

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 5th DAY OF JULY 2023

COMPLAINT No: CMP/ 201005/0006762

COMPLAINANTS....

**JYOTI RANJAN ROUT &
SUJATA ROUT
Flat No: E4, 4th Floor
Maruti Krupa Appartment
6th "G" Cross, Kaggadasapura
C.V. Raman Nagar Post
BENGALURU URBAN-560093**

**(By Sri. KOWSHIK RAJA
Advocate)**

V/S

RESPONDENTS.....

**1. M/s KSR PROPERTIES PRIVATE
LIMITED
Having its Corporate office at
No: 23, Sankey Square, Sankey
Road, Lower Palace Orchards
Sadashivanagar
BENGALURU-560 003.**

**2. L. Haribabu
Landlord
Flat No: 12, 1st Floor, Doctors
Apartment, No:60, 3rd "A"Cross
Doctors Layout, B. Chennasandra
Kasturi Nagar
Bengaluru-560043.**

**(By Sri. Shishira Amaranath
Advocate)**

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10/05

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA against, project "**KSR BASIL**" developed by "**M/s KSR PROPERTIES PRIVATE LIMITED**" for the relief of refund with interest.
2. This project is registered in RERA bearing registration No. PRM/KA/RERA/1251/446/PR/180519/1744
3. The builder has developed this project in the limits of Sy.No. 68/2, Huskur Village, Bidarahalli Hobli, Off Old Madras Road, Bengaluru East.
4. The gist of the complaint is that the complainants had booked an apartment no. K-101 in the project "**KSR BASIL**" and thereafter entered into an agreement of sale dated 25.1.2019 with respondent no.1 towards purchase of the said apartment. Out of total sale consideration of Rs.38,86,176/- the complainants have paid an amount of Rs. 1,00,000/- on 28/12/2018, Rs.2,88,618/- on 8/1/2019 Rs.9,32,682/- on 16/2/2019, Rs.4,66,341/- on 11/3/2019, Rs.4,66,341/- on 9/4/2019, Rs.4,66,341 on 15.5.2019 altogether Rs.27,20,323/- to the respondent no.1/promoter which has been duly acknowledged by him. The complainants have also borrowed loan from State Bank of India, RACPC, Malleshwaram, Bengaluru towards purchase of the said apartment. The respondent is required to hand over the possession of the apartment to the complainants by 31st December 2019 with a grace period of 6 months that is by 12/6/2020. The construction work at the KSR Basil project completely stopped since February 2019 even before the COVID-19 pandemic lockdown. Now even after the COVID-19 relaxation, still the construction work has not resumed by promoter. The

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promoter has not yet re-opened its office at project site. They tried to reach executives of KSR Properties over phone but there was no response. Further, they have sent several emails requesting for settlement and refund but they did not receive any reply from them. The promoter has not paid any interest for every month's delay as per agreement.

5. It is contended that Respondent no.1 has entered into a joint development agreement dated 21/4/2011 with the proposed respondent no.2, who is the absolute owner of the property over which respondent no.1/promoter has been given the responsibility of construction of apartments. Respondent no.2 in furtherance of terms of the said JDA has also executed a General Power of Attorney dated 21/4/2011 in favour of respondent no.1 for development of his property, to obtain necessary sanctions and permissions from various competent authorities. Respondent no.2 has filed a suit for cancellation of the above mentioned JDA dated 21.4.2011 before the Commercial Court, Bengaluru Rural in Commercial O.S. No. 1000/2021, which is pending before the Hon'ble XI Additional District and Sessions Judge(Commercial Court), Bengaluru. Respondent No.2 being the absolute and sole owner of the property over which the respondent no.1 had promised to develop and has collected funds from the complainants and has abandoned the project.

6. Having lost confidence with the respondent-1/promoter, the complainants have decided to exit from the project and approached this forum seeking for the relief of refund with interest. Hence, this complaint.

7. After registration of the complaint, in pursuance of notice, the respondent-1 has appeared before this Authority through his counsel during the hearings held on 21/9/2022 and filed Vakalatnama. Subsequently, he

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continuously remained absent during the hearings held on 25/01/2023. 22/2/2023, 18/4/2023 and has not contested the matter by filing statement of objections, producing documents if any on their behalf. The advocate for complainants has filed an application under order 1 Rule 10(2) & Section 151 of the Code of Civil Procedure, 1908 to implead the landlord which came to be allowed by this Authority.

8. The complainants in support of their claim have produced documents such as (1) copy of agreement for sale dated 25/1/2019 (2) copies of receipts dated 28.12.2018, 16/2/2019, 11/3/2019 and 9/4/2019 (3) SBI loan account statements from 10.1.2019 to 19.9.2020 (4) SBI interest certificates (5) Loan agreement dated 9.1.2019 (6) complaint and FIR against KSR Properties Private Limited dated 6.11.2021.

9. Heard the arguments. This matter was heard on 21/9/2022, 13/12/2022, 25/1/2023, 22/02/2023, 18/4/2023.

10. 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?

11. Findings to the above points are as under:-

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

FINDINGS

12. **Findings to point No.1:-** The grievance of the complainants is that the complainants have booked an apartment no. K-101 in the first floor in Block-K in the

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project of the respondent for a total sale consideration of Rs.38,86,176/- .As per entered agreement into between both the parties, the vendor agrees to deliver the apartment in habitable condition 31/12/2019 with a grace period of 6 months by 30.6.2020. The construction work in the project has been completely stopped since February 2019 even before the COVID 19 Pandemic lockdown. Even after the COVID-19 relaxation, still the construction work has not resumed by the promoter. The promoter has not yet reopened its office situated at project site. They tried to reach executives of KSR Properties over phone but there was no response. They have also sent several emails requesting for settlement and refund but the respondent no.1 did not reply. Respondent no.1 who had not appeared before this Authority until the previous date of hearing even after issuance of notice on multiple times, suddenly wakes up at a present stage and begins construction activity on the project site. Since the project was not completed within the stipulated timeline by the certificate of registration on date 30.9.2021, the registration of the project under consideration has been lapsed. Hence, respondent has no authority/control over the project under consideration and thereby prevented from undertaking any kind of developmental activity on the project site.

13. In pursuance of notice, the respondent no. 1 did appear before this Authority on 21/9/2022 and filed Vakalatnama. Thereafter, respondent no.1 has failed to file statement of objections, furnishing documents if any on his behalf.

14. At this juncture, our 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

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*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.*

15. 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.

16. Further, in the decision of the Hon'ble Supreme Court of India(Judgement) 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 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"

17. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant. The complainants have claimed an amount of Rs.37,57,918/- The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

Sub

KWS,

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18. 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 27.9.2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 27.9.2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
27,20,323	10,37,595	0	37,57,918

19. Though the respondent no.1 has appeared before this Authority through its counsel and filed Vakalatnama. 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.

20. Findings to point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, 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/201005/0006762 is hereby allowed as under:

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1. The respondent is hereby directed to pay a sum of Rs. 37,57,918/- (Rupees Thirty seven lakhs fifty seven thousand nine hundred eighteen only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate of, at the rate SBI MCLR + 2% from 28.12.2018 till the date of entire realization.
2. The complainants are 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.

(Neelmani N. Raju)

Member
K-RERA

(G.R. Reddy)

Member
K-RERA

(H.C. Kishore Chandra)

Chairman
K-RERA