

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 12<sup>th</sup> Day of June 2023**

**COMPLAINT NO. CMP/211110/0008535**

**COMPLAINANTS:**

**Rohan Vyavaharkar &  
Debkanya Dhar**

B1, Metropolitan

Pali Hill

Bandra(W)

**MUMBAI CITY-400150**

**Maharashtra**

**(By Aarna Law LLP,  
Advocates)**

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.**

**(By Sri. G.S. Venkat Subbarao  
and Harsha R, Advocate)**

**2. Altico Capital India Limited**

Registered office at 21, 2<sup>nd</sup> Floor

5 North Avenue, Maker Maxity

Bandra Kurla Complex,

Bandra(E)

**Mumbai City.400051**

**Maharashtra**

**(By Ms. Nitya Kalyani &  
Shipra Das, Advocates)**

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3. **Assets Care &  
Reconstruction Enterprise  
Limited**

13, 2<sup>nd</sup> Floor, Mohandev  
Building, Tolstoy Marg  
New Delhi-110 001.

(By Mr./Ms. Rose Joy,  
Advocate, M/s Keystone  
Partners)

**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**" and sought 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 booked a residential apartment bearing no. **T1-E-1005, tenth floor, T-1 tower**, under a special buy back scheme of the respondent-1 by entering into an memorandum of understanding dated **13.4.2017**. Out of total sale consideration of Rs. **61,06,051/-** (Rs. Sixty one lakhs six thousand fifty one only), the complainant has paid Rs. **30,53,025/-** (Rs. Thirty lakhs fifty three thousand twenty five only) to the respondent which has been duly acknowledged by him. As per the memorandum of agreement of sale, the respondent was required to



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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 within the stipulated timeline as agreed. As per MOU, the said apartment was allotted to an booked by the complainants as per the buy back scheme wherein the complainants could exercise their right to cancel the allotment or surrender the apartment and receive physical amount along with appreciation as agreed. As per clause 4 of the said MOU, the respondent no.1 has agreed to pay appreciated value at Rs.1383 per sq.ft amounting to Rs.15,64,778/-. The construction of the project was stalled. Furthermore, as per clause 5 of the said MOU, if the respondent failed to pay the amount due within 30 days from the buy-back date, then an interest of 20% per annum would be applicable to the amount due. Further, as per clause 4 of the said MOU, the purchaser herein can cancel their allotment or surrender the apartment by giving prior intimation to the developer i.e. respondent no.1 herein at the start of 29<sup>th</sup> month but before the commencement of the 31<sup>st</sup> month from the date of the said MOU. The complainants did not receive any payment of the principal amount along with appreciation amount which was liable to be paid within 30 days from the buy back date as per the MOU. Despite intimation by the complainants with respect to exercising buy back option, there was no response from respondent no.1 in clear violation of the terms agreed in the said MOU. The complainants have opted for the buy-back scheme which respondent no.1 has failed to pay. In lieu of the same, the respondent-1 is liable to pay the total outstanding amount as has been agreed along with interest to the complainants in accordance with section 18(1), 18(3) and 19(4) of the RERA Act. The respondent no.1.

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stated that majority of the money raised through the sale and buy-back scheme was used to repay dues owed to Primal. The complainants were shocked to learn vide e-mail dated 22.12.2018 about transfer of charge in favour of respondent no.2. The complainants had not been intimated about transfer of chare on the project property from Piramal to respondent no.2. Further the complainants learnt through newspaper reports that "Assets Care and Reconstruction Enterprise Limited (ACRE) has acquired all outstanding assets and investments from Altico. Till date construction has not commenced and Altico expressed that they have run out of funds. Having lost confidence with the project, the complainants sought for the relief of refund with interest. Hence this complaint.

4. After registration of the complaint, in pursuance of notice, the respondents have appeared before the Authority through its counsels and filed statement of objections as under:
5. **Statement of objections filed by respondent no.1:** The respondent-1 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 into order to invest and gain profits out of the project has brought in the investment money in order to gain profit. 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.
6. It is submitted that the complainants are home buyers having entered into the memorandum of agreement of sale to purchase the real estate




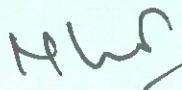
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project. Further, the complainants have not paid the agreed amounts as per the time schedule prescribed under the memorandum of agreement of sale. The complainants are yet to pay 50% of the sale consideration amount towards acquiring immovable property. 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.

7. It is submitted that the complainants are not entitled for refund of the amount as claimed in the complaint. If at all the complainants seeks 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.
8. As per terms the respondents are required to deliver the possession of the apartment within 36 months plus 6 months grace period from the date of commencement certificate issued by BBMP subject to receiving the entire sale consideration and other levies payable by the complainants.
9. 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.
10. 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

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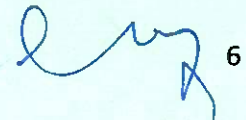
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lender. The amount received are directly credited to escrow account which was under the control of the lender and the amount for development activity was to be released by the said lender. M/s Altico Capital India Limited however committed defaults 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.

