

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 6

Dated 9TH AUGUST, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/220525/0009527

COMPLAINANT.....

**YASHASHWINI BASETTY
610, TOWER-3, DECCAN HABITAT
PIPELINE ROAD
YESHWANTPUR
BANGALORE-560022.**

(IN PERSON)

V/S

RESPONDENT....

**M/S. SHRIVISION TOWERS PVT LTD
NO.40/43, 8TH MAIN ROAD
4TH CROSS
SADASHIV NAGAR
BENGALURU-560080.**

**(By Mr.Joseph Anthony,
Advocate & others, JSM Law
Partners)**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**SHRIRAM GREENFIELD PHASE-2**" developed by "**SHRIVISION TOWERS PRIVATE LIMITED**" on Sy.No.73/1, 73/2A, 74(P) & 81, Bammenahalli Village, Bidarahalli Hobli, Bangalore East Taluk, Hoskote, Bengaluru Rural District for the relief of refund with interest.
2. This project has been registered under RERA bearing registration No.PRM/KA/RERA/1250/304/PR/171014/001220 valid till 31/3/2021. The project was extended due to COVID-19 for a period of 9 months i.e. till 31/12/2021. On expiry of the registration

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validity, the Authority had extended the registration for a further period of 12 months which is valid till 30/12/2022.

Brief facts of the complaint are as under:-

3. The complainant has booked a flat bearing No.G-1206, Tower – G, 12th Floor in Building-II in the project of the respondent by entering into an agreement for sale dated 23/06/2018 and has paid an amount of Rs.26,92,499/- (Rupees Twenty Six Lakh Eighty Five Thousand Two Hundred and Thirty Three only) to the respondent on various dates (including own contribution, Housing loan and PEMIs). As per the agreement respondent was supposed to handover the flat on 31/03/2021 with a grace period of six months i.e. latest by 30/9/2021, but till today the respondent has not handed over the flat to the complainant. Though more than a year has been lapsed, the respondent has failed to complete the project and deliver the possession of the flat as agreed. The complainant submits that the respondent is asking to pay cancellation charges for cancellation of the booking. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent to refund the entire amount with interest. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative and filed statement of objections as under:
5. The respondent submits that the complainant has availed a loan from HDFC under subvention scheme and entered into tripartite agreement on 26/6/2018 wherein the Respondent had agreed to pay PEMI for the period of 29 months from the date of first disbursement is made or August 2020 whichever is earlier.
6. The respondent contends that they have paid PEMIs in full as per the terms of the tripartite agreement subject to MOU executed between the parties on 26/3/2018.

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7. The respondent contends that the complainant is not entitled for seeking relief sought in light of the Agreement of Sale dated 23/06/2018. The respondent submits that the complainant has filed this complaint for reaping fruits from the instant complaint. The respondent submits that the plan sanction for the project has been sanctioned by the Hoskote Planning Authority on 23/12/2014. The respondent submits that a lake was situated at a distance of 34 meters from the project, and the distance was sufficiently greater than 30 meters stipulated by the BBMP revised master plan. However, due to the general directions in the order of Hon'ble NGT this buffer zone was increased to 75 meters.
8. The respondent further submits that the delay in completion of the project was attributed to the pending litigations against the respondent before the Hon'ble National Green Tribunal in O.A.No.222/2014 as well as before the Hon'ble Supreme Court in Civil Appeal No.5016/2016 benches and the orders dated 4/5/2016 and 5/3/2019 passed by the Hon'ble NGT and Hon'ble Supreme Court regarding maintenance of buffer zones where the apartment allotted to the complainant in respect of the project was situated and on conclusion of the cases in Hon'ble NGT and Hon'ble Supreme Court, the construction and development work of the project proceeded.
9. The respondent further submits that the project has not been completed within stipulated time due to force majeure events such as, scarcity of raw materials, non-availability of skilled labours, transport disruption or such reasons beyond the control of the respondent, and the respondent cannot be held liable to compensate the complainant under section 18(1) of RERA Act. In addition COVID-19 pandemic and the frequent lockdowns have also contributed significantly to the obstacles faced by the respondent.
10. The respondent contends that there is no willful delay or default by the respondent in handing over the possession of the flat to the

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complainant and continues to remain committed to delivering the possession to its customers. The respondent denies the allegations of the complainant and submits that the delay has been caused as a result of factors beyond the control of the respondent such as the ruling of the NGT and force majeure of the pandemic. The respondent further submits that the impact of the ruling of the NGT, New Delhi was common knowledge as the same had been extensively published in the media and the newspapers as the same was widely covered in public knowledge.

