

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 5TH JUNE 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/220706/0009723

COMPLAINANTS.....

**LOKNATH NAYAK
& SRUSTI BEDATRAYEE DAS
FLAT NO.28144
SOBHA DREAM ACRES
BALAGERE ROAD, PANATHUR
BANGALORE-560087**

**(BY MR. ABHEEK SAHA, ADVOCATE &
OTHERS)**

RESPONDENTS...

**1.SHRIVISION TOWERS PRIVATE LIMITED
NO.40/43, 8TH MAIN, 4TH CROSS
SADASHIV NAGAR
BANGALORE-560080.**

**2.SHRIPROP HOMES PRIVATE LIMITED
NO.40/43, 4TH CROSS ROAD
8TH MAIN ROAD, RMV EXTENSION
SADASHIVNAGAR
BANGALORE-560080.**

**3.RAMESH RAMACHANDRAN KALPATTU
DIRECTOR
SHRIVISION TOWERS PVT LTD
NO.40/43, 4TH CROSS ROAD
8TH MAIN ROAD, RMV EXTENSION
SADASHIVNAGAR
BANGALORE-560080.**

**4.RAJESH YASHWANT SHIRWATKAR
DIRECTOR
SHRIVISION TOWERS PVT LTD &
DIRECTOR
SHRIPROP HOMES PRIVATE LIMITED
NO.40/43, 4TH CROSS ROAD**

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8TH MAIN ROAD, RMV EXTENSION
SADASHIVNAGAR
BANGALORE-560080.

5.KRISHNA VEERARAGHAVAN
DIRECTOR
SHRIVISION TOWERS PVT LTD
NO.40/43, 4TH CROSS ROAD
8TH MAIN ROAD, RMV EXTENSION
SADASHIVNAGAR
BANGALORE-560080.

6.GOPALAKRISHNAN JAGADEESWARAN
DIRECTOR
SHRIPROP HOMES PRIVATE LIMITED
NO.40/43, 4TH CROSS ROAD
8TH MAIN ROAD, RMV EXTENSION
SADASHIVNAGAR
BANGALORE-560080.

7.NARASIMHAMURTHY NAGENDRA
DIRECTOR
SHRIPROP HOMES PRIVATE LIMITED
NO.40/43, 4TH CROSS ROAD
8TH MAIN ROAD, RMV EXTENSION
SADASHIVNAGAR
BANGALORE-560080.

(BY MR.JOSEPH ANTHONY,
ADVOCATE & OTHERS)

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**" on Sy.No.73/1, 73/2A, 74(P) & 81, Bommanahalli Village, Bidarahalli Hobli, Bangalore East Taluk, Hoskote, Bengaluru Rural District for the relief of refund of entire amount with interest.

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2. This project has been registered under RERA bearing registration No.PRM/KA/RERA/1250/304/PR/171014/001220 valid till 31/3/2021. The project was extended due to COVID-19 for a period of 9 months i.e. till 31/12/2021. As the registration of the project expired on 31/12/2021, the Authority extended the registration for a further period of 12 months which is valid till 30/12/2022. The Authority has given further extension under section 7(3) of the Act for a further period of 12 months i.e. till 30/12/2023.

Brief facts of the complaint are as under:-

3. The complainants had booked a flat bearing No.G-1508, 15th Floor, Tower-G, Building-II in the project of the respondents for a total sale consideration of Rs.51,19,700/- and entered into agreement for sale dated 15/06/2019. They have paid Rs.22,93,626/- to the respondents on various dates. The complainants have also entered into tripartite agreement with L&T Housing Finance Limited and the respondent No.1 for housing loan. As per the agreement, the respondents were supposed to deliver possession of the flat within 31/03/2021 with a grace period of six months i.e. latest by 30/09/2021. Till the date of filing this complaint, only 5 floors are completed in the project since its construction started in 2018. The complainants submit that there is inordinate delay in the completion of the project and are suffering in the hands of the respondents. They are not able to live in their own flat due to failure of the respondents to complete the construction. The complainants had to bear financial losses and their hard-earned money is blocked with the respondents. The complainants are staying in a rented house paying rent apart from clearing EMI every month. The complainants are bearing the burden of paying PEMIs. Due to this act of the respondents, the complainants are going through mental agony.



