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 - 4**

**PRESENT:**

**SHRI. RAKESH SINGH, HON'BLE CHAIRMAN**

**COMPLAINT NO.00277/2025**

**Dated 02nd Day of June 2025**

| | |
|---|---|
| **Complainants** | **Avnish Kumar & Shilpa Giri**<br>**Bren Edgewaters, Kasavanahalli, Bengaluru - 560035** |
| **Respondent** | **SHANDERS PROPERTIES PVT LTD**<br>**No.1097 18th B Main Road 5th Block Rajajinagar, Bengaluru - 560010**<br>**(Jaypee Associates – Advocate)** |



## J U D G E M E N T

The Complaint is filed on 10/02/2025 in No.**00277/2025** under section 31 of the Real Estate (Regulation and Development) Act 2016 against the Respondent in the project **"Shanders Court Yard"** situated at converted Sy.No.195/4, Chikkannagamangala Village, Sarjapura Hobli, Anekal Taluk, Bangalore Rural for the relief of refund with interest.

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

1. The project is registered under name **Shanders Court Yard** having registration certificate in No.PRM/KA/RERA/1251/308/PR/210324/006710 valid till 31/03/2025.

2. The gist of the compliant is that, the Complainant agreed to purchase a residential plot bearing No.K01, property No.89 in the residential layout known as **Shanders Court Yard** from the Respondent by entering into Agreement of Sale dated 21/05/2024 for a total consideration of Rs.1,17,99,600/- and accordingly paid a sum of Rs.29,49,900/- and same has been subject to realization towards booking and part-payment, as per the agreement.

3. Due to unforeseen family and financial issues, the Complainant had to cancel the deal in July 2024 and made repeated efforts to communicate with the Respondent via emails, messages, and in-person visits. The Respondent failed to respond or cooperate for several months. After persistent follow-ups, an amount of Rs.5,00,000/- was refunded in January 2025, along with a verbal assurance to repay the remaining amount with 9% interest which has not been honored. The Complainant submits that the Respondent refused further refund, acted unprofessionally by shouting and threatening during a recent visit to the office, and claimed to have influential connections, effectively obstructing justice. Hence, this complaint.

4. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, both the parties have appeared before the Authority through their counsel.

5. Subsequently, the Respondent has filed objections dated 29/05/2025 as: The Respondent claims that the sale agreement dated 21/05/2024 was completed and obligations were fulfilled. The buyer cannot claim under Section 18. The Respondent argues they were ready to hand over possession, and any delay or cancellation is due to the Complainants. Further claims that the cancellation was not due to delay or default by them, so Section 18 doesn't apply. The Respondent claims the purchasers had a personal dispute which led to the cancellation, not any fault of the builder. The Respondnet has already refunded Rs.5,00,000/- via RTGS on 06/01/2025 based on the request. As per the agreement, the Respondent states they are entitled to deduct Rs.3,00,000/- towards brokerage from the refund and cannot claim full refund. The Respondent says since the agreement was cancelled voluntarily and no breach is proven, RERA has no jurisdiction to grant compensation or interest.

6. In support of his claim, the complainant has produced documents such as copy of Agreement of Sale dated 21/05/2024, mail communications, photos, messages and memo of calculation.

7. Hearings were conducted on 28/04/2025, 12/05/2025, 20/05/2025 and 27/05/2025.

8. **On the above averments, the following points would arise for our consideration:-**
   - Whether the complainant is entitled for the relief claimed?
   - What order?
9. **Our answer to the above points is as under:-**
   - In the Affirmative.
   - As per final order for the following

**REASONS**

10. **Our finding on point No. 1:** From the materials placed on record, it is apparent that the Complainant had purchased a plot No.K01, property No.89 in the residential layout known as **Shanders Court Yard** from the Respondent by entering into Agreement of Sale dated 21/05/2024 and accordingly paid a sum of Rs.29,49,900/- towards booking and part-payment, as per the agreement. Due to unforeseen family and financial issues, the Complainant had to cancel the deal in July 2024 and made repeated efforts to communicate with the Respondent via emails, messages, and in-person visits. After persistent follow-ups, an amount of Rs.5,00,000/- was refunded in January 2025, along with a verbal assurance to repay the remaining amount with 09% interest which has not been honored. The Complainant submits that the Respondent refused further refund, acted unprofessionally by shouting and threatening during a recent visit to the office, effectively obstructing justice.

11. The Respondent's contention that the agreement was fulfilled and hence Section 18 is not applicable is not supported by any cogent documentary evidence. Despite claiming readiness, the Respondent has not demonstrated that it offered possession or executed the Sale Deed within the stipulated timeframe under the Agreement. No possession handover letter, possession certificate or communication indicating readiness for registration has been placed on record. It is the responsibility of the promoter to ensure execution of the Sale Deed and physical handover of possession in a time-bound manner. The Respondent has claimed that the cancellation arose out of a personal dispute between the Complainants. However, the Respondent has not shown how such alleged disputes absolve them from fulfilling their legal obligations. The dispute between co-purchasers, does not interfere with the promoter's duty to deliver possession or execute the Sale Deed or refund or delay compensation. The builder must fulfil its commitments to all purchasers collectively. Thus, this objection is irrelevant to the present proceedings.

