

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 3RD OCTOBER 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/UR/220708/0009734

COMPLAINANTS.....

**PRATHUSH RAMACHANDRAN
& SANDEEP JANARDHANAN PILLAI
ELLATH SARIKA THARANATH
KALLUALAPPIL HOUSE
KANNUR DISTRICT: 670011
STATE: KERALA**

**(SUCHITHRA S.M., AUTHORIZED
PERSON ON BEHALF OF THE
COMPLAINANTS VIDE SPECIAL
POWER OF ATTORNEY -
NO.99, 2ND A CROSS
V.V. EXTENSION
NARASIMHA SWAMY NILAYA
HOSAKOTE TALUK
BENGALURU RURAL - 562114.**

**(BY MR. MOHAMMED SHAKEEB,
MR. SATHIES KUMAR, MR.CHETAN
TAYAL, ADVOCATES)**

V/S

RESPONDENT.....

**EXPAT PROJECTS BANGALORE
HOLDINGS PRIVATE LIMITED
CARLTON TOWERS, A WING
3RD FLOOR, UNIT NO.301-304
NO.1, OLD AIRPORT ROAD
BENGALURU-560008.**

**(BY MR.R.M. UDAY SHANKAR,
MS. ANUSHREE G & OTHERS,
ADVOCATES)**



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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project **"EXPAT NAVATA"** developed by **"M/S EXPAT PROJECTS BANGALORE HOLDINGS PRIVATE LIMITED"** situated at Expat Navata, Chandapura, Bangalore for the relief of refund with interest.

2. This project is not registered under RERA.

Brief facts of the complaint are as under:-

3. The complainants submit that they had booked a flat bearing No.78 in the project of the respondent vide booking form dated 31/3/2015 and have paid the entire sale consideration amount of Rs.21,52,800/- (Rupees Twenty One Lakh Fifty Two Thousand Eight Hundred only) to the respondent. The complainants submit that the respondent vide their letter of intent dated 8/7/2015 had promised that the phase-wise construction of the project will be completed by March 2019 and that the flats which are allocated for early allottees will be handed over by December 2017, but till today there is no development in the project.

4. The complainants submit that the respondent vide their letter of intent dated 8/7/2015 that if the project is not launched by December 2015, they will pay back the principal amount with 12% p.a. interest to the complainants within 90 days from the date of receipt of the written intimation of cancellation by the purchaser. The complainants also submit that numerous emails were sent on 27/11/2018, 6/5/2019, 8/5/2019, 15/5/2019 to the respondent requesting them for exit from the project and to return the hard earned money but the respondent is not paying any heed to their request. Thus, the complainants have approached this Hon'ble Authority and pray for direction to

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the respondent for refund of entire amount with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of several notices and summons, the respondent has appeared before the Authority through his counsel and has contested the matter by filing statement of objections on their behalf.

6. The respondent denies each and every allegation made in the complaint by the complainant as false and contends that it is not an ongoing project as on date. Hence, the project is excluded from the jurisdiction of the Hon'ble Authority. The respondent contends that the complainants herein are NRIs staying in Bahrain. They are not allottees and are investors in order to derive profits. The respondent contends that the RERA provision came into force from 01/05/2016 and that the same will not be applicable to a transaction which came into existence on 8/7/2015.

7. The respondent submits that the complainants have alleged that no agreement for sale has been executed and have contended that the respondent is liable to return the amount and compensation as proved under section 18 of RERA Act. The respondent contends that when the present transaction occurred and the letter of intent was executed between the parties, the RERA Act was not even in force and thereby the transaction does not come in the purview of the Hon'ble Authority.

8. The respondent contends that the cheques amounting to Rs.10,76,400/- has been issued by one Mr. Vijay Gandhi and that he has not been made as party to the present proceedings and neither his involvement is explained by the complainants. The respondent contends that the complainants have preferred this complaint for reaping fruits. The respondent also contends that

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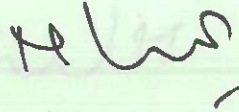
the complainants are not eligible for any compensation for mental agony suffered.

9. The respondent submits that the dispute is purely in nature of reaping profits and prays the Hon'ble Authority to dismiss the complaint.

10. The complainants in their rejoinder have submitted that the contention of the respondent that the present complaint does not come under the jurisdiction of RERA Act are baseless and produces a copy of the order dated 11/8/2020 of the Adjudicating Officer, RERA in CMP/UR/190514/0002601 between Lesile Veghese Isaa and Expat Projects Bangalore Holding Pvt Ltd, the Hon'ble Authority has directed the respondent to refund a sum of Rs.16,15,000/- with interest pertaining to same project. The complainants also submit that the contention of the respondent that they had not carried out any activities of advertising, marketing are false as the respondent had persuaded the complainants to purchase the flat. The complainants enclosed brochure in support of their claim.

11. The complainants deny the contention of the respondent that the complainants are not allottees but are investor. The complainants submit that the letter of intent dated 8/7/2015 clearly goes to show that the complainants have reserved a flat in the project.

12. The complainants submit that on coming to know that it is still a barren land, on 27/11/2018 they requested the respondent to return their money with interest which was ignored by the respondent. The complainants in their rejoinder further submit that they received reply from the respondent after three months to the effect that the respondent has entered into Joint Venture Agreement with SLV Infrastructure and to wait till June 2019. The complainants submit that they made several requests to the respondent for exit



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from the project vide email dated 27/11/2018, 6/5/2019, 8/5/2019, 15/5/2019, 20/5/2019 and 22/5/2019 but the respondent did not respond to any of the above emails.

