAGER" of the respondent and thereafter entered into an agreement of sale dated 31st March 2014 with the respondent for a sale consideration of Rs.45,00,000/- (Rs. Forty five lakhs only). The complainant has paid an amount of Rs.23,00,000/- on 12/4/2014, Rs.3,50,000/- on 29/12/2016, Rs.1,00,000/- on 6/8/2017, Rs.1,00,000/- on 10/9/2017 and Rs.15,00,000/- on 15/11/2017 altogether Rs.43,50,000/- (Rs. Forty three lakhs fifty thousand only) to the respondent. The respondent was required to hand over the possession of the said apartments within 28.2.2017. The promoter did not the complete the project till date. The complainant insisted upon the specific performance of the contract as per agreement. But the respondent even failed to refund the amount as was promised. Hence, the complainant has approached this Authority seeking for the relief of refund with interest. Hence, this complaint.



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5. After registration of the complaint, in pursuance of the notice, the respondent neither appeared before this Authority during the proceedings held on 26/09/2022, 19/10/2022, 7/11/2022, 28/11/2022 19/12/2022, 23/1/2023, 13/2/2023, 13/3/2023 and on 31/3/2023 nor contested the matter by filing statement of objections or producing documents if any on his defence and remained continuously absent and hence he has been placed as Ex-parte.
6. In support of his claim the complainant has produced documents such as (1) copy of agreement of sale dated 31/3/2014 (2) Details of payment made to the respondent (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

9. **Findings on point No.1:-** The grievance of the complainant is that as per the agreement of sale entered into between the parties dated 31/3/2014 the promoter has defaulted in handing over the possession of the said apartments within the stipulated timeline. As per the agreement of sale, the respondent was required to hand over the possession of the said flats within 28.2.2017. Hence, the

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respondent has failed to abide by the terms and conditions of sale agreement dated 31/3/2014. Hence he has filed this complaint seeking refund of amount with interest.

10. Despite of several notices served on the respondent, the respondent remained absent continuously and has not participated in the proceedings by filing statement of objections, furnishing documents in support of his defence etc. Hence, the respondent has not resisted the claim of the complainant. The complainant has established his claim by producing cogent documentary evidence.

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.

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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 etc., 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 of the complaint and copy of the agreement between the parties, it is obvious that the complainant has already 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 on his behalf.

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

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Memo of Calculation submitted by the complainant as on 17.2.2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 17.2.2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
43,50,000	30,13,530	3,00,000	70,63,530

16. Considering all these aspects, the point raised above is answered in the Affirmative.

17. **Findings on 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/211120/0008612** is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs.70,63,530/- (Rs. Seventy lakhs sixty three thousand five hundred thirty only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 12/4/2014 to 30/4/2017. Further, at the rate of 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