12. In the Objections of the Respondents, "...without admitting any breach or default... the Respondent is ready and willing to pay after defraying the amount of Rs.5,00,000/- already paid and the balance amount of Rs.3,00,000/- and Rs.9,00,000/- expended towards brokerage, in all amounting to Rs.17,00,000/- and the balance amount of Rs.12,50,000/- will be paid... either within 15 days or within three months or when the scheduled plot is sold, whichever is later. No interest shall be payable."

The refund must include interest and must not be conditional. Brokerage charges are not the buyer's liability unless it was specifically mentioned in the Agreement for Sale. Unilateral deductions for brokerage are not supported under RERA unless proven as a valid contractual deduction. Further, the

Builders cannot deny interest on delays or partial refunds. This has been repeatedly upheld in RERA tribunal orders across India.

13. The Respondent has stated that a partial refund of Rs.5,00,000/- was processed and that the booking amount Rs.3,00,000/- and Rs.9,00,000/- deducted towards brokerage under Clause 9.3(ii) of the Agreement. However, no proof of such brokerage being paid or incurred has been furnished. Moreover, contractual clauses cannot override the statutory rights conferred upon the Allottee under Section 18 of the Act. Deduction without due proof and justification is impermissible. Hence, the deduction of Rs.3,00,000/- cannot be sustained. The delay, coupled with partial refund and unauthorized deduction, establishes a violation of statutory duties. The Respondent's argument that the Authority lacks jurisdiction is misplaced. This Authority is competent to adjudicate disputes regarding delayed possession, refund, and compensation under RERA Act.

14. In the judgment reported in the Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patil and another by the Hon'ble Supreme Court it is held as:

> *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 the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himashu 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".*

15. As per section 18 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 them in respect of that apartment, flat, 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. From the averments made in the complaint it is obvious that the complainant has paid substantial sale consideration amount to the respondent towards purchase of the said flat.

16. The Respondent's conduct is in clear violation of Section 18(1) of the RERA Act, which mandates refund with interest where the buyer withdraws due to non-performance or other valid reasons, particularly when no possession has been handed over.

17. The complainant has filed his Memo of calculation as on 15/05/2025 claiming an amount of **Rs.27,45,121/-** (Rupees Twenty Seven Lakh Forty Five Thousand One Hundred and Twenty One Only) towards refund with interest calculated from 18/04/2024 till 15/05/2025.

18. A thorough verification of 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 the relief at refund with interest. Therefore, it is incumbent upon the Respondent to refund the amount along with interest which is 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 | 04-03-2017 | 0 | 57 | 30-04-2017 | 0 |
| 2 | | 0 | | TOTAL INTEREST (I1) | 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 | 2807 | 06-01-2025 | 8.15 | 10.15 as on 01-05-2017 | 0 |
| 2 | 18-04-2024 | 3,00,000 | 263 | 06-01-2025 | 8.85 | 10.85 as on 15-04-2024 | 23,453 |
| 3 | 28-05-2024 | 26,49,900 | 223 | 06-01-2025 | 8.85 | 10.85 as on 15-05-2024 | 1,75,659 |
| 4 | TOTAL AMOUNT | 29,49,900 | | | | TOTAL INTEREST (I2) | 1,99,112 |

**Refund Interest Calculation From 01/05/2017 (After RERA)**

| S.NO | AMOUNT PRINCIPLE | REFUND DATE | REFUND AMOUNT | BALANCE | NO OF DAYS | NO OF DAYS TILL | MCLR INTEREST X% | INTEREST RATE X+2% | INTEREST @X+2% |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 29,49,900 | 06-01-2025 | 5,00,000 | 24,49,900 | 129 | 15-05-2025 | 9.1 | 11.1 as on 15-12-2024 | 96,109 |
| 2 | | | | | | | | TOTAL INTEREST (I3) | 96,109 |

**Memo Calculation**

| PRINCIPLE AMOUNT ( A ) | INTEREST ( B = I1 + I2 + I3 ) AS ON 15-05-2025 | REFUND FROM PROMOTER ( C ) | TOTAL BALANCE AMOUNT ( A + B - C ) |
|---|---|---|---|
| 29,49,900 | 2,95,221 | 5,00,000 | 27,45,121 |



19. Having regard to all these aspects, it would be just and appropriate to direct the Respondent to refund the amount along with interest to the Complainant. Accordingly, the point raised above is answered in the Affirmative.

20. The Respondent's proposal to deduct Rs.9,00,000/- towards brokerage and Rs.12,50,000/- as balance payment without interest is found to be unjustified, arbitrary, and contrary to the mandate of Section 18(1) of the RERA Act. No deductions (e.g., brokerage) shall be permitted unless expressly agreed upon in writing and proved to be at the instance of the Complainant.

21. **Our findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we 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, complaint in No.**00277/2025** is hereby allowed.

1. The respondent is hereby directed to pay a sum of **Rs.27,45,121/-** towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of SBI MCLR 2% from 18/04/2024 till 15/05/2025.
2. The interest due from 16/05/2025 up to the date of final payment shall be calculated likewise and paid to the complainant.
3. The Complainant is at liberty to initiate action for recovery in accordance with law if the Respondent fails to comply with this order.

No order as cost.

**(RAKESH SINGH)**
Chairman
K-RERA