

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

CMP. NO. 7033 and 7034

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 4

Dated 5th August 2022

COMPLAINANTS.....

1. CMP/201127/0007033

DR G SURI BABU,

No. 11 & 11A, Shabhari Layout,
Opp SGT, Sadaramangala,
Kadugodi PO,
Bangalore – 560067.

2. CMP/201127/0007034

G BALA SARASWATI,

No. 11 & 11 A, Shabhari Layout,
Opp SGT, Sadaramangala,
Kadugodi PO,
Bangalore - 560067.

(Rep. by Sri, Nagesha Poojari. Y, Adv)

V/S

RESPONDENT.....

AIR FORCE NAVAL HOUSING BOARD

Air Force Naval Housing Board,
Air Force Station,
Delhi – 110003.

(Rep. by Sri. Ramachandar Desu, Adv)

*** * * * ***

1. These complaints are filed under section 31 of the RERA Act against the project 'Jal Vayu Towers' for the relief of refund with compensation.
2. Both these matters are taken up together for disposal as they are arising from common project and in order to avoid repetition.



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The brief facts of the complaint in Cmp. No. 7033 are as under:-

3. The complainants had booked an apartment in the project of respondent in 2nd week of March 2018 and on 21/03/2018 he had paid Rs.6,10,000/- to the respondent. On 27/04/2018 he has paid Rs.9,15,000/- as 2nd instalment to the respondent. The respondent had issued an allotment letter and payment schedule dated 11/05/2018. Again as per request of respondent, he has paid Rs.9,09,000/- on 27/06/2018. So, he has totally paid Rs.24,34,000/- to the respondent. But the respondent did not execute any agreement of sale before or after receiving the money from him.
4. Subsequently, due to unforeseen issues he was forced to withdraw from the project and applied for cancellation of allotment on 21/07/2018. Same is accepted by the respondent on 30/07/2018. But till now the respondent did not refund the amount.
5. Hence, this complaint.

The brief facts of the complaint in Cmp. No. 7034 are as under:-

6. The complainant had booked an apartment in the project of respondent in 2nd week of March 2018 and on 21/03/2018 he had paid Rs.3,50,000/- to the respondent. On 27/04/2018 he has paid Rs.10,48,500/- as 2nd instalment to the respondent. The respondent had issued an allotment letter and payment schedule dated 11/05/2018. Again as per request of respondent, he has paid Rs.8,33,100/- on 27/06/2018. So, he has totally paid Rs.24,34,000/- to the respondent. But the respondent did not execute any agreement of sale before or after receiving the money from him.
7. Subsequently, due to unforeseen issues he was forced to withdraw from the project and applied for cancellation of allotment on 21/07/2018.



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Same is accepted by the respondent on 30/07/2018. But till now the respondent did not refund the amount.

8. Hence, this complaint.
9. After registering the complaints, in pursuance of the notice the respondent has appeared before the Authority in both the cases through his counsel and filed written submissions as under:-
10. That the complainants have voluntarily applied for flats in the project of respondent by accepting the terms and conditions of allotment. On 21/07/2018 due to personal reasons the complainants have voluntarily applied for cancellation of registration and refund of money. Respondent vide its reply e-mail dated 30/07/2018 informed the complainants that their request has been noted, but refund of amount would be made as per terms of master broacher 2012 as and when the scheme is fully subscribed or new allottee joins the scheme. As per para 0703 of master broacher
11. *"No withdrawal is generally permitted, if a waitlist does not exist. However, even if withdrawal is permitted under special circumstances the amount shall be refunded only when a new allottee joins in and pays the due instalment. No interest shall be paid on such refunds and cancellation charges as mentioned in para 0702 above shall be deducted as per existing rules". In this case it is submitted that the scheme is still undersubscribed and does not have a waitlist. The case of the complainants has been considered under special circumstances and payment of their money shall be paid only after a new allottee joins the scheme".*
12. Till date there are 29 cancellations received by the respondent whose refund is pending and still there are 11 vacant units in this project.



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Because, the project is self funded and the amount contributed by the members has been utilized to progress the project. Hence, no funds are available with respondent till a new member joins the scheme and contributes the amount.

13. The date of completion mentioned in the allotment letter July 2019 was tentative as evident from clause 0206 of master broacher 2012 which deals with delay in completion of project *"No interest compensation shall be payable to the allottee for delay in completion of the project or change in handing over schedule of the dwelling units. While every effort will be made by Board to ensure timely completion of the projects, delay cannot be rules out. AFNHB shall not be liable on account of any such delay in the completion of a project. It needs to be borne in mind that AFNHB renders its services to the allottees / registrants on a "NO profit NO loss" basis"*.
14. Hence, prayed to dismiss the complaint.
15. In support of their claim, the complainants have produced in all 3 documents, such as copy of allotment letters, payment receipts and E-mail correspondence.
16. On the other hand, the respondent has produced in all 3 documents, such as copy of registration certificate, master broacher 2012 and vacancy status of Mysore project.
17. Heard both sides.
18. **On the above averments, the following points would arise for my consideration:-**
 1. Whether the complainants are entitled for the relief of refund with interest as claimed?
 2. What order?
19. **My answer to the above points are as under:-**
 1. In the Affirmative.



