

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 2<sup>nd</sup> DAY OF AUGUST 2023**

**COMPLAINT No: CMP/UR/ 200315/0005728**

**COMPLAINANT....**

LEO PAUL K.  
150, CQAL LAYOUT  
B-BLOCK, SAHAKAR NAGAR  
BENGALURU URBAN-560092

**V/S**

**RESPONDENTS.....**

GIRISH NAIK  
M/s SAN INFRASTRUCTURE  
PRIVATE LIMITED  
11 & 12, 2<sup>nd</sup> FLOOR, P.S.  
PLAZA, JAWAHARLAL STREET  
PLATFORM ROAD  
SESHADRIPURAM  
BENGALURU URBAN-560020

(BY SRI. R. HARIPRASAD  
ADVOCATE)

**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA against, project "SAN CITY BLUE BELL" developed by "M/s SAN INFRASTRUCTURE PRIVATE LIMITED" for the relief of refund with interest.

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2. This project is registered not registered in RERA. This Authority has passed an interim order dated 7<sup>th</sup> March 2023 with directions to the respondent-promoter to register the project immediately as required under Section 3 of the Real Estate(Regulation and Development)Act, 2016 within two weeks from the date of this order. But the complainant has failed to register this project.
3. The builder has developed this project situated at Borekappanakavalu Village, Hanagund Hobli, Hunsur Taluk, Mysore District
4. The gist of the complaint is that the complainant had booked a site bearing 93A measuring 30' x 40' Sqft in the project "**SAN CITY BLUE BELL "A " BLOCK "** and thereafter entered into an Memorandum of Understanding with M/s San Infrastructure Private Limited on 28/7/2016. From the memo of calculation furnished by the complainant on 20/1/2023, the total sale consideration of the said property is Rs.3,00,000/- (Rs. Three lakhs only). The complainant has paid an amount of Rs.5,000/- each on 9/5/2016, Rs.1,15,000/- on 17/5/2016 and Rs.85,000/- on 30/5/2016, altogether Rs.2,10,000/- (Rs. Two lakhs ten thousand only) to the respondent which has been duly acknowledged by him. The respondent was required to hand over the said property within 12 months from the date of MOU dated 28/7/2016 i.e. by 28/7/2017. It is contended that since the promoter was not able to register the property within the stipulated timeline even after one year of renewal of agreement, he had submitted a representation dated 8/9/2018 requesting him for cancellation and to refund the amount along with interest. After multiple follow-ups and discussion, the respondent has agreed that he will initiate partial refund of

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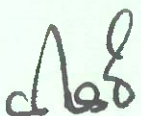
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Rs. 25,000 until closure of the complete amount. He has received Rs.25,000/- on 12<sup>th</sup> December 2019 as agreed. Again from January 2020 until this date there is no refund from the company and there is no proper response as to when the arrears would be cleared. Having lost confidence with the respondent-promoter, the complainant has approached this Authority seeking for the relief of refund along with interest. Hence, this complaint.

5. After registration of the case, in pursuance of notice, the respondent has been absented himself from appearance during the hearings held on 16/12/2022, 24/1/2023, 6/3/2023, 31/3/2023 and on 21/4/2023 except on one occasion he did appear before this Authority during the hearings held on 10/2/2023 and filed Vakalath. Thereafter, inspite of providing sufficient opportunity, it is seen that the neither the complainant nor his counsel appeared before the Authority during the hearings to put forth their grievances and have not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf but remained absent. Hence, he has been placed as Ex-parte.
6. In support of her claim, the complainant has produced documents such as (1) payment receipts (2) memo of calculation (3) copy of MOU dated 28/7/2016 (4) cancellation request copy (5) acknowledgement copy of the registered post sent to respondent.
7. Heard arguments of the complainant.
8. 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?



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09. Findings on the above points are as under:-

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

**FINDINGS**

10. **Findings on point No.1:-** The grievance of the complainant is that the complainant has booked a site bearing 93A measuring 30' x 40' Sqft in the project "SAN CITY BLUE BELL "A " BLOCK " and thereafter entered into an Memorandum of Understanding with M/s San Infrastructure Private Limited on 28/7/2016. The respondent was required to hand over the said property within 12 months from the date of MOU i.e. by 28/7/2017. Since the promoter was not able to register the property within the stipulated timeline even after one year of renewal of agreement, he had submitted a representation dated 8/9/2018 requesting him for cancellation and to refund the amount along with interest.

11. 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*

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*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.*

12. 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.

13. 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:

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

14. 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 complainant has claimed an amount of Rs.3,17,210/- The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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

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**Memo Calculation submitted by the complainant as on 20/01/2023**

PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 20/01/2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
2,10,000	1,32,210	25,000	3,17,210

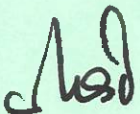
16. Though the respondent has appeared before this Authority through its counsel, subsequently it has failed to file statement of objections and furnishing documents in support of its defence and hence not contested the matter. In the absence of any resistance by the respondent and considering the claim 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.

17. Considering all the above aspects, the point raised above is answered in the Affirmative.

**18. Findings on 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/200315/0005728 is hereby allowed as under:




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1. The respondent is hereby directed to pay a sum of Rs. **3,17,210/-** (Rupees Three lakhs seventeen thousand two hundred ten only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate 9% from 9/5/2016 till 30/4/2017. Further at the rate of SBI MCLR + 2% from 1/5/2017 till the date of entire realization.
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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