

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 V

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 2nd December 2024

COMPLAINT NO: CMP/211005/0008417

COMPLAINANTS...

**Shreepad G Shindgikar and Rahul
Shindgikar
No.6A, Keshav Nagar,
SBI Colony,
Near Uday Hostel,
Dharwad-580001.
STATE: KARNATAKA**

(In person)

Vs

RESPONDENT.....

**Skytown Builders and Developers,
2nd Floor, Dev Plaza,
Above Shirur Park More,
80 Ft. Main Road,
Shirur Park,
Dharwad-580031.**

(Adv. Shivayogi Jawoor, Advocate)

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Skytown Luxuria" developed by Skytown Builders and Developers for the relief of refund with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1259/479/PR/200604/003438 till 31-12-2023.

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3. This project is situated at, K.C.C Bank colony, Gamanagatti Village, Hubli, Dharwad.

Brief facts of the complaint are as under:-

4. The complainants have booked a residential flat bearing no. G-4 on ground floor in the project of the respondent namely "Skytown Luxuria" for total sale consideration of Rs.27,00,000/- (Rupees Twenty Seven Lakhs only) and entered into an agreement of sale on 31-08-2019. At the time of booking a said flat the respondent had promised that the possession of flat will be handed over within two years from the date of booking i.e. before August 2021. However, the respondent had not completed the project as agreed and stalled the project for the reasons best known to him. The complainants have waited nearly 2 years for completion of the project. The respondent had committed that he shall hand over the flat by August 2021 with all amenities. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notices, the complainants have appeared before the Authority. The respondent has appeared before the Authority and filed vacalath but not contested the matter by filing statement of objection, producing documents on its behalf etc.,.
6. In support of their claim, the complainants have produced documents such as copy of agreement of sale, brochures, payment receipts, email conversation of both the parties and memo of calculation as on 08-04-2024.

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7. This matter is heard on 23-08-2023, 22-03-2024, 18-06-2024 and 21-09-2024.

8. **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?

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

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

REASONS

10. **My answer to Point No.1:-** The complainants have approached this forum seeking relief of refund of entire amount paid to the respondent along with interest. The grounds urged on that they had entered into agreement of sale dated 31-08-2019 with the respondent towards purchase of flat bearing no. G-04 in the project 'Luxuria'. The respondent was supposed to complete and handover possession of said flat to the complainants within August 2021. However, the respondent had failed to complete the project and to handover possession of said flat to the complainants as agreed.

11. 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 as under:

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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.

12. Further, 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

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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 latter 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."

13. As per section 18(1) of RERA Act, 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, plot, 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.

14. 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 etc., in accordance with sale agreement.

15. From the averments of the complaint and documents of the complaint, it is obvious that the complainants have paid substantial sale consideration to the respondent towards the purchase of said flat. Having accepted the substantial sale consideration and having failed to abide by the terms of agreement of sale dated 31-08-2019 certainly entitles the complainants for refund of entire amount with interest.

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16. The complainants have filed their memo of calculation as on 08-04-2024 claiming a refund of Rs.34,81,663/-(Rupees Thirty Four Lakhs Eighty One Thousand Six Hundred and Sixty Three only) including interest. The respondent has not resisted the said memo of calculation filed by the complainants and he has not submitted his Memo of calculation inspite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainants reveals that their claim is genuine.

17. In response to the notice, the respondent didn't turn up and appear before the Authority. He has not taken any interest to participate in the proceedings and to resist the claim of complainants. Hence, the claim of complainants remained unchallenged and his claim is corroborated with cogent materials. There is no reason to discard the claim of complainants.

18. Having regard to all these aspects as mentioned above, this Authority concludes that the complainants are entitled for refund along with interest as claimed vide their memo of calculation 08-04-2024.

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

Interest Calculation From 01/05/2017 (After RERA)							
S.N O	DATE FROM 01/05/20 17	AMOUNT PAID BY CUSTOM ER	NO OF DAY S	NO OF DAYS TILL	MCLR INTERES T X%	INTEREST RATE X+2%	INTERES T @X+2%
1	01-05- 2017	0	253 4	08-04- 2024	8.15	10.15 as on 01-05-2017	0

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2	31-08-2019	23,50,000	168 2	08-04-2024	8.45	10.15 as on 10-08-2019	11,31,66 3
3	Total Amount	23,50,000				TOTAL INTEREST(I2)	11,31,66 3

MEMO OF CALCULATION			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 08-04-2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
23,50,000	11,31,663	0	34,81,663

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

21. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I proceed to pass the following:-

ORDER

22. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/211005/0008417** is hereby allowed as under.

1. The respondent is directed to pay a sum of Rs. 34,81,663/- (Rupees Thirty Four Lakhs Eighty One Thousand Six Hundred and Sixty Three only) towards refund with interest calculated at MCLR + 2% from 31-08-2019 till 08-04-2024 to the complainants within 60 days from the date of this order.

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2. The interest due from 09-04-2024 up to the date of final payment will be calculated as per MCLR + 2% and paid to the complainants.

3. The complainants are at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

pNo order as to the costs.

(G R REDDY)
Member, K-RERA

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