

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**

**Dated 22nd OCTOBER 2024**

**CMP/200907/0006502**

**Present**

**Hon'ble Chairman Shri. Rakesh Singh**

**Hon'ble Member Shri. G.R.Reddy**

**Complainant....**

**B Prashanth**

79/99 4TH MAIN ROAD BAPUJI NAGAR  
BANGALORE SOUTH GOVERNMENT  
ELECTRIC FACTORY, BANGALORE,  
Bengaluru - 560026.  
(By S.A. Maruthi Prasad, Advocate)

V/s

**Respondents .....**

1. a) **Sri. C. Nagaraj**  
S/o late Chennarudriayya  
Aged 63 years
- b) **Smt. Latha Chandrashekhar**  
D/o C.Nagaraj  
Aged 38 years
- c) **Smt. Asha Santhosh**  
D/o C.Nagaraj  
Aged 38 years
- d) **Smt. Suma Renukesh**  
D/o C.Nagaraj  
Aged 31 years
- e) **Sri. Ravi.N.Tito**  
S/o C.Nagaraj  
Aged 29 years

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- f) **Smt. Bharathi Devanath**  
W/o Late K.C. Devanath  
Aged 25 years
- g) **Smt. Spoorthi,**  
D/o Late K.C. Devanath,  
Aged 25 years
- h) **Sri. Prajwal.D.K**  
S/o Late K.C. Devanath,  
Aged 23 years
- i) **Sri. Kuchangi.C.Vasanth Kumar,**  
S/o Smt. Usha Kumari  
Aged 51 years
- j) **Sri. K.C. Shankar**  
S/o Sri.K.G. Channabasavaiah  
Aged 47 years
- k) **Sri.K.G. Channabasavaiah**  
S/o Late Gubbaiah  
Aged 82 years
- l) **Smt. Tara manjunath**  
D/o Late PremaRajashekar  
Aged 55 years
- m) **Smt. Asha Mahesh**  
W/o Late K.R. Mahesh,  
Aged 45 years
- n) **Sri. K.R. Dinesh**  
S/o Late PremaRajshekar  
Aged 49 years
- o) **Dr. Himanshu.M**  
S/o Late Akkamahadevi  
Aged 62 years
- p) **Dr.G. Mohan Kumar**  
H/o Late Akkamahadevi  
Aged 62 years
- q) **Smt. Sujatha Shivashankar**  
D/o Late D.R. Chennarudraiyya  
Aged 62 years

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r) **Smt. Siddalakshmi Sastry**

D/o Sujatha Shivashankar  
Aged 27 years

s) **Miss. Karuna Shastry**

D/o late G.T. Shivashankar  
Aged 23 years

All are represented by their GPA holder

**2. M/s Tirumala Constructions**

**Represented by its partner MR. Praveen Mohan**

326, 5th Main, 10th Cross, 4th Stage

Vinayaka Layout, Nagarabhavi,

Bengaluru Urban – 560072.

(By Shri. Chethan Kumar, Advocate)

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### JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "THIRUMALA K PARK CENTRAL" developed by "M/s. Tirumala Constructions" of the respondent for the relief of refund with interest and to register the aforesaid project with RERA.
2. This project is unregistered one.
3. The said project is situated at Property no.12, 12/1 & 12/2 (old no.5), PID No.77-59-12, situated at Serpentine road & Pipe Line Road, 8th Block, Kumara Park extension, Bangalore.
4. Earlier, the complainant herein had filed 2 complaints in cmp.No.6502 and 6518 against the respondent herein seeking relief of refund with interest which came to be dismissed vide order dated 01/03/2021.

