

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 5

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

Dated 13th June 2024

COMPLAINT NO: CMP/00249/2023

COMPLAINANT...

1. Dabasish Gayen
No.304, 3rd Floor, E-Block,
Sowparnika Tharangini,
Bangalore-562125.
STATE: KARNATAKA
(Mr. Ramaih, Advocate)

Vs

RESPONDENTS.....


1.GVG Infrastructure Pvt. Ltd.,
No. 589, 3rd Floor,
State Bank of India,
'C' Block, AECS Layout,
Brookfield,
BENGALURU-560037.
(Ex-parte)

2. U.S.S.V Prasad
No. 589, 3rd Floor,
State Bank of India,
'C' Block, AECS Layout,
Brookfield, BENGALURU-560037.
(Ex-parte)

3. Uma Maheshwara Reddy
No. 589, 3rd Floor,
State Bank of India,
'C' Block, AECS Layout,
Brookfield, BENGALURU-560037.
(Ex-parte)

4. Renuka
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.

5. Anantha
Varthur Village,


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**Varthur Hobli, Bengaluru East Taluk,
Brookfield, BENGALURU-560087.**

6. Ambhika

**Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, BENGALURU-560087.**

7. Arjuna

**Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, BENGALURU-560087.**

8. Aruna

**Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, BENGALURU-560087.**

9. Archana

**Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, BENGALURU-560087.**

10. K. Nagaraju

**No. 198, Dharmaraya Temple Main Road,
Ramagondanahalli,
Whitefield Road,
Bengaluru-560066**

11. K. Manjunatha


**No. 198, Dharmaraya Temple Main Road,
Ramagondanahalli,
Whitefield Road,
Bengaluru-560066.**

12. K. Abharish

**No. 198, Dharmaraya Temple Main Road,
Ramagondanahalli,
Whitefield Road,
Bengaluru-560066.**

13. N. Lokesh

**No. 198, Dharmaraya Temple Main Road,
Ramagondanahalli,
Whitefield Road,**



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Bengaluru-560066.

14. Munichellamma
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.

15. R.K Muniraju
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.

16. R. Prabhavathi
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.

17. Devisree M
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.

18. Kishore
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.

19. Hemanth
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.

20. R.K Shashidhar
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.

21. Sunitha
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.

22. Gayathri
Varthur Village,

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**Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.**

**23. Yashwath
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.**

**24. R.K Sujatha
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.**

**25. R.K Suguna
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.**

**26. R.K Vani
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.**

**27. J.Krishnappa
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.
(Ex-Parte)**

**28. Hema
Varthur Village,
Varthur Hobli, Bengaluru East Taluk,
Brookfield, Bengaluru-560087.
(Ex-Parte)**

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "**Grandeur Park**" developed by M/s GVG

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Infrastructure Pvt. Ltd., seeking for relief of refund along with interest.

2. This project is not registered with RERA.
3. Said project is situated at Harohalli Road, Varthur Hobli, Bengaluru-560087.

Brief facts of the complaint are as under:-

4. The complainant had purchased a flat bearing No.B-716 in the project "Grandeur Park" of respondent by entering into an agreements of sale and construction dated 10-01-2022 for a substantial sale consideration of Rs.74,92,800/- (Rupees Seventy Four Lakhs Nine Two Thousand Eight Hundred only). At the time of entering into an agreement of sale agreement, the complainant had paid the sum of Rs.15,53,601/- (Rupees Fifteen Lakhs Fifty Three One Thousand One Hundred only). The complainant had applied home loan in SBI and both were entered into a tripartite agreement on 27-01-2022, the complainant had got approval for home loan of Rs.57,65,000/- (Rupees Fifty Seven Lakhs Sixty Five Thousand only) among this Rs.54,00,000/- (Rupees Fifty Four Lakhs only) was disbursed and the same was paid to the respondent on 28-01-2022. The respondent was supposed to handover the possession of the said flat to the complainant in December 2022. If the completion of project has been delayed the respondent has to pay the entire money to SBI and the same was entered into the tripartite agreement. However, the respondents neither completed the project nor paid the emi to

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the bank. The respondents have not given any genuine reasons for the delay of the project. Hence, this complaint.