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2. As per final order for the following

REASONS

20. **My answer to point No. 1:- on perusal of the materials on record,** it is apparent that there are specific terms regarding what has to be done if a person wants to voluntarily to go out of the project. They are as under:-
21. If a withdrawal is permitted under special circumstances the amount shall be refunded only when a new allottee joins in and pays the due amount. No interest shall be paid on such refunds and cancellation charges as mentioned in para 0702 above shall be deducted as per existing rules. Further, no interest compensation shall be payable to the allottee for delay in completion of project or change in handing over schedule of dwelling units. AFNHB renders its service to the allottees / registrants or a no profit no loss basis.
22. Respondent herein is not disputing its liability to refund the amount paid by the complainants. Their contention is only that prospective purchasers who want to walk out of the project have to wait until a new member steps in their place and they cannot claim any interest on the amount to be refunded.
23. Basically, the scheme of respondent is self financed and all the finance in the project has to be contributed by the purchasers. On that basis the respondent has put up conditions that if withdrawal is permitted under special circumstances, the amount shall be refunded only when a new allottee joins and pays the dues instalment. Further no interest shall be paid on such refunds as respondent renders its services to the allottees on a no profit no loss basis.
24. Section 18 (1) of the Act reads as under:-



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25. 18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—
26. (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
27. (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
28. he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, 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:
29. Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.
30. Undisputedly, the complainant Dr. G Suri Babu had booked an apartment in the project of respondent in 2nd week of March 2018 and paid Rs.6,10,000/- to the respondent on 21/03/2018. Further, on 27/04/2018, he has paid Rs.9,15,000/- as 2nd instalment to the respondent. Again on 27/06/2018 he has paid Rs.9,09,000/- to the respondent at his request. Subsequently, when the complainant had

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applied for cancellation of apartment on 21/07/2018, same is accepted by the respondent on 30/07/2018.

31. Likewise, the complainant G. Bala Saraswathi in cmp. No. 7034 had booked an apartment in the project of the respondent in 2nd week of March 2018 and on 21/03/2018 he had paid Rs.3,15,000/- to the respondent. Further, on 27/04/2018 he has paid Rs.10,48,500/- as 2nd instalment to the respondent. The respondent had issued an allotment letter on 11/05/2018. Further again at the request of respondent the complainant had paid Rs.8,33,100/- on 27/06/2018. So far, he has totally paid Rs. 24,34,000/- to the respondent. Subsequently, when this complainant had applied for cancellation for allotment on 21/07/2018 same is accepted by the respondent on 30/07/2018.
32. Admittedly, the project was introduced in October 2012 and the said project was not completed before the RERA Act came into force. Hence, the provisions of the Act and Rules will apply as on the date. In the present case, the complainants have applied for cancellation of the project as the respondent did not execute any agreement for sale before or after receiving the money from him in Cmp. No. 7033 and 7034. Further, the respondent has accepted the applications filed by both the complainants for cancellation of allotment on 30/07/2018. But, till now the respondent didn't refund the amount. However, the respondent had failed to complete the project and register the sale deeds and to deliver the possession of the apartments to the complainants. The proviso to section 18 of the Act mandates that where an allottee does not intend to proceed with the project, he is entitled for refund by the promoter with interest.
33. Further, the respondent has nowhere mentioned regarding period for completion of the project. The complainants have parted with



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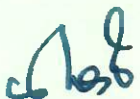
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substantial portion of sale consideration, but respondent has not executed AOS and hence violated the condition of RERA Act.

34. With regard to conditions mentioned in the letter of allotment and agreed by both the parties that in case of refund the allottees are not entitled for interest on the said amount will not have overriding effect against the provisions of Section 18 of the Act which provides for return of the amount with interest in case the allottee withdraws from the project for the lapse on the part of the developer in not executing any agreement of sale or not delivering possession or not completing the project.
35. Further, the respondent has failed to place any materials to prove that the amount received from the allottees towards sale consideration is invested in the project.
36. Considering all these circumstances, this Authority is opined that complainants are entitled for refund with interest.
37. Accordingly, the point raised above is answered in the Affirmative.
38. **My answer to the point No. 2:-** In view of the above discussion, complaint deserves to be allowed. Hence, I proceed to pass the following order

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/201127/0007033 and CMP/201127/0007034 are hereby allowed.
2. Complainant in Cmp. No., 7033 is entitled for refund of Rs.24,34,000/- with prescribed interest at the rate of SBI MCLR + 2%.



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3. Complaint in Cmp. No. 7034 is entitled for refund of Rs.22,31,600/- with prescribed interest at the rate of SBI MCLR + 2%.
4. The respondent is directed to refund the amount received by both the complainants herein with prescribed interest from the date of payment made by the complainants till the repayment of amount to the complainants.

No order as to costs.


(H.C. Kishore Chandra)

Chairman
KRERA