Which

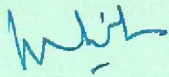


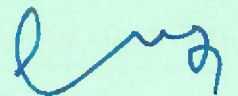
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Against the said order the complainant had preferred appeals before the Hon'ble Appellate Tribunal in Appeal No.43/2021 clubbed with appeal with 64/2021 which came to be allowed in part vide Judgement dated 15/06/2022 and, matters were remanded to the Authority for fresh consideration with a direction to club all the 3 complaints filed by the allottee in Cmp.No.6502 and 6518 along with Cmp.No.8297 which was adjudication before this Authority. These being the facts, after remittal of the matters as aforesaid, during hearing before this Authority, the complainant had filed an amendment application dated 23/09/2022 for amendment of prayer for the relief of refund with interest to register the aforesaid project with RERA instead of 'to restrain the builder from creating 3rd party charge over flat g 3 in Tirumala K Park Central'. Said amendment application came to be allowed on 24/02/2023. The respondent herein had challenged the said order dated 24/02/2023 before the Hon'ble High Court of Karnataka in Writ Petition No.6893(GM-RES) which came to be dismissed vide judgement dated 27/09/2023. Thereafter, during hearing before this Authority the respondents herein have preferred a writ petition in W.P.No.5847 before the Hon'ble High Court of Karnataka praying to quash the impugned order dated 11/01/2024 in Cmp.No.8297, Cmp.6502 and 6518 of 2022 which came to be disposed of vide order dated 26/06/2024 directing this Authority to conclude the proceedings after giving sufficient and reasonable opportunities to both the parties and in accordance with law. With this background, this matter has been remanded by the Hon'ble High Court of Karnataka in Writ Petition





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No.5847/2024 vide order dated 26/06/2024 with a direction to this Authority to reconsider afresh in accordance with law.

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

5. The complainant had entered into an agreement of sale on 19/07/2019 to purchase a flat bearing No.G-01 in ground floor in the project "THIRUMALA K PARK CENTRAL" of the respondents. The respondents had assured huge discount for one time payment of entire sale consideration. The complainant had paid entire sale consideration of Rs.1,83,00,000/- (One crore eighty three lakh only). In view of the attractive discount offered by the builder the complainant had paid the entire sale consideration. Recently the complainant came to know that the builder without consent or knowledge of the complainant has sold the said flat through an absolute sale deed dated 11/11/2019 in favor of third parties even though the said flat No.G-2 is still not complete.Hence, this complaint.
6. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through their counsel, and filed statement of objections as under:-
7. The respondents deny the entire allegations made against them by the complainant as false.They have contended that at no point of time the respondents herein had either executed the agreement of sale dated 19/07/2019 or received sale consideration of Rs.2,00,00,000/- from the complainant. The complainant has fraudly created the said sale agreement of schedule B property to gain amount from the respondents. According to the complainant he has entered into agreement of sale dated





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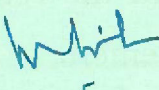
19/07/2019. Further, the agreement discloses that payment of sale consideration of schedule B property is sum of Rs.1,83,00,000/- and complainant had paid an advance amount of Rs.1,83,00,000/-. The above circumstances clearly shows that the agreement dated 19/07/2019 signed on same day and the sale consideration was acknowledged by the respondent on the same day, but agreement discloses that the payment was done on 22/07/2019 Rs.50,00,000/- and there are details about remaining sum of Rs. 1,32,00,000/- by the complainant in the agreement. Further, the payment details and sale consideration are contrary to agreement of sale and complaint. Hence, it clearly goes to show that the complainant has created the said agreement to file this complaint and to harass the respondent to gain illegal amount or apartment from him.

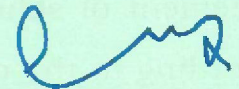
8. Further they contend that the contention taken by the complainant that he has paid a sum of Rs. 2 crore to respondents on 24.07.2019 by way of cheque and RTGS towards sale of flat and same is reflected in the account statement produced by the complainant. It is pertinent to mention here that the complainant Mr. Prashanth was director of the M/s Super Royal Holiday India Private Limited. The complainant has transferred a sum of Rs. 6 crore through his personal account to respondent firm on 24.07.2019 as follows :

a) Rs. 50,00,000/- by way of Cheque bearing No. 000000000121 on 24.07.2019 .

b) Rs. 50,00,000/- by way of Cheque bearing No. 000000000122 on 24.07.2019.

c) Rs. 50,00,000/- by way of Cheque bearing No.





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000000000124 on 24.07.2019.

d) Rs. 1, 50,00,000/- by way of Cheque bearing No.

000000000125 on 24.07.2019 .

e) Rs. 1,50,00,000/- by way of Cheque bearing No.

000000000126 on 24.07.2019.

f) Rs. 1,50,00,000/- by way of Cheque bearing No.

000000000127 on 24.07.2019. (as per the compliant the above said amount is the sale consideration amount of the sale agreement dated 19.07.2019)

9. After receiving the above said amount by the Respondent firm, on same day i.e., 24.07.2019 the Respondent firm Rep by its partner Mr. PraveenMohan had transferred the said amount to his personal account. On same day the Mr. Praveen (Partner of the Tirumal Construction) had transferred the above said amount of Rs.6,00,00,000/-(Rupees Six Crore) to M/s Super Royal Holiday India Private Limited represented by its director Mr. Prashanth B. The complainant is the director of the M/s Super Royal Holiday India Private Limited and the said transaction clearly states that what amount the complainant is showing as sale consideration in sale agreement, the same has been completely repaid by the Respondent to the complainant on same day.

