

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, CHAIRMAN

DATED 7TH DAY OF JUNE 2023

COMPLAINT No: CMP/UR /190625/0003328

COMPLAINANT....

**DEEPIKA PATHAK
C/o MIRA PATHAK
NIRALA NAGAR
SIWAN
BIHAR-841226**

**(BY SRI. GIRISH B.N.
ADVOCATE)**

V/S

RESPONDENT.....

**M/S DREAMZ INDRA INDIA
LIMITED
NO: 577/B, 2nd FLOOR, OUTER
RING ROAD, TEACHERS
COLONY, KORAMANGALA
BENGALURU URBAN-560034**

(EX-PARTE)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA against the project "DREAMZ SAAKAR" developed by " M/S DREAMZ INFRA INDIA LIMITED" for the relief of refund of amount with interest.



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2. The builder has developed this project situated in Sy.No. 130/3 Horamavu Village, Krishnarajapuram Hobli, Bengaluru East Taluk.
3. This project is not registered in RERA. This Authority has passed an interim order dated 17th October 2022 directing the respondent-promoter to register the project as required under section 3 of the RERA within two weeks from the date of this order followed by show cause notice dated 29/9/2022. But the respondent has failed to do so.
4. The gist of the complaint is that the complainant had entered into an Memorandum of Understanding on 01/08/2016 for the purchase of undivided share of land measuring in proportion to the 1375 Sq.ft of constructed super built area in the schedule-A property in the project "DREAMS SAAKAR" of the respondent. It was agreed in all for total consideration of Rs.29,00,000/- (Rs. Twenty nine lakhs only) for sale of the above mentioned property as per the MOU. The respondent was required to hand over the possession within 24 months with additional grace period of 6 months from the date of MOU. The complainant has paid an amount of Rs.1,00,000/- on 31/7/2016, Rs.1,00,000/- on 14/8/2016 and Rs.6,70,000/- on 16/8/2016 altogether Rs.8,70,000/- (Rs. Eight lakhs seventy thousand only) to the respondent-promoter which has been duly acknowledged by him. It is contended that there was neither any development nor any communication from the respondent-promoter about the said project. Though 6 years have been elapsed after signing of MOU, there was no chance of completion of the project and obtaining the occupancy certificate. The respondent-promoter has not handed over the

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property within the stipulated timeline as agreed and hence he has suffered from monetary loss. Hence, this complaint.

5. After registration of the complaint, in pursuance of notice served, respondent has neither appeared before this Authority during the hearings held on 25/7/2022, 19/8/2022, 2/9/2022, 23/9/2022, 14/10/2022, 14/11/2022, 2/12/2022, 19/12/2022, 30/01/2023, 17/2/2023 and 20/3/2023 nor contested the matter by filing statement of objections and producing documents on his behalf but continuously remained absent on all the dates of hearings and hence he has been placed as Ex-parte.

6. In support of his claim, the complainant has produced documents such as Memorandum of Understanding dated 1/8/2026, commitment letter dated 14/8/2016, payment receipts with regard to payment made to the respondent.

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 she has entered into an Memorandum of Understanding dated 1/8/2016 for the purchase of undivided share of land measuring in proportion to the 1375 Sq.ft of

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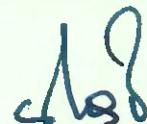
constructed super built area in the schedule-A property in the project "DREAMS SAAKAR" of the respondent. It is her case that the developer has not completed the project despite the complainant having paid substantial sale consideration to the respondent. The builder has failed to abide by the terms of the MOU dated 1/8/2016. Hence, she has filed this complaint seeking refund of the amount.

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

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



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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 respondent 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. .

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

CSB

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Memo Calculation submitted by the complainant as on 7/6/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 7/6/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
8,70,000	5,94,943	0	14,64,943

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

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/190625/0003328** is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs.14,64,943/- (Rupees Fourteen lakhs sixty four thousand nine hundred forty three) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 31/7/2016 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