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The complainants also submit that when they visited the project site, it was found that there was no progress in the construction work and there are many other issues with respect to the development. As such, they have chosen to exit from the project. Thus, the complainants have approached this Hon'ble Authority and pray for direction to the respondents to refund the entire amount with interest, compensation of Rs.15,00,000/- for mental agony and Rs.1,50,000/- as the cost of the present proceedings. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Hon'ble Authority through their counsel/representative and have filed their statement of objection as under:-
5. The respondents have denied all the allegations made in the complaint by the complainant as false. The respondents submit that the complainants being desirous of purchasing a flat bearing No.G-1508, 15th Floor, Tower-G in the project of the Respondent No.1 booked a flat and entered into agreement for sale dated 15/6/2019. It was agreed to deliver the flat to the complainants by 31/3/2021 with a grace period of six months.
6. The respondents submit that the complainants have availed housing loan from L&T Housing Finance Limited under the subvention scheme and entered into tripartite agreement dated 17/6/2019 with the respondent No.1 and the financial institution, wherein it was agreed that the respondent No.1 will pay PEMIs to the financial institution from the period starting from first date of disbursement till 07/08/2020. The respondents contend that they have duly paid PEMIs on behalf of the complainants to the financial institution as per tripartite agreement.

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7. The respondents submit that the tripartite agreement entered between the parties was in pursuant to MOU executed between the respondent and the financial institution dated 19/12/2018. The respondents submit that though the development and construction in the project started as scheduled, the complainants flat could not be completed due to various force majeure conditions that were beyond their control viz., demonetization, non-availability of skilled labour, scarcity of raw materials, truck strikes etc. The project was further delayed due to the spread of Covid-19, during which a nation-wide lockdown was imposed to curb the spread of the disease.
8. The respondents submit that after considering the hindrances caused to the builders in completing the projects due to Covid-19 pandemic, the Hon'ble Authority extended the period to complete the project till 30/9/2021 and further extended it till 30/12/2023.
9. The respondents submit that the project is still in completion stage and the complainants have approached the Hon'ble Authority seeking refund of entire amount with interest with an intention to reap fruits of the instant complaint.
10. The respondents submit that the complainants are entitled to only amount paid by them towards the flat i.e. Rs.3,06,919/- plus interest and the remaining the amount disbursed by the financial institution i.e. Rs.19,86,707/- (out of Rs.69,46,200/- housing loan availed from financial institution) will be paid back by the respondents to the financial institution. They further submit that Respondent No.1 is not liable to pay any interest on the amounts received by them from the financial institution, as they have already paid the interest and will pay back the amount received in view of the termination of the agreement.



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11. The respondents pray the Hon'ble Authority not to grant the relief sought by the complainants and to dismiss the complaint.
12. The complainants in their memo filed before the Hon'ble Authority have invoked Section 18 and 19(4) of the RERA 2016 pertaining to return of amount and compensation; rights and duties of allottees for refund with interest due to the delay by respondents in completion of the project and have given two options to the respondents i.e. (1) the complainants undertake that once the respondents refund the principal amount of Rs.23,04,768/- plus interest to the complainants directly the complainants shall close their home loan account themselves or (2) after calculation of principal amount Rs.23,04,768/- + interest based on the actual date when the respondents are paying the amount, if on such date the home loan account have any due, the respondent can first clear the home loan account on actuals directly and remit the remaining due to the complainants.
13. In support of their defence, the respondents have produced documents such as agreement for sale, tripartite agreement, memo of understanding, RERA registration and extension certificates and memo of calculation as on 5/10/2023.
14. In support of their claim, the complainants have produced documents such as copies of agreement for sale, tripartite agreement, statement of account issued by the respondent dated 17/5/2022, statement of account issued by L&T Finance Limited pertaining to Home Loan dated 29/5/2024, payment receipts and memo of calculation as on 29/05/2024.
15. This matter was heard on 28/9/2022, 13/12/2022, 16/2/2023, 21/3/2023, 01/06/2023, 11/7/2023, 4/10/2023, 5/12/2023,

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24/1/2024, 7/3/2024, 19/3/2024, 28/5/2024, 30/5/2024 and
4/6/2024. Heard arguments of both sides.

