

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 12<sup>TH</sup> OCTOBER 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/220280/0009921**

**COMPLAINANT.....**

**RASHMI T SHETTY  
W/O TARANATH RAMA SHETTY  
D-206, OBEROI SPLENDOR  
JVLIR, OPP. MAJAS DEPOT  
JOGESHWARI EAST  
MUMBAI-400060  
STATE: MAHARASHTRA  
DISTRICT: MUMBAI CITY**

**(BY MR.SUHAIL AHMED, MR.ANIL  
D'SOUZA, ADVOCATES)**

**Vs**

**RESPONDENT.....**

**M/S SHRIVISION TOWERS PVT LTD  
40/43, 8<sup>TH</sup> MAIN, 4<sup>TH</sup> CROSS  
SADASHIVA NAGAR  
BANGALORE-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** situated at Sy.No.73/1, 73/2A, 74(P) & 81, Bammenahalli Village, Bidarahalli Hobli, Bangalore East Taluk, Hoskote, Bengaluru Rural 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 31/03/2021. The project was extended due to Covid-19 pandemic for a

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period of 9 months till 31/12/2021. The Authority has further extended its registration for a period of 12 months i.e. till 30/12/2022.

**Brief facts of the complaint are as under:-**

3. The complainant has purchased a flat bearing No.G-1611, Tower G, 16<sup>th</sup> Floor, Building-II for total sale consideration of Rs.53,45,225/- (Rupees Fifty Three Lakh Forty Five Thousand Two Hundred and Twenty Five only) in the project of the respondent and entered into an agreement for sale on 6/10/2018. The complainant submits that she has paid an amount of Rs.23,93,328/- (Rupees Twenty Three Lakh Ninety Three Thousand Three Hundred and Twenty Eight only) to the respondent on various dates. The respondent was supposed to hand over the possession of the flat to the complainant by 31/03/2021 with a grace period of six months i.e. latest by 30/9/2021. The complainant submits that though she has made time to time payments the representative of the respondent send demand letters repeatedly by highlighting wrong progress of the project.
4. The complainant submits that she visiting the project in May 2022 and noticed that in Phase-II all the towers were completed up to 18<sup>th</sup> Floor and the people had started getting possession as well, whereas the Tower G in which the complainant has booked flat was completed only up to 6<sup>th</sup> Floor. The complainant submits that she has lost all hopes of getting the flat and during her visit to the project site on 29/6/2022 she has conveyed to the respondent that she wants to exit from the project. Thus the complainant has approached this Hon'ble Authority and prays for directions to the respondent to refund the entire amount with interest, exit from the project, pay compensation of Rs.5,00,000/- for causing mental agony and cost of the proceedings. Hence, this complaint.

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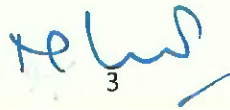


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5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative and has filed statement of objections as under:
6. The respondent denies the entire allegations made against them in the complaint and contends that the complainant is not entitled for the relief sought by her. The respondent submits that they entered into a JDA to develop and construct residential flats. The respondent admits that they had agreed to deliver the flat to the complainant by 31/3/2021 with a grace period of six months i.e. latest by 30/9/2021. The respondent 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 regarding discrepancies in the maintenance of buffer zones and in view of the orders passed by the Hon'ble NGT, the respondent was constrained to halt construction work in the project where the flat allotted to the complainant was situated. 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. The respondent further submits that on conclusion of the cases in Hon'ble NGT and Hon'ble Supreme Court, the construction proceeded.
7. The respondent further submits that in addition COVID-19 pandemic and the lockdowns imposed by the State Government to curb the disease from spreading have also contributed significantly to the obstacles faced by the respondent.

  
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8. The respondent submits that the project has not been completed within stipulated time and was unable to deliver the flat as promised in the agreement for sale 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.
9. The respondent submits that through an affidavit dated 11/7/2023 they had undertaken to give possession of the flat by December 30, 2023 and in light of the above affidavit the possession shall be given upon the condition that the complainant does not choose to withdraw from the project and in case the complainant choose to withdraw from the project, the respondent shall refund the consideration amount paid by the complainant towards the flat.
10. The respondent contends that they are not liable to pay the compensation amount of Rs.5,00,000/- claimed by the complainant towards mental agony as the same does not fall under the purview of the RERA Act 2016.
11. The respondent submits that the project is still in the completion stage and under construction and that the complainant has approached this Hon'ble Authority seeking relief of refund with interest and compensation with an intention to reap profits in the instant complaint.
12. The respondent contends that there is no willful delay or default by the respondent in handing over the possession of the apartment to the 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 Hon'ble NGT and force majeure of the pandemic. The respondent prays this Hon'ble Authority not to grant the relief sought by the complainant and to dismiss the complaint.