11. The respondent further contends that the amount if any repayable to the complainant upon cancellation of the agreement shall be the total amount paid by the complainant alone after deducting booking amount, any interest liabilities as well as any statutory payments made in line with the agreement and therefore, the complainant is not entitled to any interest on delay of the project as the project has not been delayed in light of the force majeure conditions faced by the respondent in the course of developing the project and prays not to grant the relief sought by the complainant and to dismiss the complaint.
12. In support of their defence, the respondent has submitted copies of the Agreement for Sale, Tripartite Agreement, Sanctioned Plan dated 10/5/2016, Order dated 4/5/2016 passed by the Hon'ble National Green Tribunal, Delhi in O.A. 222/2014, Order dated 5/3/2019 passed by the Hon'ble Supreme Court in Civil Appeal 5016/2016, maps of Bommenahalli and Bendiganahalli village depicting the lake, screenshot from Google maps depicting the location of the Project and the lake, RERA Registration & extension certificates and memo of calculation as on 01/08/2023.
13. The complainant has produced documents such as copies of Agreement of Sale, payment receipts, home loan statement of account (showing disbursement of loan and PEMIs paid by the complainant to

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the Bank) issued by HDFC and memo of calculation as on 01/08/2023.

14. This case was heard on 28/7/2022, 15/9/2022, 18/10/2022, 17/11/2022, 19/1/2023, 14/3/2023, 13/4/2023, 22/6/2023 and 2/8/2023. Heard arguments of both sides.

15. **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?

16. **My answer to the above points are as under:-**

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

REASONS

17. **My answer to Point No.1:-** From the materials placed on record, it is apparent that in spite of entering into an agreement for sale to handover the flat by 31/3/2021 with the grace period of six months i.e. latest by 30/9/2021, the respondent has failed to abide by the terms of the agreement and has failed to handover the possession of the flat to the complainant till today.

18. The Hon'ble Authority has perused the statement of objections submitted by the respondent and has not agreed with the contentions made by the respondent.

19. During the process of the hearing in the similar cases, the Hon'ble Authority had directed the respondent to furnish information regarding the date of start of NGT litigation, date of order of Hon'ble NGT/Hon'ble Supreme Court, when the appeal was filed in the Hon'ble Supreme Court, date of sale of apartment to the complainant, whether the complainants/customers were kept informed about the litigation existing at the time of sale of agreement, whether they had

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kept the RERA Authority informed about this litigation at the time of registration, date of application for RERA registration.

20. The respondent had not kept the RERA Authority informed about the litigation at the time of Registration nor had intimated the complainant/customers about the ongoing dispute despite knowing the fact that the Hon'ble NGT order could delay their project. At the time of registration in RERA, the respondent could have asked for longer time for completion or could have changed their building plan. The respondent's contention that the ruling of the NGT, New Delhi had been extensively published in the media and newspapers and that the buyer ought to have been aware about the ruling of the NGT, New Delhi is not acceptable. The onus is on the promoter to open all their cards at the time of sales and not to keep the customers in dark.

21. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s The State of Uttar Pradesh it is held that:

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

22. 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

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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 later 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."

23. 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 that apartment, flat, 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.
24. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
25. As the complainant had not included the housing loan amount disbursed to the respondent by the Bank in her memo of calculation, the Hon'ble Authority instructed the complainant to visit RERA Office and file fresh memo of calculation. Accordingly,

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the complainant has filed fresh memo of calculation as on 8/8/2023.

26. The complainant vide her memo of calculation as on 08/08/2023 has claimed an amount of Rs.36,96,069/- (Rupees Thirty Six Lakh Ninety Six Thousand and Sixty Nine only) as refund with interest. The complainant has admitted for having received refund of Rs.86,373/- from the respondent on 21/8/2021. The respondent vide their memo of calculation as on 01/08/2023 have claimed that they have to pay an amount of only Rs.3,22,329/- as refund and that they have refunded Rs.21,88,677/- to the complainant on 31/12/2021. However, no proof for this payment is submitted. The complainant has denied having received any such amount. Hence, the Authority has not accepted the memo of calculation submitted by the respondent.

27. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund of full amount with interest as claimed by the complainant in her memo of calculation as on 08/08/2023.

28. Therefore, it is incumbent upon the respondent to pay refund with interest 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	30-04-2017	0	0	30-04-2017	0
2		0		TOTAL INTEREST (I1)	0

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	0	1573	21-08-2021	8.15	10.15 as on 01-05-2017	0