5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainant had appeared before the Authority by his counsel and filed a memo of calculation, copy of agreements of sale, construction and tripartite, sanction letter and payment receipts. All the respondents did not appear before this Authority and remained absent. Hence, all the respondents were placed as ex-parte.
6. In support of their claim, the complainant had produced documents such as copies of agreements of sale, construction and tripartite, payment receipts and memo of calculation as on 04-04-2024.
7. This matter was heard on 22-08-2023, 05-12-2023 and 29-02-2024.
8. **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?
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:- :- From the materials placed on record, it is apparent that inspite of entering into an agreement of sale on 10-01-2022 to handover the possession of the apartment to the complainant on or before January

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2024, the respondents have failed to complete the project. The respondents have not started construction work even for 2 years, the complainant had tried to contact with the builder and ask about the construction work. There is no response from their end. The complainant had availed loan in SBI by pre emi scheme, but the respondent did not ready to pay the said emi. The complainant had paid pre emis of Rs.2,62,500/- (Rupees Two Lakhs Sixty Two Thousand Five Hundred only) to the bank. Hence, the respondents have failed to abide by the terms of the agreement for sale dated 10-01-2022.

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:

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.

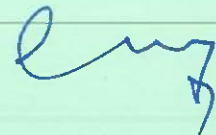
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12. Further, the judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

"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 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 letter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to



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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 the copies of agreements between the parties, it is obvious that the complainant had already paid substantial sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of the apartment certainly entitles the complainant herein for refund along with interest. The complainant had filed his memo of calculation as on 04-04-2024 claiming an amount of Rs.21,21,380/- (Rupees Twenty One Lakhs Twenty One Thousand and Three Hundred and Eighty only) as refund with interest. Despite opportunities being given to all respondents, they had not filed their memo of calculation.

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15. A thorough verification of the documentary evidence submitted by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide his memo of calculation as on 04-04-2024.

16. 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.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL 04-04-2024	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	2530	04-04-2024	8.15	10.15 as on 01-05-2017	0
2	10-01-2022	15,00,000	815	04-04-2024	7.3	9.3 as on 15-12-2021	3,11,486
3	10-02-2022	37,500	784	04-04-2024	7.3	9.3 as on 15-01-2022	7,490
4	15-03-2022	37,500	751	04-04-2024	7.3	9.3 as on 15-03-2022	7,175
5	10-04-2022	37,500	725	04-04-2024	7.3	9.3 as on 15-03-2022	6,927
6	10-05-2022	37,500	695	04-04-2024	7.4	9.3 as on 15-04-2022	6,711
7	10-06-2022	37,500	694	04-04-2024	7.4	9.3 as on 15-04-2022	6,702
8	10-07-2022	37,500	684	04-04-2024	7.7	9.3 as on 15-06-2022	6,318
9	10-08-2022	37,500	603	04-04-2024	7.8	9.3 as on 15-07-2022	6,071
20	TOTAL AMOUNT	17,62,500				TOTAL INTEREST (I2)	3,58,880

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 18-04-2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
22,83,645	5,32,283	0	28,15,928

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

[Handwritten Signature]

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18. **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

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/00248/2023** is hereby allowed. Respondent is directed to pay a sum of **Rs.21,21,380/- (Rupees Twenty One Lakhs Twenty One Thousand Three Hundred and Eighty only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 10-01-2022 till 15-07-2022.
2. The interest due from 16-07-2024 up to the date of final payment will be calculated likewise and paid to the complainant.
3. Further, the respondents are directed to clear the loan amount whatever is due from the complainants to their loan account No. 40706474926.
4. The complainant is hereby directed to cooperate with the respondent for cancellation of agreement of sale dated 10-12-2022 on receipt of entire amount as directed to be refunded by the respondent.
5. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent

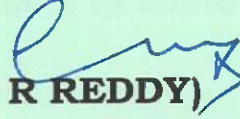
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fails to pay the amount as per the order of this
Authority.

No order as to costs.


(G R REDDY)
Member, K-RERA

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