11. It is submitted that the settlement arrived between respondent and M/s Altico Capital India Limited is reduced into writing and settlement deed dated 22.4.2021 was made and executed. Further, pursuant to the said settlement, the financial corporation has also redeemed the mortgage and a discharge deed is made and executed on 20.1.2022. The respondent being in need of additional funds and keeping the interest of home buyers has assigned the activity of development and construction in favour of another entity called M/s High Crest Infra Promoters LLP and as such MOU was also made and executed between this respondent and the said entity called M/s High Crest Infra Promoters LLOP on 24.11.2021.
12. **Memo on behalf of respondent no.2:** It is submitted that respondent no.2 was a systemically important non-banking financial company with the meaning of subsection (f) of section 45-1 of the RBI Act, 1934 and financial institution in terms of sub-section(m) of section of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002(SARFAESI), had entered into a facility agreement dated 31<sup>st</sup> March 2016 and an amended and restated facility agreement dated 14<sup>th</sup> June 2016(Facility agreement) with the respondent no.1 for the purpose of construction of several development projects by the Unishire group in Bengaluru. The facility was secured by a mortgage created over immoveable property comprising of residentially converted land measuring 99,099 sq.ft presently coming under the jurisdiction of BBMP of Chokkanahalli

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Village, Yelahanka hobli, Bengaluru north taluk(weave land) together with all rights, title, interests, properties, claims and demands thereon including the development rights of respondent no.1 in relation to the residential apartment building being constructed by respondent no.1 on the weave land comprising of a built up area of 30,198.95 square meters including 181 residential units.

13. Vide assignment agreement dated 4<sup>th</sup> March 2021, the respondent no.2 was assigned its participation in the facility along with all underlying security interest and rights in terms of the provisions of the SARFAESI Act. Respondent no.3 acting in its capacity as trustee of India Real Estate 2021 Trust, having its registered office at New Delhi. Therefore under S.5 of the SARFAESI Act, w.e.f. 10<sup>th</sup> March 2021, all rights and liabilities of the respondent no.2 under the facility vested with the respondent no.3.
14. Subsequently, the respondent no.1 to 3 have entered into a settlement for settling the debts and default under the facility and under the terms of the settlement, respondent no.3 has released all its rights, title and interest over the project to the respondent no.1
15. In the light of the above, respondent no.2 no longer has any right, charge or interest over the project with its entire participation in the facility having been assigned to the respondent no.3. The respondent no.2 prays to take the memo on record, take on record the assigning of the Facility along with all underlying security interest and rights thereunder by the respondent no.2 to the respondent no.3 from the array of parties.
16. **Memo on behalf of respondent no.3:** The memo filed by on behalf of the respondent no.3 is the replica of the memo filed by the respondent no.2. The respondent no.3 prays this Authority to take on record the instant memo and delete the respondent nos.2 and 3 from the instant proceedings.

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17. 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.
18. In support of their claim, the complainants have produced documents such as (1) copy of the booking form along with letter of confirmation of allotment and receipt of payment (2) copy of email dated 31.3.2016 from Piramal to complainants detailing the securities taken by Piramal (3) copies of memorandum of understanding and sale agreement both dated 13.4.2017 (4) copy of email dated 7.5.2018 exercising the buy back option (5) copy of email dated 22.12.2018 (6) copy of PIB article dated 10.3.2021 (7) copy of email dated 21.5.2018 along with letter (8) copy of sale auction notice dated 21.6.2020 (9) copy of email dated 27.6.2020 along with letter dated 26.6.2020 (10) memo of calculation.
19. In support of his defence the respondent has not produced documents such as (1) copy of the settlement deed dated 22.4.2021 (3) copy of Discharged deed dated 20.1.2022 (3) copy of MOU dated 24.11.2021
20. Heard the both the parties. This matter was heard on 14.12.2022.
21. On the above averments, the following points would arise for our consideration.
22. 1) Whether the complainant is entitled for the relief claimed?  
2) What order?
23. **Our answer to the above points is as under:**
- 1) In the Affirmative
- 2) As per final order for the following:



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**FINDINGS**

24. **Our findings on point no.1:** From the materials placed on record, it is apparent that in spite of entering into an memorandum of understanding and memorandum of 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 13.4.2017. There seems to be no possibility of completing the project or handing over possession in near future.

25. 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 taken all steps to complete the project and deliver the apartment. The complainant has delayed in making payments. The respondent was committed to deliver the apartment at the agreed price nevertheless on account of escalation in the cost, the respondent has no other alternative but to raise an additional demand for the purpose of delivering built apartment. The respondent in the event of cancellation is entitled to procure another purchaser and return the payment to the complainant nevertheless such an exercise would further delay the project. It is contended that in the interest of both the parties, it is just and appropriate that complainant to take possession of the apartment by paying balance amounts payable to the respondent within the aforesaid time frame.

26. 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:

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“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.

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

28. From the averments 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.

29. The complainants have submitted the memo of calculation dated 21.12.2022 whereas the respondent has not filed any memo of calculation in spite of sufficient opportunity provided to him. The details are as below:

Principal Amount	Interest	Refund from promoter	Total Balance amount
30,53,026	21,10,887	0	51,63,913



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30. Considering all these facts, this Authority concludes that the complainants are entitled for the relief claimed as per memo of calculation submitted by the complainants. Accordingly, the point raised above is answered in the Affirmative.

**31. 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/211110/0008535** is hereby allowed.

1. The respondent is hereby directed to pay a sum of Rs. **51,63,913/-** (Rs. Fifty one lakhs sixty three thousand nine hundred and thirteen only) towards refund along with interest to the complainants **within 60 days** from this order calculated at the rate 9% percent from **19.11.2015 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

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