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2	20-06-2018	3,02,020	1158	21-08-2021	8.45	10.45 as on 01-06-2018	1,00,130
3	29-06-2018	8,35,199	1149	21-08-2021	8.45	10.45 as on 01-06-2018	2,74,747
4	13-12-2018	5,63,610	982	21-08-2021	8.75	10.75 as on 10-12-2018	1,63,006
5	10-09-2020	9,664	345	21-08-2021	7.3	9.3 as on 10-09-2020	849
6	10-10-2020	9,664	315	21-08-2021	7.3	9.3 as on 10-10-2020	775
7	15-10-2020	5,47,169	310	21-08-2021	7.3	9.3 as on 10-10-2020	43,218
8	10-11-2020	13,472	284	21-08-2021	7.3	9.3 as on 10-11-2020	974
9	10-12-2020	13,472	254	21-08-2021	7.3	9.3 as on 10-12-2020	871
10	10-01-2021	13,310	223	21-08-2021	7.3	9.3 as on 10-01-2021	756
11	10-02-2021	13,310	192	21-08-2021	7.3	9.3 as on 10-02-2021	651
12	10-03-2021	13,310	164	21-08-2021	7.3	9.3 as on 10-03-2021	556
13	10-04-2021	13,230	133	21-08-2021	7.3	9.3 as on 10-04-2021	448
14	10-05-2021	13,229	103	21-08-2021	7.3	9.3 as on 10-04-2021	347
15	10-06-2021	15,542	72	21-08-2021	7.3	9.3 as on 15-05-2021	285
16	10-07-2021	13,229	42	21-08-2021	7.3	9.3 as on 15-06-2021	141
17	10-08-2021	13,229	11	21-08-2021	7.3	9.3 as on 15-07-2021	37

M/S

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18	10-09-2021	13,229	697	08-08-2023	7.3	9.3 as on 15-08-2021	2,349
19	10-10-2021	10,729	667	08-08-2023	7.3	9.3 as on 15-09-2021	1,823
20	10-11-2021	10,729	636	08-08-2023	7.3	9.3 as on 15-10-2021	1,738
21	10-12-2021	10,729	606	08-08-2023	7.3	9.3 as on 15-11-2021	1,656
22	10-01-2022	10,729	575	08-08-2023	7.3	9.3 as on 15-12-2021	1,571
23	10-02-2022	10,729	544	08-08-2023	7.3	9.3 as on 15-01-2022	1,487
24	10-03-2022	10,729	516	08-08-2023	7.3	9.3 as on 15-02-2022	1,410
25	10-04-2022	10,729	485	08-08-2023	7.3	9.3 as on 15-03-2022	1,325
26	10-05-2022	10,729	455	08-08-2023	7.4	9.4 as on 15-04-2022	1,257
27	10-06-2022	10,729	424	08-08-2023	7.5	9.5 as on 15-05-2022	1,184
28	10-07-2022	12,181	394	08-08-2023	7.7	9.7 as on 15-06-2022	1,275
29	10-08-2022	12,181	363	08-08-2023	7.8	9.8 as on 15-07-2022	1,187
30	10-09-2022	12,181	332	08-08-2023	8	10.0 as on 15-08-2022	1,107
31	10-10-2022	13,794	302	08-08-2023	8	10.0 as on 15-09-2022	1,141
32	10-11-2022	13,794	271	08-08-2023	8.25	10.25 as on 15-10-2022	1,049
33	10-12-2022	13,794	241	08-08-2023	8.35	10.35 as on 15-11-2022	942

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34	10-01-2023	14,359	210	08-08-2023	8.6	10.6 as on 15-12-2022	875
35	10-02-2023	14,359	179	08-08-2023	8.6	10.6 as on 15-01-2023	746
36	10-03-2023	14,359	151	08-08-2023	8.7	10.7 as on 15-02-2023	635
37	10-04-2023	14,762	120	08-08-2023	8.7	10.7 as on 15-03-2023	519
38	10-05-2023	14,762	90	08-08-2023	8.7	10.7 as on 15-04-2023	389
39	10-06-2023	14,762	59	08-08-2023	8.7	10.7 as on 15-05-2023	255
40	10-07-2023	14,762	29	08-08-2023	8.7	10.7 as on 15-06-2023	125
41	TOTAL AMOUNT	26,92,499				TOTAL INTEREST (I2)	6,13,836

Refund Interest Calculation From 01/05/2017 (After RERA)									
S. NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	26,92,499	21-08-2021	86,373	26,06,126	717	08-08-2023	7.3	9.3 as on 15-08-2021	4,76,107
2								TOTAL INTEREST (I3)	4,76,107

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 08-08-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
26,92,499	10,89,943	86,373	36,96,069

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

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30. **My answer to Point No.2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, I proceed to pass the following:

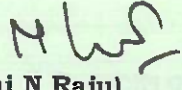
ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/220525/0009527** is hereby allowed.

Respondent is directed to pay a sum of Rs.36,96,069/- (Rupees Thirty Six Lakh Ninety Six Thousand and Sixty Nine only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 20/6/2018 to 08/08/2023. The interest accruing from 09/08/2023 till the date of final payment will be calculated likewise and paid to the complainant.

The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA