

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. KIRHOSRE CHANDRA, HON'BLE CHAIRMAN

DATED 8TH DAY OF JUNE 2023

COMPLAINT NO.:CMP/211028/0008480

COMPLAINANT.....

C PADMA JYOTHI
C 42/16, 3RD FLOOR
DRDO TOWNSHIP PHASE-2
C V RAMAN NAGAR
BENGALURU URBAN
KARNATAKA - 560093

(BY MR.SHIVAAKUMAR N,
AVINASH P, ADVOCATES)

V/S

RESPONDANT/S.....

**M/S SIPANI PROPERTIES PVT
LTD**
NO. 439, 18TH MAIN 6TH
BLOCK, KORMANGLA
BENGALURU URBAN
KARNATAKA - 560095

PROJECT NAME &

SIPANI JARDIN

REGISTRATION NO.

PRM/KA/RERA/1251/308/PR
171031/001129



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

JUDGEMENT

1. This complaint is filed under section 31 of RERA Act against the project "**SIPANI JARDIN**" developed by "**SIPANI PROPERTIES PRIVATE LIMITED**" for the relief of refund along with interest .
2. The promoter has developed this project at Sy.no. 168,169, Madivala village, Marsur post, Kasaba hobli, Anekal taluk, Bengaluru-562106.
3. The gist of the complainant is that the complainant herein had booked an apartment bearing no.210 on the second floor of Block-C in the project "Sipani Jardin" by entering into an agreement of sale dated 20.8.2016 and supplementary agreement for loan dated 20.8.2016 with M/s Sipani Properties Limited. As per supplementary agreement entered into between both the parties, the vendor/builder has offered a subvention scheme to the purchaser with regard to purchase of the said flat by purchaser and the purchaser is interested to go ahead with the said scheme with certain terms and conditions. The complainant has paid an amount of Rs.25,14,053/- (Rs. Twenty five lakhs fourteen thousand fifty three only) to the respondent on various dates which inclusive of monthly EMIs paid by the complainant towards home loan availed with IIFL Home Finance Limited for purchase of the said apartment. As per the agreement to sale and agreement to construction, the respondent is required to hand over the flat by September 2017 with a grace period upto 31st December 2017. However, the respondent has failed to construct the said project and hand over the possession. The complainant has sought for the refund and the respondent has agreed to return the same and cancelled the allotment but failed to



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

return the amount. The complainant has sought for the relief of refund along with interest. Hence, this complaint.

4. After registration of the complainant, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and filed memo dated 14/10/2022 as under: The respondent has submitted the ledger account statement from 1st April 2021 to 30th September 2022 which reflects the payments being made to the complainant on monthly basis. It is contended that the respondent company is able to make payment only on monthly basis as funds are being utilized for ongoing projects. Further, it is undertaken by the respondent that it shall clear the dues at the earliest if the financial position of the company improves. The respondent prayed this Authority that the aforesaid memo along with the document may be taken on record in the interest of justice.
5. This matter was heard on 21/9/2022, 14/10/2022, 28/10/2022 and on 14/11/2022.
6. Heard both the parties.
7. The complainant in support of her claim has produced documents such as (1) copy of sale agreement (2) copy of supplementary agreement (3) receipts (4) emails (5) legal notice.
8. The respondent in support of his defence has produced documents such as ledger account statement from 1st April 2021 to 30th September 2022.



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

9. **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?

10. **My Answer to the above points are as under:-**

1. In the Affirmative.
2. As per final order for the following

FINDINGS

11. **Findings on point No.1:-** It is the case of the complainant that she has entered into an agreement of sale and supplementary agreement both dated 20.8.2016 in respect of unit bearing No. 210. The agreement entered into between the respondent and the complainant stipulates that, the respondent was required to hand over the possession of the said apartment on or before on or before December 2017 with grace period of 6 months. It is her 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 20.8.2016. It was agreed by the builder to hand over the same by December 2017 with grace period of 6 months, but still the builder has not handed over the unit even after a lapse of over 6 years as agreed.

12. In pursuance of notice, the respondent has appeared before this Authority on 15/7/2012 through its counsel and filed a memo dated 14/10/2022. But subsequently the respondent has failed to file statement of objections, furnishing documents on its 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

13. 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.

14. 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.
15. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get her 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.
16. Therefore, it is incumbent upon the respondent to refund of balance amount with interest which is determined as under:



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

Memo Calculation submitted by the complainant as on 3/6/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 3/6/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
25,14,053	13,39,745	11,03,036	27,50,762

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

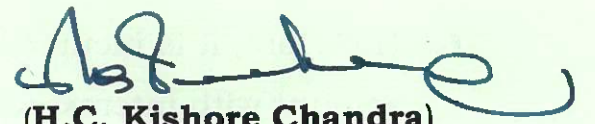
18. **Findings on point no.2.** In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/211028/0008480** is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs.27,50,762/- (Rupees Twenty seven lakhs fifty thousand seven hundred sixty two only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 09.08.2016 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