

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 6

Dated 19TH JUNE 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/221017/0010110

COMPLAINANTS.....

**MR. APURVA ANAND &
MRS. ANUPAM KUMARI
2B 003, CLPD ARCADIA APARTMENTS
GUNJUR-DODDAKANNELLI ROAD
CHIKKA BELLANDUR
BANGALORE-560087.**

**(THROUGH MR.ATUL KUMAR SINGH,
ADVOCATE)**

Vs

RESPONDENTS.....

1.SHRIVISION TOWERS PVT LTD

**2.SHRIPROP HOMES PRIVATE LIMITED
40/43, 8TH MAIN, 4TH CROSS
SADASHIVA NAGAR
BANGALORE-560080.**

3.GARDENCITY REALTY PRIVATE LTD

**4.GARDENCITY HOMES
845, 5TH CROSS ROAD,
10TH MAIN ROAD, INDIRANAGAR
BANGALORE-560038.**

**(By Mr.Joseph Anthony, Advocate
& others, JSM Law Partners)**

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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**SHRIRAM GREENFIELD PHASE 2**" developed by **SHRIVISION TOWERS PVT LTD** on Sy.No.73/1, 73/2A, 74(P) & 81, Bommanahalli

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Village, Bidarahalli Hobli, Bangalore East Taluk, Hoskote, Bengaluru Rural
District for the relief of refund with interest.

2. This project has been registered under RERA bearing Registration No.PRM/KA/RERA/1250/304/PR/171014/001220 valid till 31/3/2021. The project was extended due to Covid-19 for a period of 9 months till 31/12/2021. The Authority has further extended its registration for a further period of 12 months i.e. till 30/12/2022.

Brief facts of the complaint are as under:-

3. The complainants had booked an apartment in the project of respondent and entered into an agreement for sale on 21/09/2019. The complainants availed housing loan from HDFC and entered into Tripartite Agreement on 15/10/2019 with the respondent and the Bank and have paid Rs.27,96,951/- to the respondent on various dates. The complainants submit that the Bank has disbursed housing loan amount of Rs.22,81,440/- to the respondent as on 30/12/2020.

4. The respondent was supposed to hand over the possession of the flat to the complainants by 31/03/2021 with a grace period of six months by the end September 2021, but till today the respondent has not handed over the possession of the apartment to the complainants.

5. The complainants further submit that the respondent was supposed to pay PEMIs to the Bank till the date of possession but failed to pay PEMIs to the Bank as agreed. But the Bank is demanding the complainants to pay PEMIs. The respondent has failed to complete the project and deliver the possession of the flat on time. The complainants are suffering both financially and mentally due to this enormous delay. The complainants have been denied of owning their own house out of their hard earned savings. Thus, the complainants have approached this Authority to issue directions to the respondent to refund the amount with interest. Hence, this complaint.

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6. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and has filed statement of objections as under:

7. The respondent contends that the complainants are not entitled for seeking relief sought in light of the Agreement of Sale dated 21/09/2019 and submit that the delay in completion of the project was attributed to the spread of Covid-19 pandemic due to force majeure events such as, scarcity of raw materials, non-availability of skilled labours, transport disruption or such reasons beyond the control of the respondent, and as such, the respondent was not able to deliver the complainants apartment as agreed.

8. The respondent contends that the complainants have to obtain No Due Certificate from the Bank as agreed in the Tripartite Agreement and only thereafter refund has to be made to the complainants. The respondent also contends that booking amount along with any interest liabilities will be deducted out of the total amount to be refunded to the complainants.

9. The respondent submits that the amounts paid by the complainants cannot be considered for computing the interest, as a part of the amount has been contributed towards GST, which shall be excluded while computing the refund with interest payable to the complainants and prays the Authority to dismiss the complaint.

10. In support of their defence, the respondent has submitted copies of the Agreement for Sale, Tripartite Agreement, RERA registration and extension certificates. The respondent has not filed their memo of calculation.

11. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Tripartite Agreement, Customer statement issued by the respondent dated 01/09/2022, email correspondence with the respondent and memo of calculation as on 15/02/2023.



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12. This case was heard on 21/02/2023, 05/04/2023 and 14/06/2023.
Heard arguments of both sides.

13. On the above averments, the following points would arise for my consideration:-

1. Whether the complainants are entitled for the relief claimed?
2. What order?

14. My answer to the above points are as under:-

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

REASONS

15. My answer to Point No.1:- From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the apartment within 31/03/2021 with the grace period of six months i.e. latest by 30/9/2021, the respondent failed to abide by the terms of the agreement and not handed over the possession of the apartment to the complainants till date.

16. The complainants vide their memo of calculation as on 15/02/2023 have claimed an amount of Rs.38,89,704/- (Rupees Thirty Eight Lakh Eighty Nine Thousand Seven Hundred and Four only) as refund with interest.

17. Despite several opportunities were given, the respondent has not filed their memo of calculation.

18. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s The State of Uttar Pradesh it is held that:

"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 by the date specified therein or on account of discontinuance 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 of the amount with interest at such rate as may be prescribed in this behalf."

19. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at Para No.23 between M/s Imperia Structures Ltd v/s Anil Patni and another by the Hon'ble Supreme Court it is held that:

"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 case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment."

20. During the process of the hearing the Authority has gone through the statement of objections submitted by the respondent and has disagreed with the contention of the respondent the construction of apartment was delayed due to force majeure and that GST should be exempted from calculating interest for refund.



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21. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest of Rs.38,89,704/- (Rupees Thirty Eight Lakh Eighty Nine Thousand Seven Hundred and Four only).

22. Therefore, it is incumbent upon the respondent to refund with interest to the complainants determined as under:-

Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	0	0	30-04-2017	0
2				TOTAL INTEREST (I1)	0

Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	2116	15-02-2023	8.15	10.15 as on 01-05-2017	0
2	17-06-2019	27,96,951	1339	15-02-2023	8.65	10.65 as on 10-06-2019	10,92,753
3	TOTAL AMOUNT	27,96,951				TOTAL INTEREST (I2)	10,92,753

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 15-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
27,96,951	10,92,753	0	38,89,704

23. Accordingly, the point raised above is answered in the Affirmative.

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24. **My answer to Point No.2:-** In view of the above discussion, 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/221017/0010110** is hereby allowed.

Respondent is directed to pay a sum of **Rs.38,89,704/- (Rupees Thirty Eight Lakh Eighty Nine Thousand Seven Hundred and Four only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 17/06/2019 till 15/02/2023. The interest due from 16/02/2023 up to the date of final payment will be calculated likewise and paid to the complainants.

The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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