13. The complainant in her rejoinder to the statement of objections and memo of calculation submits that though the respondent has submitted an affidavit wherein they have undertaken to deliver possession of the flat by 30/12/2023, the complainant in no way accept the assurance given by the respondent and wishes to go ahead with her decision to seek refund with interest. The complainant submits that she does not agree with the principal amount claimed in the memo of calculation filed by the respondent. The complainant submits that she has produced payment receipts as proof of payments made to the respondent.

14. In support of their defence, the respondent has submitted copies of Agreement for Sale, Order dated 4/5/2016 passed by the Hon'ble National Green Tribunal in O.A.No.222/2014, Order dated 5/3/2019 passed by the Hon'ble Supreme Court in Civil Appeal No.5016/2016, maps of Bommenahalli village and Bendiganahalli village depicting the lake, screenshot from Google maps depicting the location of the project and the lake, RERA registration, extension and covid extension certificates and memo of calculation as on 17/8/2023.

15. In support of her claim, the complainant has produced documents such as copies of agreement for sale, customer statement of account

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issued by the respondent, payment receipts and memo of calculation as on 07/10/2023.

16. This case was heard on 22/12/2022, 7/3/2023, 1/6/2023, 11/7/2023, 2/8/2023, 17/8/2023, 14/9/2023 and 10/10/2023. Heard arguments of both sides.

17. **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?

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

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

**REASONS**

19. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of the flat within 31/3/2021 with a 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 not handed over the possession of the flat to the complainant till date.

20. The Hon'ble Authority has perused the statement of objections submitted by the respondent and written submission submitted by the complainant. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, and hence it is necessary that it shall be from any ambiguity and vagueness. Here in this case, the respondent has not

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given possession of the said flat to the complainant as agreed and have not complied with the terms of the said agreement of sale. Therefore, the Authority has not accepted the contentions of the respondent made in their statement of objections.

21. During the process of the hearing the Authority in similar cases 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 before the Hon'ble Supreme Court, date of sale of apartment to the complainants, whether the complainants/customers were kept informed about the litigation existing at the time of sale of agreement, whether they had kept the RERA Authority informed about this litigation at the time of registration, date of application for RERA registration.

22. The respondent have 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 taken longer time for completion or 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.

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23. 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."*

24. 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*

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

25. 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.
26. 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.
27. The complainant vide her memo of calculation as on 07/10/2023 has claimed an amount of Rs.33,65,511/- as refund with interest calculated from 11/2/2018 to 07/10/2023.
28. The respondent has submitted their memo of calculation as on 17/8/2023 and have claimed that the complainant is to be paid an amount of Rs.28,94,468/- as refund with interest calculated from 15/3/2018 to 17/8/2023. The Hon'ble Authority has noticed that there is a difference in the principal amount between the two parties. The complainant has submitted e-payment receipts as proof to substantiate her claim.
29. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as claimed in her memo of calculation as on 7/10/2023.

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30. Further the complainant has sought compensation for mental agony which does not come under the jurisdiction of this Authority, as such, the same is not considered.

31. 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 ( 11 )	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	2350	07-10-2023	8.15	10.15 as on 01-05-2017	0
2	11-02-2018	25,000	2064	07-10-2023	8.1	10.1 as on 01-02-2018	14,278
3	25-02-2018	75,000	2050	07-10-2023	8.1	10.1 as on 01-02-2018	42,544
4	10-07-2018	1,00,000	1915	07-10-2023	8.45	10.45 as on 01-07-2018	54,826
5	10-07-2018	3,34,225	1915	07-10-2023	8.45	10.45 as on 01-07-2018	1,83,244
6	20-02-2019	3,00,000	1690	07-10-2023	8.75	10.75 as on 10-02-2019	1,49,321



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7	20-02-2019	2,00,000	1690	07-10-2023	8.75	10.75 as on 10-02-2019	99,547
8	22-08-2019	5,00,000	1507	07-10-2023	8.45	10.45 as on 10-08-2019	2,15,728
9	01-01-2020	2,60,700	1375	07-10-2023	8.2	10.2 as on 10-12-2019	1,00,173
10	29-09-2021	5,98,402	738	07-10-2023	7.3	9.3 as on 15-09-2021	1,12,522
11	TOTAL AMOUNT	23,93,328				TOTAL INTEREST ( I2 )	9,72,183

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 07-10-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
23,93,328	9,72,183	0	33,65,511

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 –

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.**CMP/220820/0009921** is hereby allowed.

The respondent is directed to pay a sum of **Rs.33,65,511/-** (Rupees Thirty Three Lakh Sixty Five Thousand Five Hundred and Eleven only) towards refund with interest to the

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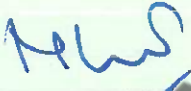
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complainant within 60 days from the date of this order,  
calculated at MCLR + 2% from 11/2/2018 to 07/10/2023.

The interest on refund due from 08/10/2023 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