13. Regarding Mr. Vijay Ashok Gandhi, the complainants submit that he has been named as Nominee in the booking form and the respondent has accepted the payments from his bank account without any queries.

14. The complainants submit that a perusal of the letter of intent dated 8/7/2015 clearly shows that the respondent has promised to refund the entire amount with interest within 90 days from the date of receipt of the written intimation of cancellation by the purchaser. The complainants submit that the memo of calculation is a system generated from the RERA portal and denies the allegation of extortion of money made by the respondent.

15. The complainants pray this Hon'ble Authority to direct the respondent to refund the amount with interest.

16. In support of their defence, the respondent has not produced any documents and also has not filed their memo of calculation despite several opportunities was given.

17. In support of their claim, the complainants have produced documents such as copies of Booking Form, Brochure, Letter of Intent dated 8/7/2015 from the respondent, payment receipt, copy of the Hon'ble Authority order dated 11/8/2020 and memo of calculation as on 15/08/2023.

18. This complaint was heard on 7/9/2022, 2/11/2022, 12/1/2023, 7/2/2023, 16/3/2023, 6/6/2023, 13/7/2023, 16/8/2023 and 14/9/2023. Heard arguments of both sides.



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19. 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?

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

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

REASONS

21. My answer to Point No.1:- From the materials placed on record, it is undisputed that inspite of accepting full sale consideration amount from the complainants, the respondent has failed to handover the flat to them as agreed in their letter of intent dated 8/7/2015. The respondent has also failed to refund the amount as agreed in their letter of intent dated 8/7/2015 after receiving request from the complainants for exit from the project and refund of full amount with interest.

22. From the averments of the complaint and the copies of booking form letter of intent dated 8/7/2015, it is obvious that complainants have already paid entire sale consideration to the respondent. Having accepted the said amount the respondent failed to keep up promise to handover possession of the flat. The respondent has also failed to refund the amount with interest to the complainants, despite several requests were made by the complainants through emails for exit from the project and refund of full amount with interest, certainly entitles the complainants herein for refund with interest.

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23. The Hon'ble Authority has perused the statement of objections filed by the respondent and written submission, rejoinder to the objections of the respondent filed by the complainants.

24. One of the defence of respondent is that the said project was not an ongoing project as on the date of enactment of RERA Act and hence said project is excluded from the jurisdiction of this Authority. The complainants are seeking for refund of entire amount with interest on the ground that the respondent had not completed the said project as agreed. The respondent has not produced a single iota of evidence before this Authority to establish that he had completed the said project before RERA Act came into force. Therefore, the said project is coming under the purview of the RERA Act. From the letter of intent dated 8/7/2015, the promoter has promised that the phase-wise construction of the project will be completed by March 2019 and the flats which are allocated for early allottees will be handed over by December 2017. In view of the above, when RERA came into existence the project was still continuing by respondent's own plan of action and, therefore, the respondent should have registered the project with RERA.

25. 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

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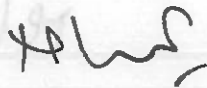
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seek refund of the amount with interest at such rate as may be prescribed in this behalf."

26. 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 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."

27. 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



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be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

28. 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.

29. The complainants in their memo of calculation as on 15/08/2023 have claimed an amount of Rs.38,04,519/- (Rupees Thirty Eight Lakh Four Thousand Five Hundred and Nineteen only) as refund with interest. A thorough verification of the documentary proof submitted by the complainant reveals that their claim is genuine. Despite several opportunities was given, the respondent has not filed their memo of calculation.

30. Having regard to all these aspects, the Authority concludes that the complainants are entitled for refund with interest as calculated vide their memo of calculation as on 15/08/2023.

31. Therefore, it is incumbent upon the respondent to pay the refund with interest which is 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	10-04-2015	3,58,800	751	30-04-2017	66,441
2	11-04-2015	3,58,800	750	30-04-2017	66,353
3	04-05-2015	1,79,400	727	30-04-2017	32,159
4	04-05-2015	1,79,400	727	30-04-2017	32,159
5	02-06-2015	1,79,400	698	30-04-2017	30,876
6	02-06-2015	1,79,400	698	30-04-2017	30,876
7	05-08-2015	1,79,400	634	30-04-2017	28,045
8	05-08-2015	1,79,400	634	30-04-2017	28,045

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9	14-09-2015	1,73,025	594	30-04-2017	25,342
10	15-10-2015	1,104	563	30-04-2017	153
11	02-11-2015	1,34,671	545	30-04-2017	18,097
12		21,02,800		TOTAL INTEREST (I1)	3,58,546

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% @X+2%	INTEREST @X+2%
1	01-05-2017	21,02,800	2297	15-08-2023	8.15	10.15 as on 01-05-2017	13,43,173
2	TOTAL AMOUNT	21,02,800				TOTAL INTEREST (I2)	13,43,173

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 15-08-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
21,02,800	17,01,719	0	38,04,519

32. Accordingly the point raised above is answered in the Affirmative.

33. **My answer to Point No.2:-** In view of the above discussion, 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

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complaint bearing No. **CMP/UR/220708/0009734** is hereby allowed.

1. The respondent is directed to pay a sum of **Rs.38,04,519/- (Rupees Thirty Eight Lakh Four Thousand Five Hundred and Nineteen only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 10/04/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 15/08/2023.

The interest due from 16/08/2023 up to the date of final payment will be calculated likewise and paid to the complainants.

The complainants are 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.

2. Office is hereby directed to issue notice to the respondent under section 3 of the RERA Act to register the project 'Expat Navata' immediately.
3. No order as to the costs.



(Neelmani N Raju)
Member, KRERA

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