

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-4

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

DATED 14TH DAY OF JULY 2023

COMPLAINT NO: CMP/UR/220321/0009177

COMPLAINANT:

**PURAVANKARA LIMITED
130/1, ULSOOR ROAD
BENGALURU URBAN-560042**

**(BY ANKITA SHARMA
(AUTHORIZED SIGNATORY)**

V/s

RESPONDENT

**V. SURESH BABU
No: 26, 1st Floor
14th "B" Cross
22nd Main Road
Padmanabha Nagar
BENGALURU URBAN-560070**

(IN PERSON)

PROJECT NAME

PROVIDENT PARK SQUARE

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act by the promoter of the project **"PROVIDENT PARK SQUARE"** developed by **"PURAVANKARA LIMITED"** against the respondent/allottee for the relief of cancellation of registered agreement of sale dated 27/8/2018.
2. The promoter-complainant has developed this project in the limits of Sy.Nos. 3/37, 7,8,9/2A, 9/2B1, 26/1P, Mallasandra Village, Uttarahalli Hobli, Bengaluru Urban.

Ans

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3. This project is registered under RERA bearing registration No. PRM/KA/RERA/1251/301/PR/180217/002476 valid till 31/12/2021. The project was extended due to COVID-19 for a period of 9 months till 30/9/2022. The Authority has further extended its registration for a further period of 12 months i.e. till 30/9/2023.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:

4. The complainant is the promoter of real estate project named "PROVIDENT PARK SQUARE PHASE-1". The respondent had booked an flat bearing No. B1-1D-704 in the said project for a sale consideration of Rs.28,32,200/- (Rs. Twenty eight thousand thirty two thousand two hundred only). Thereafter, he entered into an registered agreement to sell dated 27/8/2018. The respondent has paid an amount of Rs.11,11,756/- (Rs. Eleven lakhs eleven thousand seven hundred fifty six only) on various dates to the complainant. The complainant was required to hand over the possession of the said apartment to the respondent within 31st October 2021. As per the said agreement to sell, time is one of the essence and a purchaser is legally and contractually obligated to make all payments due to the company. The respondent has failed to make several payments towards demands raised in accordance with construction linked payment plan. The complainant had issued notices to the respondent on 17/12/2020, 1/1/2021 and on 21/5/2021 outlining the dues payable and requesting that those dues be duly remitted. Hence, this complaint.

5. After registration of complaint, in pursuance of the notice, the respondent has appeared before this Authority and filed the documents such as (1) Statement of account from Puravankara Limited with regard to payment received from the respondent (2) Details of payment made to Puravankara Limited (3) Project status report received from Puravankara in February

199

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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2022(4) Letter submitted for notice on 16/4/2022 and copies of project status from October 2019 to January 2022. (5) memo of calculation for refund with interest.

6. Further, the respondent has submitted two representations dated 20/6/2022 and 13/9/2022. It is contended that respondent has to raise complaint in RERA against PURAVANKARA LIMITED for no progress in the project. Instead the complainant has registered a complaint against him asking for cancellation of the agreement for flat B1-ID-704 where there is no construction activity for almost 4 years till January 2022 as per the project status report January 2022. The project was started in 2018. The complainant has not made any progress of the apartment booked by the respondent, whereas he has completed ground floor according to the mails sent by Puravankara informing the project status in February 2022. The complainant has constructed 14 floors in other Tower which has taken more than 4 years till date. It contends that in case had the complainant had informed earlier that Tower B1-ID would be constructed at later stage, he would have selected the flat in other tower which would be completed within the stipulated timeline. During the proceedings held on 7/2/2023, the respondent has stated that the construction was not in accordance with the time schedule and hence payments were not made.
7. The complainant has also filed rejoinder for objections dated 19/6/2022 as under: The respondent had booked a flat bearing No. B1-ID-704 in the project "PROVIDENT PARK SQUARE PHASE-1" by entering into an agreement to sell dated 27/8/2018 with the complainant. The last payment made by the respondent was on 10/02/2022 which is much prior to the handover date mentioned in the agreement. Vide 2 notifications dated 4/4/2020 and 29/5/2020, the KRERA has