10. Further, they contend that the complainant taking the advantage of above account transaction has created 3 sale agreements dated 19.07.2019 and had filed the above cases to harass respondents and to gain the amount and apartment illegally. Further, it is stated by the respondents that they have not entered into agreement with complainant and except the above transaction, the complainant had failed to prove

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the case and above transition is not for the sale agreement. Hence, the question of restrain the builder/ respondents from creating any third party charge and executing sale deed does not arise. Hence, on this ground itself, the case needs to be dismissed in-limine.

11. Further, they contend that the other contention taken by the complainant is that the respondent had already sold the Flat bearing No.G-2 of said project. The respondents submit that, the sale deed dated 11.11.2019 shows that the sale consideration is sum of Rs. 2 crore 35 Lakhs, again it is proof that, in the sale agreement dated 19.07.2019 produced by the complainant shows that the sale consideration is sum of Rs. 1crore 83 lakhs and there is 50 Lakhs difference between the sale agreement and sale deed. It shows that the complainant has created the sale agreement. Hence, on this ground itself, the case needs to be dismissed in-limine.
12. Further, there is a specific clause in the sale agreement dated 19.07.2019, clause 6 of Sale agreement speaks about, if fails and neglects to execute the sale deed as aforesaid the purchaser will be at liberty to enforce specific performance of the agreement or for refund of the amount paid. Even then the complainant had not challenged the sale deed before any court. In the said circumstances it clearly shows that the complainant had fraudly created the sale agreement to harass the respondents.
13. The complainant has not paid single rupee to respondents as sale consideration and the sale agreement is not registered one and proper stamp duty has not been paid by the complainant to Government. The

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complainant had paid only Rs.200. Hence, impounding the above documents and direct the complainant to pay the penalty on the said documents.

14. The said agreement is not registered and proper stamp duty has not been paid by the complainant, no witness has signed in the witnesses Colum, the Respondent has not entered into said sale agreement.Hence, prayed to dismiss the complaint.
15. In support of their claim, the complainant has produced/uploaded copies of agreement for sale 19/07/2019, sale deed dated 30/10/2019, Encumbrance Certificate, bank statement, resignation letter dated 26/06/2019 and legal notice.
16. In the support of their defense, the respondents have produced copies of interim order of Hon'ble High Court dated 28/05/2024.
17. This matter was heard on 04/04/2022, 29/04/2022, 15/07/2022, 12/08/2022, 23/09/2022, 18/11/2022, 09/12/2022, 09/01/2023, 06/02/2023, 24/02/2023, 14/03/2023, 21/03/2023, 30/10/2023, 17/11/2023, 01/12/2023, 18/12/2023, 11/01/2024, 21/02/2024, 12/03/2024, 21/03/2024 and 03/09/2024.
18. Heard arguments of both sides.
19. **On the above averments, the following points would arise for our consideration:-**
1. Whether the complainant is entitled for the relief claimed?
  2. What order?
20. **Findings on the above points is as under:-**
1. In the Affirmative.
  2. As per final order for the following





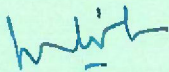
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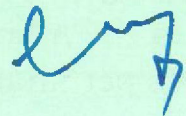
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**REASONS**

- 21. Our findings on point No.1:-** From the materials available on record, it is apparent that in spite of booking a flat bearing No.G-01 in ground floor and receiving entire sale consideration, the respondent/builder had failed to abide by the terms of the agreement of sale dated 19/07/2019. The respondent No.2 builder had failed to refund the amount paid by the complainant till today.
- 22.** From the averments of the complaint and the copies of the agreement of sale 19/07/2019, it is obvious that the respondent had failed to complete the work and to execute the sale deed of said flat. Further, the respondent builder had sold the said flat in favor of third party under registered sale deed dated 30/10/2019.
- 23.** During the process of the hearing, the Hon'ble Authority has perused the statement of objections filed by the respondent and written submission filed by the complainant.
- 24.** 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 free from any ambiguity and vagueness. Here, in this case, the respondent has not complied with the terms of the said agreement for sale.
- 25.** The respondent builder has filed statement of objections taking several defenses such as the complainant herein was the director of M/s. Super Royale Holiday India Pvt.Ltd. and had transferred a sum of Rs.6,00,00,000/- through his personal account to respondent firm on 24/07/2019 and on the same day partner of respondent firm namely





