

ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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 31st DAY OF AUGUST 2023

COMPLAINT No: CMP/UR/ 190622/0003359

COMPLAINANT....

**SHWETA GUPTA &
NAVEEN KUMAR GUPTA
D-216, 2nd FLOOR, SAMHITA
RAINBOW MTB
THUBRAHALLI
BENGALURU URBAN-560066**

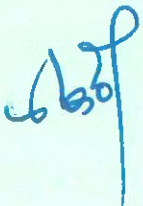
**(BY SRI. ABHEEK SAHA
SHARISTI JAISWAL
TAHAKALEEL KV, ADVOCATES)**

V/S

RESPONDENT.....

**ANIL KUMAR
PROMOTER
M/s DHRUTHI INFRA
PROJECTS LIMITED
NO: 12B, 3RD FLOOR
EPIP ZONE, WHITEFIELD
BENGALURU URBAN-560 066.**

**(BY SRI. AJAY J. NANDALIKE
MANU K..... ADVOCATES)**



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JUDGEMENT

1. This complaint is filed under section 31 of the RERA against, project **"DHRUTHI TRANQUIL TOWERS"** developed by **"M/s DHRUTHI INFRA PROJECTS LIMITED"** for the relief of refund with interest.
2. This project is registered not registered in RERA. This Authority has passed an interim order dated 17th October 2022 directing the respondent-developer to register the project 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 is yet to register the project.
3. The builder has developed this project situated at Sy.No: 92/1, Nagondanahalli Village, K.R. Puram Hobli, Bengaluru East Taluk.
4. The gist of the complaint is that the complainants had booked an apartment bearing no. A-306 on the third floor in the project **"DHRUTHI TRANQUIL TOWERS"** and thereafter entered into an agreement of sale and construction agreement dated 21/7/2015 with the respondent for a sale consideration of Rs.62,07,500/- (Rs. Sixty two lakhs seven thousand and five hundred only). The complainants have paid an amount of Rs.2,00,000/- on 16/7/2015, Rs.3,00,000/- on 1/8/2015, Rs.2,00,000/- on 14/8/2015, Rs.15,226/- on 2/9/2015, Rs.25,50,000/- on 3/10/2015, Rs.18,00,774/- on 28/10/2015 and Rs.5,40,010/- on 6/1/2016 altogether Rs.56,06,010/- (Rs. Fifty six lakhs six thousand ten only) to the respondent which has been duly acknowledged by him. The one of the complainant Naveen Kumar Gupta has also entered into an tripartite agreement dated 1/9/2015 with the respondent-builder and Housing Development Finance Corporation

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Limited for availing housing loan towards purchase of the said apartment. The respondent was required to hand over the possession of the said apartment to the complainants within 31/12/2016. It is contended that, though the building was constructed, laying of tiles in bed rooms and bathroom has not been completed. There is no electricity and water work besides fixture have not been furnished. Further, even at the end of the stipulated timeline and after a delay of more than four years, the respondent did not complete the construction and handed over the possession to the complainants. They are staying in a rented apartment and being forced to pay rent for the same apart from clearing the EMIs every month. The complainant has availed housing loan from HDFC Bank for the purpose of the said flat and are regularly paying EMI dues. Having lost confidence with the respondent, the complainants have approached this forum for the relief of direction to the respondent to refund the amount along with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and filed statement of objections as under:
6. The respondent denied all the allegations made against him by the complainants as false. It is contended that according to the agreement, the complainants were supposed to pay the total consideration of Rs.62,07,500/- towards the said apartment. However, the complainants have paid only a sum of Rs.56,06,010/- (Rs. Fifty six lakhs six thousand and ten only). Thereafter, the project of the respondent was stalled and he could not able to complete the project.

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7. In view of the above, the complainants and the respondent amicably entered into a Cancellation agreement dated 24/6/2022 wherein both the parties are agreed to certain terms and conditions. Under the cancellation agreement, the complainants have received a cheque of Rs.7,15,226/- as full and final settlement. It is submitted that the respondent has already drawn out the demand drafts to settle the loan availed by the complainant towards purchasing of the said apartment. For this, the complainants are required to sign an endorsement with the Bank for cancellation of the loan. The complainant is deliberately failing to do so. It is further contended that the complainants now coming forward and saying that they does not want to honour the terms of the agreement. When there is a signed agreement between the parties, violation of the same amounts to abuse of process of the Hon'ble Authority and the same cannot be countenanced by this Hon'ble Authority. Hence, prayed to dismiss the complaint.