16/6

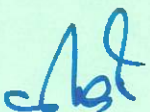
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highlighted the directions/advisories for RERA registered projects and directed to extend the registration automatically by 9 months due to outbreak of COVID 19. The Force Majeure period would be treated as a "moratorium period" for the purpose of calculating interest and the dates of possession mentioned already in the registered agreements, shall be deemed to be extended by force majeure period as granted by the Regulatory Authority in the light of Covid outbreak.

8. It is submitted that delay interest is a system generated statement and same has been levied as against the Respondent's account on account of default in making timely payments as and when demands were raised on the basis of the payment schedule. Demands have been raised on the basis of the developments taking place in the project and respondent being aware of the same he has defaulted in making payments. In consonance with Clause 6.3 of the Agreement, two successive notices dated 17/12/2020 and 01/01/2021 and one final notice dated 21/5/2021 had been issued to the respondent as reminders to regularise his payments. Despite repeated reminders, the respondent deliberately failed to rectify his breach and this led to further accumulation of interest on delayed payments. The completion date as per agreement is 31/10/2021 + 9 months(Covid extension as per RERA)which automatically stands on 30/7/2022 and the respondent has stopped the payment much before the above mentioned date. Hence, prayed this Authority for a direction to the respondent to execute "Deed of Cancellation" before the jurisdictional sub-registrar and take the refund as mentioned in the Memo of calculation.
9. This matter was heard on 25/11/2022, 16/12/2022, 13/01/2023, 7/2/2023, 7/2/2023 and on 24/2/2023.
10. Heard the both the parties.



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11. **On the above averments, the following points would arise for my consideration.**

- 1) Whether the complainant is entitled for the relief claimed?
- 2) What order?

12. **Findings on the above points is as under:**

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

13. Heard both the parties.

FINDINGS

14. **Findings on point no.1:** The grievance of the complainant is that, the respondent had booked a flat bearing No. B1-1D-704 in the project "PROVIDENT PARK SQUARE" and entered into an agreement to sell dated 27/8/2018. As per the agreement the respondent was supposed to make the payments towards demands raised in accordance with the construction linked plan. When the respondent had failed to make payment as agreed, the complainant had issued 3 notices dated 17/12/2020, 1/1/2021 and 21/5/2021 requesting him to make balance payment as agreed upon as per the agreement of sale dated 27/8/2018 Clause 6.3. Despite these notices, the respondent has failed to pay instalments due on time and in full, thereby having an adverse impact on other customers who make payments on time. The respondent has also agreed that he would be entitled to terminate the agreement of sale in the event it he delayed, deferred or otherwise failed to make all payments on time and in full.

15. On the other hand, the contention of the respondent is that the said construction was not in accordance with the time schedule and hence payments were not made. The respondent has contended that for the last

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3 years due to COVID he was facing lot of problems and has become difficult to survive.

16. On perusal of the sale agreement, it is apparent that the promoter has to deliver the apartment on or before 31st October 2021 but failed to hand over possession of the apartment. Further, the respondent has submitted a letter dated 20/6/2022 stating that there is no construction activity on B1-ID-Tower for almost 4 years till January 2022, as per the project status report January 2022 of Puravankara. Hence he opted to exit from the project on account of delay in completing the project. As per Section 18 of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of said 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 under this Act.
17. Therefore, as per Section 18 of the Act, the promoter is liable to return the amount received along with interest.
18. Though the complainant-builder has taken the contention that he is seeking for cancellation of agreement of sale dated 27/8/2018 on the ground that the allottee had failed to make payments as agreed, here in this case, the complainant-builder had not completed the project as agreed within the stipulated timeline. Hence, this itself entitles the respondent-allottee to claim for refund of entire amount paid to the builder along with interest.
19. 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