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Praveen Mohan had transferred the said amount to his personal account and that same has been completely repaid by the respondent to the complainant on the same day. For this the respondent has not produced a single iota of evidence before this Authority in order to establish that he has transferred/repaid a sum of Rs.6,00,00,000/- (Six Crore) to the complainant on 24/07/2019. Furthermore, it is apparent from the records such as resignation letter dated 26/06/2019 of complainant herein, bank statement that the complainant herein had resigned from the directorship of 'M/s Super Royal Holiday India Private Limited' and after resignation the complainant herein had entered into agreement of sale dated 19/07/2019 with the respondent towards purchase of said flat. From this it is crystal clear that whatever the transactions entered into between the parties herein are after the resignation of the complainant herein from the directorship of 'M/s Super Royal Holiday India Private Limited'. Therefore, the defense taken by the respondents herein that they have repaid the amount to the complainant holds no water.

26. On the other hand, the complainant has produced account statement of Karur Vysya Bank Ltd to establish that he has transferred a sum of Rs.2,00,00,000/- (Two crore) to the respondent.

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

*"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or unable to give possession of an apartment, plot or*

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*building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance or 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."*

**28.** In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at Para 23 between M/s Imperia Structures Limited v/s Anil Patni & 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 of 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 the provision of section 18(1). The case of Himanshu Giri came under the later category. The*

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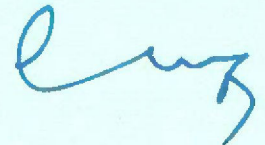
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*RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment."*

29. 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.
30. 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 the sale agreement.
31. The complainant has claimed Rs.2,77,43,807/- (Rupees Two Crore Seventy Seven Lakh Forty Three Thousand Eight Hundred and Seven only) vide his memo of calculation as on 17/03/2023 towards refund with interest. Despite several opportunities were given the respondent No.2 has not filed their memo of calculation.
32. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest calculated vide their memo of calculation as on 17/03/2023.
33. Therefore, it is incumbent upon the respondent to pay refund with interest which is determined as under:



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S.NO	DATE FROM	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	1/5/2017	0	2146	17-03-2023	8.15	10.15 as on 01-05-2017	0
2	19-07-2019	50,00,000	1337	17-03-2023	8.6	10.6 as on 10-07-2019	19,41,397
3	24-07-2019	1,50,00,000	1332	17-03-2023	8.6	10.6 as on 10-07-2019	58,02,410
4	TOTAL AMOUNT	2,00,00,000				TOTAL INTEREST ( I2 )	77,43,807

PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 17-03-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
2,00,00,000	77,43,807	0	2,77,43,807

34. Previously, there are 2 complaints in Cmp.No.6502 and 6518 filed by the complainant herein for the relief of refund with interest which came to be dismissed vide order dated 01/03/2021 for the following reasons:-

*"From the records it is not clear as to whether there were in fact sale transactions with respect to apartment No.G-1 and G-3. When such being the case, the complainant cannot be considered as an allottee as defined under the provisions of the Act. From transactions we can infer that he may be an investor with the respondent firm".*

*with*

*[Signature]*

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The said order was challenged by the complainant before Appellate Tribunal in appeal No.43/2021 clubbed with appeal No.64/2021. After hearing said appeals came to be allowed in part vide order dated 15/06/2022 with observations in **para No.35:-** that

*“this Authority has failed to consider that the sale consideration was paid through various cheques from the personal bank account of the complainant to the account of builder. If the builder wanted to return that amount to the complainant, the builder should have returned the same to the personal bank account of the complainant and not to the firm ‘M/s. Super Royale Holiday India Pvt.Ltd’,*

**in para No.36: -**

*“In view of denial of agreements of sale and the signature of Mr.Praveen Mohan, the partner of M/s Tirumala constructions Pvt.Ltd.,(the builder), the Authority ought to have verified the disputed signatures of Mr. Praveen Mohan found in the agreements of sale with that of his admitted signatures found in his statement of objections, Vkalath and such other documents available in the record”.*

**in para No.37**

*“When the complainant has alleged that there was a separate transaction entered into between his former company M/s Super royal holiday India Private Limited., and the builder-company where under a sum of rupees nine crores was paid by ‘M/s Super royal holiday India Private Limited’ to the builder M/s. Tirumala Constructions Private Limited., and in connection with the said transaction, the builder might have returned a sum of rupees six crores to M/s Super royal holiday*

*whit*

*eng*

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Karnataka Real Estate Regulatory Authority,

# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,  
3rd Cross, Mission Road, Bengaluru-560027

*India Private Limited., and taking advantage of the said transaction, the builder is trying to mislead the authority as if builder has returned the amount of the complainant, the Authority, ought to have verified both the transactions, the one held between the builder and M/s Super royal holiday India Private Limited., Thus, the finding of the authority holding that the complainant is not an allottee as defined under section 2(d) of the act and it can be inferred that he is an investor and there are no transactions between the parties is contrary to the above materials on record and to the relevant provisions of law mentioned hereinabove and, therefore, it is liable to be set aside."*

With these observations both the appeal Nos.43/2021 and 64/2021 came to be allowed in part vide Judgement dated 15/06/2022 and, matters were remanded to the Authority for fresh consideration with a direction to club all the 3 complaints filed by the allottee in Cmp.No.6502 and 6518 along with Cmp.No.8297 which was adjudication before this Authority.

These being the facts, after remittal of the matters as aforesaid, during hearing before this Authority, the complainant had filed an amendment application dated 23/09/2022 for amendment of prayer for the relief of refund with interest and to register the aforesaid project with RERA instead of 'to restrain the builder from creating 3rd party charge over flat g 3 in Tirumala K Park Central'. Said amendment application came to be allowed on 24/02/2023. The respondent herein had challenged the said order dated 24/02/2023 before the Hon'ble High Court of Karnataka in Writ Petition No.6893(GM-RES) which came to be

*hbt*

*[Signature]*



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dismissed vide judgement dated 27/09/2023 with the observations in para No.10 that

*“since sale of flats is not disputed, the complainant, if has paid the amount, he can seek refund of amount. The Authority which was dealing with the application seeking amendment ought to have assigned reasons before passing the order. Since the impugned order is an order on an interlocutory application seeking amendment, this court is of the view, instead of remaining the matter, this Court can supplement reasons for allowing the application”.*

Thereafter, during hearing before this Authority the respondents herein have preferred a writ petition in W.P.No.5847 before the Hon'ble High Court of Karnataka praying to quash the impugned order dated 11/01/2024 in Cmp.No.8297, Cmp.6502 and 6518 which came to be disposed of vide order dated 26/06/2024 directing this Authority to conclude the proceedings after giving sufficient and reasonable opportunities to both the parties and in accordance with law and made observation in para No.3 as under:-

*“Though several contentions have been urged by both sides in support of their respective claims, a perusal of the impugned order will indicate that respondent No.1 Authority has directed the matter to be heard by the Full Bench of the authority in terms of the provisions of the Real estate Regulations and development Act, 2016. It is needless to state that while adjudicating upon the matter, respondent No.1 Authority would bear in mind the judgement of the Karnataka Real estate Appellate Tribunal in appeal No.(K-REAT)-43/2021 c/w Appeal No.(K-REAT)-64/2021 dated*

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15.06.2022, as well as the order passed by the Court in W.P.No.6893/2023 dated 27.09.2023 and proceed further in accordance with law”.

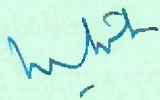
35. Accordingly, the point raised above is answered in the affirmative.

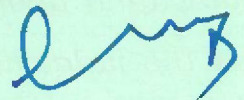
36. **Findings on point No.2** :-In view of the above discussion, the complaint deserves to be allowed. Accordingly, I proceed to pass the following

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/200907/0006502** is hereby allowed as under.

1. The respondent/developer is hereby directed to pay a sum of Rs.2,77,43,807/- (Rupees Two Crore Seventy Seven Lakh Forty Three Thousand Eight Hundred and Seven only) towards refund with interest calculated at SBI MCLR+2% from 19/07/2019 to 17/03/2023 to the complainant within 60 days from the date of this order.
2. The interest due from 18/03/2023 shall be calculated likewise and paid to the complainant till the date of possession.
3. The Secretary K-RERA to initiate proceedings against the respondents for not registering the project as required under Section 3 of the Act.





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Karnataka Real Estate Regulatory Authority,  
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4. The complainant is at liberty to initiate action in accordance with law, if the respondents fail to comply with this order.

No order as to costs.

  
(G.R.Reddy)  
Member  
K-RERA

  
(Rakesh Singh)  
Chairman  
K-RERA