

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

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, CHAIRMAN

DATED 6TH Day of July 2023

COMPLAINT No: CMP/UR/ 221125/0010400

COMPLAINANT....

**M.D. MANOJ
NO: 44, SRIMATHI NILAYA
7TH CROSS, BANNERGHATTA
ROAD, HULIMAVU
BENGALURU URBAN-560076**

(PRADYUMNA L.N. ADVOCATE)

V/S

RESPONDENTS.....

**VIJAYA SEKHAR
NO: 800, 14th CROSS
J.P. NAGAR 1ST PHASE
BENGALURU URBAN-560078.**

(ABSENT)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA against, project "VIJAYA MANOR" developed by Vijaya Sekhar for the relief of refund with interest.
2. This project is not registered in RERA.

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3. The builder has developed this project in the limits of No. 962, Bilekahalli Village, Begur Hobli, Bengaluru South Taluk.
4. The gist of the complaint is that the complainant had booked an residential apartment bearing no. 101 on the first floor in the project "**VIJAYA MANOR**" and thereafter entered into an sale agreement dated 4/2/2021. Out of the sale consideration of Rs.1,05,00,000/- (Rupees One crore five lakhs only) the complainant has paid an amount of Rs.15,00,000/- on 4/2/2021 and Rs.3,00,000/- as per affidavit dated 12/6/2023 altogether Rs.18,00,000/- (Rs. Eighteen lakhs only) to the respondent-promoter which has been duly acknowledged by him. The respondent was required to hand over the possession of the said apartment to the complainant within a month i.e. by 4/3/2021 as per sale agreement dated 4/2/2021. The respondent has failed to fulfill his obligations under the agreement and has unilaterally amended the contract thrice and further coerced the complainant to approving the extension of time. Till date the project has not been completed by the respondent. The respondent has also deviated from the original plan approved by the BBMP for the Schedule-A property and has made material changes in violation of RERA rules. The complainant terminated the agreement through the legal notice sent on 16th May 2022 and asked for refund with interest. However, no reply was made by the respondent. Subsequently, a second legal notice was sent on 10/8/2022 for refund of the amount along with interest. The respondent has failed to provide any reply to these two legal notices. The complainant has approached this Authority seeking for the relief of refund with interest. Hence, this complaint.

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5. After registration of the complaint, in pursuance of the notice, the respondent absented himself from appearance during Hence, in spite of providing sufficient opportunity, it is noticed that the respondent has not appeared before the Authority to put forth his defence and has not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf and remained absent on the aforesaid dates of hearings.

6. In support of his claim, the complainant has produced documents such as (1) Sale agreement dated 4/2/2021(2) Affidavit dated 12.6.2023 for having paid an amount of Rs.3,00,000/- to the respondent.(3) Memo of calculation.

7. Heard arguments of the complainant.

8. 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?

9. **Findings to the above points are as under:-**

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

FINDINGS

10. Findings to point No.1:- The grievance of the complainant is that he had booked an residential apartment no.101 on the first floor in the project "VIJAYA MANOR" and thereafter entered into an sale agreement dated 4/2/2021. The respondent was required to hand over the possession of the said flat within a month i.e. by 4/3/2021. The respondent has failed to fulfill

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his obligations under the agreement and has unilaterally amended the contract thrice and further coerced the complainant to approving the extension of time. Till date the project has not been completed by the respondent. However, the respondent-developer has not handed over the said flat within the stipulated timeline and failed to abide by the terms and condition of the sale agreement dated 4/2/2021.

12. 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.*

13. 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 /plot in accordance with sale agreement.

14. 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

Ans

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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"

15. From the averments made in the complaint and other documents, it is obvious that the complainant has paid the substantial sale consideration and the respondent has failed to hand over possession of flat No: 101 as agreed to the complainant. Having failed to abide by the terms and conditions of sale agreement dated 4/2/2021 certainly entitles the complainant to claim for refund of amount with interest. Further, the complainant has submitted memo of calculation dated 13/2/2023 claiming refund of amount with interest for Rs.21,38,927/-. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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

Memo Calculation submitted by the complainant as on 13/2/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 13/2/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
18,00,000	3,38,927	0	21,38,927

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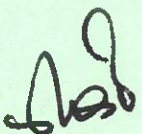
17. Despite of several notices served upon the respondent, he did not appear before this Authority but continuously remained absent on all the dates of hearings. Subsequently he has failed to file statement of objections and furnishing documents in support of his defence and hence not contested the matter. 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. Considering all these aspects, the point raised above is answered in the Affirmative.

18. 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/221125/0010400 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **21,38,927/-** (Rupees Twenty one lakhs thirty eight thousand nine hundred twenty seven only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate SBI MCLR + 2% from 4/2/2021 to 13/2/2023. The interest due to 14/2/2023 shall be calculated likewise and paid to the complainant till the date of entire realization.

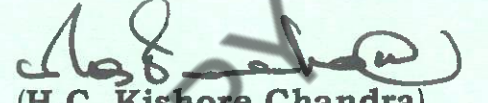


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2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
K-RERA

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