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M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

20. "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.
21. 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.
22. 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 Developers Private Limited Versus State of UP & others, it is held as under:
23. "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



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*to seek refund or the amount with interest at such rate as
may be prescribed in this behalf*

24. Further, the complainant-builder had taken one more contention that this delay is due to COVID 19 PANDEMIC and on this ground he get extension for completion of the project. In this connection, the Apex Court of India in Miscellaneous Application No: 665/2021 in SMW(c) No: 2/2020 has held that limitations of time period was extended during Covid-19 Pandemic. This order nowhere says regarding exemptions of paying interest on the loan availed by the banks/finance or delay in paying instalments etc. Hence, in view of the said order, the builder is not exempted from paying interest on delay period during COVID-19 Pandemic.

25. The respondent has furnished memo of calculation dated 13/9/2022.

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

Memo Calculation submitted by the respondent as on 13/9/2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 13/9/2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
11,11,756	3,99,274	0	15,11,030

27. The complainant has also filed memo of calculation as under:

Booking date	31/3/2018
Agreement date	27/8/2018
Advance amount paid by customer prior to and simultaneous with the execution of this Agreement	1,84,670

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Karnataka Real Estate Regulatory Authority,

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Amount paid by customer after execution of agreement	8,98,468
Amount paid towards tax, stamp paper, interest on delayed payment and prof.charges	86,654
Total amount paid by customer	11,69,792
Less: GST	1,15,544
Deduction towards: advance amount received prior to and simultaneous with execution of agreement	1,84,670
Less interest on delayed payment as per mail	1,87,393
Net amount refundable	6,82,175

28. Undisputedly, the respondent has paid an advance sale consideration of Rs.11,11,756/- (Rupees Eleven lakhs eleven thousand seven hundred fifty six only) to the complainant as per agreement to sell dated 27/8/2018. The complainant was required to hand over the project by 31/10/2021. The complainant-promoter has not completed the project and delivered the possession of the said apartment on or before 31/10/2021 as agreed as per agreement of sale dated 27/8/2018. Having accepted the said amount and failure to keep up promise to handover possession of the apartment, certainly entitles the respondent herein for refund of entire amount with interest. The respondent has obtained occupation certificate issued by BDA on 6/8/2022. From this it is very clear that the said project was still under construction.

29. Here in this case, the complainant-promoter has failed to complete the project and hand over the said apartment to the respondent allottee within the stipulated time as agreed. Having regard to all these aspects, the point raised above is answered as partly affirmative.



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30. **Findings on point no.2:** In view of the above discussion, the complaint deserves to be allowed partly. Hence, 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/220321/0009177 is hereby partly allowed. Consequently, the agreement to sell dated 27/8/2018 executed between the parties shall stand cancelled.

1. The Jurisdictional Sub-Registrar, Jayanagar(J.P. Nagar), Bengaluru is directed to cancel the agreement to sell dated 27/8/2018 registered as document registration No.JPN-1-5386/2018-19 pertaining to the apartment bearing No: B1-1D-704 in the project namely "PROVIDENT PARK SQUARE" situated at Sy.Nos. 3/37, 7,8,9/2A, 9/2B1, 26/1P, Mallasandra Village, Uttarahalli Hobli, Bengaluru Urban. Hence, same shall stand cancelled.
2. The complainant-promoter is hereby directed to refund a sum of Rs. 15,11,030/- (Rs. Fifteen lakhs eleven thousand thirty only) towards refund with interest to the respondent-allottee within 60 days from the date of receipt of this order calculated at the SBI MCLR + 2% from 3/3/2018 till the date of entire realization.
3. Both the parties are at liberty to enforce the said order in accordance with law in case if any of the party fails to comply with this order.

No order as to costs.


(H.C. KISHORE CHANDRA)
Chairman
K-RERA