8. Further, the respondent has filed written arguments dated 25/03/2023 as under: It is contended that the complainants and respondent amicably entered into cancellation agreement dated 24/6/2022 wherein both the parties agree to cancel the agreement entered into between the parties. Under the cancellation agreement, the complainants have received a cheque of Rs.7,15,226/- and closure of loan by builder as full and final settlement. Even though the project was originally planned as a residential apartment complex, in the light of difficulties faced by the builder and prevailing market conditions, the promoters and the builders have been constrained to discontinue the project. The promoter is desirous to keep the apartment for personal use and not considering to sell or offer to sell the apartments. The promoter has already cancelled some agreement to sell by way of cancellation agreement and taking active steps to cancel all the bookings.

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9. In support of their claim, the complainants have produced documents such as (1) Agreement of sale and construction both dated 21/7/2015 (2) copy of tripartite agreement dated 1/9/2015 (3) Payment receipts (4) copy of the bank account statement (5) copy of the document showing total pre-EMI interest for the period from 2016-17, 2017-18, 2018-19, 2019-20. (6) copy of email communication dated 20/5/2019. (7) copy of email and trail conversation cancellation of the booking (8) copy of email dated 27/5/2019 sent by the complainant to the respondent for cancellation of the booking and refund and trail conversation.
10. The respondent in support of his defence has produced documents such as copy of cancellation agreement dated 24/6/2022.
11. Heard arguments of the complainant.
12. This matter was heard on 13/6/2022, 15/7/2022, 19/8/2022, 9/9/2022, 10/10/2022, 28/10/2022, 5/12/2022, 19/12/2022, 18/1/2023, 20/2/2023, 10/03/2023, 23/6/2023 and on 3/7/2023
13. On the above averments, the following points would arise for my consideration:-
1. Whether the complainants are entitled for the relief claimed?
 2. What order?
14. **Findings to the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following:

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FINDINGS

15. **Findings to point No.1:-** The grievance of the complainant is that the complainant has booked an apartment no. A-306 situated on the third floor in the project "DHRUTHI TRANQUIL TOWERS" of the respondent. The respondent was required to hand over the possession of the said flat within 31/12/2016. However, the respondent-developer has not handed over the said flat within the stipulated timeline and failed to abide by the terms and condition of the agreement of sale and construction agreement both dated 21/7/2015. Therefore, she has approached this forum for a relief of direction to the respondent to refund the amount along with interest.

16. The same is resisted by the respondent on the ground that even though the project originally planned as residential apartment complex, in the light of the difficulties and prevailing market condition, he has come to a decision not to continue the project. The promoters are in desire of keeping the property for their personal use. Accordingly, the promoters and builders are taking active steps to cancel all the agreement to sell and to cancel the residential apartment project.

17. From the materials placed on record, it is apparent from the payment receipts produced by the complainants, they have paid an amount of Rs.56,06,010/- (Rs. Fifty six lakhs six thousand and ten only) to the respondent on various dates towards the purchase of their said flat. Even at the end of stipulated timeline and after a delay of more than four years, the respondents still did not complete the construction and handed over possession of the schedule apartment to the complainants as per agreement of sale and construction agreement dated 21/7/2015. It is pertinent to note that the project of the respondents was stalled and the respondents could not

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able to complete the project. Furthermore, it is apparent from the records that the complainants and the respondents have amicably entered into a Cancellation agreement dated 24/6/2022 wherein both the parties were agreed to certain terms and conditions and the complainants have affixed their signatures with protest. Under the said cancellation agreement, the complainants were offered a post dated cheque for Rs.7,15,225/- as part of cancellation agreement. The complainants did not encash the said cheque since they did not agree for the agreement though they have affixed their signatures. The complainants have fulfilled on their part of obligation and had paid, adhered to all the demand notes as was insisted by the respondents. Due to the above facts and circumstances, the complainants were finally decided to withdraw from the project due to delay in handing over and abandonment of the project by the builder.

12. As per the decision 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 proceed either under Section 18(1) or under proviso to Section 18(1)....."

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... The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

14. 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 or the amount with interest at such rate as may be prescribed in this behalf"

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. From the averments made in the complaint, it is obvious that the complainants have paid the substantial sale consideration and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the complainants. The complainants have claimed an amount of Rs.99,81,557/- as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

16. 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 23/8/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 23/8/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
56,06,010	43,75,547	0	99,81,557

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

18. Findings to 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/190622/0003359 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **99,81,557/-** (Rupees Ninety nine lakhs eighty one thousand five hundred fifty seven only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate 9% from 16/7/2015 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 to 23/8/2023.
2. The interest due from 24/8/2023 shall be calculated likewise and paid to the complainants till the date of entire realization.
3. 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.


(H.C. Kishore Chandra)

Chairman
K-RERA

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