16. **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?

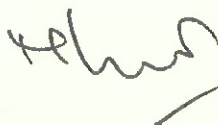
17. **My answer to the above points are as under:-**

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

REASONS

18. **My findings on Point No.1:-** From the materials placed on record, it is apparent that the complainants had booked a flat in the project **"SHRIRAM GREENFIELD PHASE-2"** and have paid Rs.23,04,768/- to the respondents on various dates. The complainants have now approached this Authority seeking refund of the entire amount with interest, compensation of Rs.15,00,000/- towards mental agony and Rs.1,50,000/- towards costs of the present proceedings. The complainants submit that the respondents were supposed to deliver possession of the flat by 31/3/2021 with a grace period of 6 months i.e. by 30/9/2021.

19. During the process of the hearing, the Hon'ble Authority has perused the written submission/memo filed by the complainants and statement of objections filed by the respondents. The Hon'ble Authority has not accepted the contentions made by the respondents in their statement of objections that the complainants are liable to get only their own contribution with interest and that the amount disbursed by the financial institution will be paid back by the respondents to the financial institution. It is pertinent to note that the housing loan from the



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financial institution has been sanctioned in the name of the complainants and the complainants are paying EMIs. The complainants have furnished proof in the form of statement of accounts issued by the L&T Finance Limited dated 29/5/2024.

20. 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. Therefore, the Hon'ble Authority has not accepted the contentions of the respondent made in their statement of objections.

21. 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."

22. 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

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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."

23. 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.

24. 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.

25. The Hon'ble Authority has not accepted the contention of the respondents that the complainants' claim accrue only after 31/12/2021. The Hon'ble Authority has also perused the memo of calculation as on 5/10/2023 filed by the respondents claiming that the complainants are liable to get Rs.18,47,758/- as the refund with interest. The Hon'ble

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Authority has not accepted their claim and has observed that there is lot of difference in the principal amount mentioned by them in the memo of calculation. Whereas, the complainants have furnished supporting documents substantiating their claim for refund with interest as on 29/5/2024.

26. Having regard to all the above aspects, the Authority has concluded that the complainants are entitled for refund with interest as calculated vide their memo of calculation as on 29/05/2024.
27. Further, the complainants have sought for compensation for mental agony, which does not come under the jurisdiction of this Authority. Hence, the same is not considered.
28. 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	2585	29-05-2024	8.15	10.15 as on 01-05-2017	0
2	11-05-2019	50,000	1845	29-05-2024	8.65	10.65 as on 10-05-2019	26,916
3	16-05-2019	50,000	1840	29-05-2024	8.65	10.65 as on 10-05-2019	26,843

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4	31-05-2019	2,00,000	1825	29-05-2024	8.65	10.65 as on 10-05-2019	1,06,500
5	31-05-2019	6,919	1825	29-05-2024	8.65	10.65 as on 10-05-2019	3,684
6	25-06-2019	14,18,200	1800	29-05-2024	8.65	10.65 as on 10-06-2019	7,44,846
7	07-08-2020	11,142	1391	29-05-2024	7.3	9.3 as on 10-07-2020	3,948
8	19-10-2020	5,68,507	1318	29-05-2024	7.3	9.3 as on 10-07-2020	1,90,915
9	TOTAL AMOUNT	23,04,768				TOTAL INTEREST (I2)	11,03,652

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 29-05-2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
23,04,768	11,03,652	0	34,08,420

29. Accordingly, the point raised above is answered as Affirmative.

30. **My findings on Point No.2:-**In view of the above discussion, this complaint deserves to be allowed. Hence, 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 No. **CMP/220706/0009723** is hereby allowed.

The respondent is directed to pay a sum of **Rs.34,08,420/- (Rupees Thirty Four Lakh Eight Thousand Four Hundred and Twenty only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 11/05/2019 to 29/05/2024.

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The interest accruing from 30/05/2024 till 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.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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