

PROCEEDINGS OF THE AUTHORITY BEFORE FULL BENCH

PRESENT

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

SMT. NEELMANI N RAJU, HON'BLE MEMBER

SHRI. GURIJALA RAVINDRANADHA REDDY, HON'BLE MEMBER

COMPLAINT NO.: CMP/200622/0005983

DATED THIS 12TH DAY OF JULY, 2023

COMPLAINANT.....

MUSHTARI ABID SHERIEF,
415, 18th Main Road,
35th Cross, 4th T Block,
Jayanagar,
Bengaluru - 560041.

(In person)

V/S

RESPONDENT.....

M/S. ROMA BUILDERS,
House No. 185, 1st Cross,
A Block, AECS Layout,
Kundalahalli,
Bengaluru - 560037.

(Ex-parte)

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "Roma Epicurean" developed by "M/s. Roma Builders" situated at Nallurahalli Village, K R Puram Hobli, Bengaluru East Taluk for the relief of refund with interest.
2. This project has been registered under RERA bearing Registration No. PRM/KA/RERA/1251/446/PR/180627/001940 and was valid till

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31/12/2020. This Authority has extended its registration for 9 months due to COVID 19 i.e., till 30/09/2021. It is a lapsed project.

Brief facts of the complaint are as under:-

3. The complainant has booked an apartment bearing No.308 in the project of respondent and she had entered into an agreement for sale and construction agreement both dated 29/11/2014 for a total sale consideration of Rs.74,60,000/- (Rupees Seventy Four Lakh Sixty Thousand only) with the respondent and paid Rs.37,30,000/-(Rupees Thirty Seven Lakh Thirty Thousand only) to the respondent on various dates. The respondent has agreed to handover possession of the said apartment on or before 31/01/2017 as per agreement of sale. However, the respondent had failed to complete the project and to handover possession of the said apartment as agreed. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, summons and news paper publication, the respondent remained continuously absent during the proceedings held on 19/07/2022, 11/08/2022, 01/09/2022, 08/02/2023, 01/03/2023 and 06/04/2023. Hence, in spite of providing sufficient opportunity, it is noticed that the respondent has not appeared before the Authority to put forth his grievances and has not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf. Hence, he has been placed as ex-parte.
5. In support of her claim, the complainant has produced in all 5 documents such as copy of agreement of sale, construction agreement, payment receipts, email conversations and bank statement.
6. Respondent has not produced any documents on its behalf.

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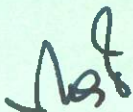
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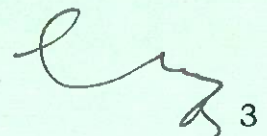
7. Hearings were conducted on 19/07/2022, 11/08/2022, 01/09/2022, 08/02/2023, 01/03/2023 and finally on 06/04/2023.
8. Heard complainant.
9. **On the above averments, the following points would arise for our consideration:-**
 1. Whether the complainant is entitled for the relief claimed?
 2. What order?
10. **Our findings on the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following

REASONS

11. **Our findings on point No. 1:-** Contention of the complainant is that, so far she has paid sum of Rs.37,30,000/- (Rupees Thirty Seven Lakh Thirty Thousand Only) and entered into an agreement of sale with the respondent on 29/11/2014 for a total sale consideration of Rs.74,60,000/- (Rupees Seventy Four Lakh Sixty Thousand Only). The respondent had promised to handover the possession of the apartment on 31/01/2017. Hence, the respondent has failed to abide by the terms of the agreement of sale.
12. On perusal of the documents filed and submissions made before the Authority, it is evident that the complainant has paid substantial sale consideration and admittedly there is a delay for more than five years in handing over the apartment as per agreement dated 29/11/2014.
13. During proceedings, the Authority has noticed that the project 'Roma Epicurean' is a lapsed project, wherein the respondent has not updated quarterly reports and obtained a completion certificate from the competent Authority, which amounts to violation of section 11 of the Act.





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14. Section 11 of RERA Act reads as under:-

11. Functions and duties of promoter.— 1 (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(c) Quarterly up-to-date the list of number of garages booked;

(d) Quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;

(e) Quarterly up-to-date status of the project; and

(f) Such other information and documents as may be specified by the regulations made by the Authority.

(4) The promoter shall— (b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

15. Hence, as per section 18(1) of RERA Act, in case the delay in handing over the flat to the allottee as per construction agreement, the promoter is liable without prejudice to any other remedy available to pay interest on the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided in this Act.

16. 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."

17. At this juncture, our attention is drawn towards the decision of the judgement 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 Developers Private Limited V/s. 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 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

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seek refund of the amount with interest at such rate as may be prescribed in this behalf."

18. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only as the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
19. The complainant has filed her memo of calculation as on 10/02/2023 claiming an amount of Rs.65,50,774/- (Rupees Sixty Five Lakh Fifty Thousand Seven Hundred and Seventy Four only) as refund with interest. Despite of several opportunities were given, the respondent has not filed their memo of calculation. A thorough verification of documentary evidence submitted by the complainant reveals that her claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide her memo of calculation dated 10/02/2023.
20. Therefore, it is incumbent upon the respondent to refund the amount with interest which is 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	11-11-2014	200,000	901	30-04-2017	44,432
2	29-11-2014	1,292,000	883	30-04-2017	281,302
3	30-01-2015	1,420,000	821	30-04-2017	287,462
4	31-01-2017	818,000	89	30-04-2017	17,951
5		3,730,000		TOTAL INTEREST (I1)	631,147

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	3,730,000	2111	10-02-2023	8.15	10.15 as on 01-05-2017	2,189,627
2	TOTAL AMOUNT	3,730,000				TOTAL INTEREST (I2)	2,189,627

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 10-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
3,730,000	2,820,774	0	6,550,774

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

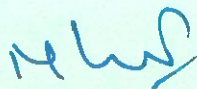
22. **Our findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we proceed to pass the following order.

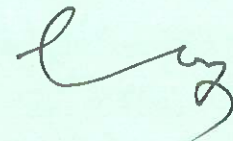
ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/200622/0005983 is hereby allowed.

1. Respondent is hereby directed to pay the amount of Rs.65,50,774/- (Rupees Sixty Five Lakh Fifty Thousand Seven Hundred and Seventy Four only) towards refund along with interest to the complainant within 60 days from the date of this order, calculated at 9% from 11/11/2014 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 10/02/2023.
2. The interest due from 11/02/2023 up to the date of final payment shall be calculated likewise and paid to the complainant.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.







4. Show cause notice is to be issued u/s. 61 for violation of section 11 of the RERA Act for not updating quarterly reports and not obtaining completion certificate from the competent Authority.

No order as to costs.

(G.R. REDDY)

Member
K-RERA

(NEELMANI N RAJU)

Member
K-RERA

(H.C. KISHORE CHANDRA)

Chairman
K-RERA

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