

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 7TH DAY OF JUNE 2023

COMPLAINT No: CMP/UR/220504/0009410

COMPLAINANT....

**VADIVEL PRABU V.
1-175/46, SHRI RASTU
FIRST FLOOR, BHASKAR
COLONY, HOSABETTU
DAKSHINA KANNADA
KARNATAKA-575019**

**(BY SRI. KKS SHASHEDARAN
LEGAL REPRESENTATIVE)**

V/S

RESPONDENT.....

**M/S PRABHAVATI BUILDERS
AND DEVELOPERS PRIVATE
LIMITED
#27/89, 4th "B" CROSS
30th MAIN, BTM 2ND STAGE
BENGALURU-560 076**

(EX-PARTE)

JUDGEMENT

1. This complaint is filed under section 31 of RERA Act against the project "**PRABHAVATHI GRANDVIEW**" developed by "**M/S**

198

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

PRABHAVATHI BUILDERS AND DEVELOPERS PRIVATE LIMITED for the relief of refund of amount along with interest.

2. This project is not registered in RERA. This Authority has passed an interim order dated 21/12/2022 directing the respondent-promoter to register the project immediately as required under section 3 of the Real Estate(Regulation and Development) Act, 2016 within two weeks from the date of this order. But the respondent has failed to do so.
3. The promoter has developed this project at 440/1A, Sarjapura Village, Sarjapura Hobli, Anekal Taluk, Bengaluru Rural District.
4. The gist of the complaint is that the complainant herein had booked flat no.**T-59** situated in the third floor in the project "**PRABHAVATHI GRANDVIEW**" and thereafter by entering into an agreement of sale dated 18/12/2015. Subsequently, he has also entered into agreement of construction dated 25/02/2016. As per agreement, Rs.12,91,000/- was the value of flat and Rs.12,09,000/- was the construction cost. Thus, the total sale consideration of the said flat was Rs.25,00,000/- (Rs. Twenty five lakhs only). The complainant has paid an amount of Rs.10,00,000/- (Rs. Ten lakhs only) on various dates which has been duly acknowledged by the respondent-promoter. The complainant has also borrowed home loan from Corporation Bank, Bengaluru- Attibele Branch towards purchase of the said flat. The respondent-promoter is required to hand over the possession of the said flat within 18 months with a grace period of 3 months as per construction agreement. However, the respondent has not completed the construction of the said unit within the stipulated

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

timeline and has failed to abide by the terms and conditions of the agreement of sale dated 18/12/2015. Having lost confidence with the builder, the complainant has approached this Authority seeking for the relief of refund of amount with interest.

5. After registration of the complaint, in pursuance of notice, the respondent has neither appeared before this Authority during the proceedings held on 16/9/2022, 10/10/2022, 17/10/2022, 3/11/2022, 14/11/2022, 2/12/2022, 16/12/2022, 23/1/2023 and on 10/2/2023 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. The complainant in support of his claim has produced documents such as (1) copy of agreement of sale dated 18/12/2015 (2) copy of construction agreement dated 25/2/2016 (3) Payment receipts made to the respondent (5) copy of 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

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

FINDINGS

9. **Findings on point No.1:-** It is the case of the complainant that he has entered into an agreement of sale dated 18/12/2015 in respect of unit bearing No. T-59 in the project "**PRABHAVATHI GRANDVIEW**" of the respondent-promoter. The respondent-promoter is required to hand over the possession of the said flat within 18 months with a grace period of 3 months as per construction agreement. It is his case that the developer has not performed in completing the project despite the complainant has paid substantial sale consideration to the respondent. Hence, the builder has failed to abide by the terms of the agreement of sale dated 18/12/2015.
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 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

Ad

362
4

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

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.

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"

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

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.
15. 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 4/6/2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 4/6/2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
10,00,000	6,06,897	0	16,06,897

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

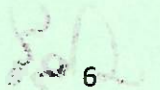
16. **Findings on point no.2.** In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I proceed to pass the following order:

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/220504/0009410** is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs.16,06,897/- (Rupees Sixteen lakhs six thousand eight hundred ninety seven only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 29/6/2015 to 30.4.2017. Further, at the rate SBI MCLR + 2% from 1.5.2017 till the date of realization.



 6

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

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

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY