

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

DATED 12th Day of June 2023

COMPLAINT NO. CMP/200628/0006078

COMPLAINANTS:

Balajayalakshmi Nagavishnu &

Nagavishnu Nagaraj

408, Naga Nivas, 6th B Cross

18th Main, Koramangala

6th Block, Bengaluru-560 095.

(By Mr. Udhaya Kumar G
Advocate)

V/s

RESPONDENTS...

1. **M/s Unishire Promoters**

Private Limited

No.36, Railway Parallel Road

Nehru Nagar

Bengaluru-560 020

Currently known address of

The Unishire Promoters Private
Limited

No.42, Castle Street, Ashok

Nagar, **Bengaluru-560 025.**

2. **Kirti Mehta**

3. **Pratik K. Mehta**

4. **Vinay K. Mehta**

Address of R1,R2 & R3

M/s Unishire Promoters

Private Limited

No.36, Railway Parallel Road

Nehru Nagar

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(By Sri. **G.S. Venkat Subbarao**
and **A. Rajesh, Advocates**)

PROJECT NAME &

UNISHIRE WEAVE

REGISTRATION NO.

PRM/KA/RERA/1251/309
PR/180604/001862

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "**Unishire Weave**" developed by "**M/s Unishire Promoters Private Limited**" for the relief of refund with interest.
2. The promoter has developed this project in Sy.no. 89/2, Chokkanahalli Village, Yelahanka Hobli, Bengaluru North Taluk, Bengaluru Urban.
3. **Brief facts of the complaint are as under:** The complainants have invested in a special buy back investment scheme with M/s Unishire Promoters Private Limited in its housing project known as "**Unishire Weave**" for residential apartment bearing no. **T2-B-202**, second floor, **T2 Tower** of the respondent by entering into an memorandum of understanding and memorandum of agreement of sale both dated **8.3.2016**. Out of total sale consideration of Rs.**57,10,532/-** (Rs. Fifty

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seven lakhs ten thousand five hundred thirty two only) the complainants have paid an amount of Rs. **28,55,266/-** (Rs. Twenty eight lakhs fifty five thousand two hundred sixty six only) to the respondents which has been duly acknowledged by them. As per the memorandum of agreement of sale, the respondent was required to complete and hand over the apartment within 36 month with 6 months grace period from the date of issuance of commencement certificate from the BBMP. In this case the commencement certificate was obtained on 8.8.2016 by the respondent from BBMP and he did not complete the works in all respects of the project as on **8.9.2019** as agreed. The buy back option was exercised on 22.12.2018 through e-mail and M/s Unishire Promoters Private Limited have also acknowledged the same on 08.01.2019 and confirmed needful action as per terms of MOU. However, M/s Unishire Promoters Private Limited failed to honour the same and did not execute the buy back and should have returned the invested amount with 18% CAGR interest till the 30th month from the effective date of MOU which works out to close of business of 4.9.2018 and the amount due on that date was Rs. **43,33,483/-**. The MOU further stipulates that M/s Unishire Promoters Private Limited can avail a grace period of 6 months and return the above amount plus 20% CAGR from 30th month till 36th month. As such the amount due as on 4.3.2019 was Rs. **47,66,831/-**. Further, the MOU stipulates that in the event of failure to honour the buy back and make this payment by the close of business as on 4.3.2019 (36th month of MOU), M/s Unishire Promoters Private Limited is liable to sell the apartment to them without asking for any further payment from their side and hand over the completed apartment to them. The respondents have not completed the said project till date as well and work has stopped at the project side for a

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very long time. As such the complainants demanded the respondents to pay the amount of Rs.47,66,831/- which was due on close of business of 4.3.2019 along with interest at 20% CAGR till the date of actual payment. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through its counsel and filed statement of objections as under: The respondents denied each and every allegations made against it as false. It is contended that admittedly the respondents are investors who has invested their money into the project of this respondent with an object of enriching themselves and the transaction between the complainant and respondents was purely commercial in nature. The complainants in order to invest and gain profits out of the project has brought in the investment money. As an alternative and in order to secure the amount of investment, the complainants have entered into an agreement of sale to purchase the immovable property. But the same does not mean the status of the complainants would change from that of an investor to buyer.

5. It is submitted that the complainants are home buyers having entered into the memorandum of agreement of sale to purchase the real estate project. Further, the complainants have not paid the agreed amounts as per the time schedule prescribed under the memorandum of agreement of sale. The complainants are yet to pay 50% of the sale consideration amount towards acquiring immovable property. For having not paid the entire sale consideration, the complainant cannot complain that there is a delay on the part of the respondents and that the property is not delivered.

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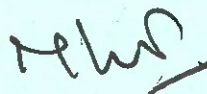
6. It is submitted that the complainants are not entitled for refund of the amount as claimed in the complaint. If at all the complainants seek refund, clause 10 of the memorandum of agreement of sale, would contemplate deduction of cancellation charges. The advance amount in case of cancellation is refunded only after the sale of the apartment which is booked by the complainants and under receipt of the amount from the prospective buyers. Further, the complainants being party to the said agreement and having agreed to the terms and conditions mentioned therein cannot now go back from such agreed terms and conditions and seek refund.
7. As per terms the respondents are required to deliver the possession of the apartment within 36 months plus 6 months grace period subject to receiving the entire sale consideration and other levies payable by the complainants.
8. At this juncture, when the time was expiring, there was an outbreak of pandemic in the country on account of which the entire construction activity has come to a standstill. The respondents were unable to mobilize the labourers and construction equipments during the said period and therefore could not complete the project in time.
9. It is submitted that it was also within the knowledge of the complainants that the project is mortgaged to non-banking financial corporation called M/s Altico Capital India Limited which was the prime lender. The amount received are directly credited to escrow account which was under the control of the lender and the amount for development activity was to be released by the said lender. M/s Altico Capital India Limited however committed defaults and various acts of fraud and did not release the money for timely progress of the project. This was also a contributing factor for delay of the project.

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10. The Engineers of RERA team have inspected the spot on 12.9.2022 and have filed the report. The inspection report reveals that the present construction activities are carried out by the "High Crest Infra Promoters Private Limited.
11. In support of their claim, the complainants have produced documents such as (1) copy of memorandum of understanding and sale agreement both dated 8/3/2016 (2) payment receipts (3) email to unishire for buyback (4) process memo (5) memo of calculation.
12. In support of their defence the respondents have produced documents such as (1) copy of memorandum of agreement of sale dated 8.3.2016 (2) copy of the memorandum of understanding dated 8.3.2016.
13. Heard the both the parties. This matter is heard of 14.12.2022.
14. The complainants have filed rejoinder to the statement of objections filed by the respondent on 17.9.2021 as under: The respondent entered into an agreement of sale dated 8.3.2016 with the complainant. The intention of the complainant was to possess a flat as identified in Tower T2-B-202 as per the terms and conditions contained therein in the agreement of sale dated 8.3.2016. It was the respondents who offered an alternate option of buy-back and executed a MOU and the complainant has not made any commercial transactions as an investor in the residential project. The respondents have completely not fulfilled their responsibility and are now shirking their accountability by taking recourse to the alternate scheme of buy-back. The respondents who failed to construct the promised building "The Weave" which is currently in an incomplete state. It is contended that as more than 5 years have lapsed since the money was paid, the said project stands incomplete and caused unbearable financial loss to the complainant.

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The respondents have not disclosed about the mortgage of the unishire property with NBFC i.e M/s Altico Capital India Limited to the complainant besides shared the ESCROW account details.

15. On the above averments, the following points would arise for our consideration.

16. 1) Whether the complainant is entitled for the relief claimed?
2) What order?

17. **Our answer to the above points is as under:**

- 1) In the Affirmative
2) As per final order for the following:

FINDINGS

18. **Our findings on point no.1:** From the materials available on record, it is apparent that in spite of entering into an memorandum of understanding and memorandum of agreement to sale to hand over the possession of the apartment, the respondent-promoter has not completed the project as per agreement and has delayed the project. Hence, the builder has failed to abide by the terms of the sale agreement dated 8.3.2016. There seems to be no possibility of completing the project or handing over possession in near future.

19. The contention of the respondents are that they have to complete the project within a period of 36 months from the date of obtaining the commencement certificate. In the instant case, the respondents have obtained commencement certificate on 8.8.2016 and subject to the grace period provided, the respondents have not taken steps to

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complete the project and deliver the apartment. Besides the respondents could not procure the prospective purchasers so as to raise funds and it was under these circumstances the respondents could not speed up the project. Further, when the time was expiring there was an outbreak in the country on account of which the entire construction activity has come to a standstill. The respondents were unable to mobilize the labourers and construction equipments during the said period and therefore could not complete the project in time.

20. At this juncture, our 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 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.

21. Therefore, as per section 18(1) of the Act, the promoter is liable to refund the amount received along with interest.

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22. From the averment of the complaint and the copy of the agreement between the parties, it is obvious that the complainant has already paid the substantial consideration. Having accepted the said amount and failure to keep up the promise to hand over the possession of apartment certainly entitles the complainants herein for refund of entire amount paid to the respondent along with interest.
23. The complainant has submitted the memo of calculation dated 22.2.2023 whereas the respondents-promoter have not submitted any memo of calculation in spite of sufficient opportunity given to them.
24. 24. Therefore, it is incumbent upon the respondents to refund the amount with interest which is determined as under:

Memo of Calculation submitted by the complainant as on 22.2.2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 22.2.2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
28,55,266	19,79,946	0	48,35,212

25. Considering all these facts, this Authority concludes that the complainant is entitled for the relief claimed. Accordingly, the point raised above is answered in the Affirmative.
26. **Our findings on point no.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following:

ORDER

In exercise of the powers conferred under section 31 of the Real Estate Regulation and Development) Act, 2016, the complaint bearing No.**CMP/200628/0006078** is hereby allowed.

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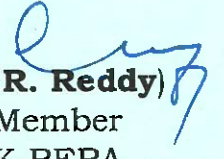
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1. The respondent is hereby directed to pay a sum of Rs. **48,35,212/-** (Rs. Forty eight lakhs thirty five thousand two hundred twelve only) towards refund along with interest to the complainant **within 60 days** from the date of this calculated at the rate 9% percent from **8.3.2016** to **30.4.2017**. Further, at the rate of **SBI MCLR +2 per cent** from **1.5.2017** till the date of realization.
2. The complainants are at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order

No order as to costs.


(Neelmani N. Raju)
Member
K-RERA


(G.R. Reddy)
Member
K-RERA


(H.C. KISHORE CHANDRA)
Chairman
K-RERA