

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 19th September 2022

COMPLAINT No: CMP/201202/0007200 (amended vide order
Dated 12.1.2023)

RECTIFICATION ORDER UNDER SECTION 39 OF RERA ACT

COMPLAINANT....

Guru R.

#218, 4th A Main, 4th Block,
4th Stage, Basaveshwarnagar
Bangalore-560 079.

(IN PERSON)

V/S

RESPONDENT.....

**SKYGOLD PROPERTIES PRIVATE
LIMITED**

42/A, 2nd Block, 3rd Stage
Basaveshwarnagar

Bangalore-560 079

**(Rep. by Bindushree P and Akshay
Advocates)**

JUDGEMENT

This complaint is registered in complaint No. CMP/UR/201202/0007200 under Section 31 of RERA Act against the project "**SKYGOLD ELEGANCE**" developed by "**SKYGOLD PROPERTIES PRIVATE LIMITED**" the limits of No.85/6, **Chokkanahalli Village, Yelahanka-2 Hobli, Yelahanka Taluk, Bangalore District.** This project has been registered under RERA Act bearing registration no. PRM/KA/RERA/1251/309/PR/171214/001545 for the relief of refund of amount with interest.

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2. The gist of the case of the complaint is that though the judgement was passed on 22nd January 2020 in complaint no. CMP/190808/0003534 , till date the builder has not honoured it despite of multiple requests and hearings. Besides the builder is not obeying the order of RERA to get the sale agreement executed with compensation. Hence, the complainant prayed this authority for justice in the form of full and final refund from the builder.

2A. The complainant Mr. Guru R. had moved an application dated 5.1.2023 inviting attention of the Authority to rectify the complaint No. 0000007200 instead of 0007200.

(a) The complaint no. is shown as CMP/UR/201202/0000007200 instead of **CMP/201202/0007200**.

The application has been verified and it is found necessary to rectify the order dated 19th September 2022.

- (i) This rectification is done within two years from the date of the original judgement i.e. of 19th September 2022.
- (ii) Here in this case, the complainant has preferred an appeal before the Hon'ble Karnataka Real Estate Appellate Tribunal in case No.1/2023 against the orders passed by RERA in the judgement dated 19th September 2022. The Hon'ble Appellate Tribunal has directed the complainant to resubmit the corrected certified order copy with proper case number to the court by 13.1.2023. Perused the directions of Hon'ble Appellate Tribunal to carry out corrections in complaint no. CMP/UR/201202/0000007200. Accordingly it is carried out as CMP/201202/0007200 instead of CMP/UR/201202/0000007200.
- (iii) No substantive part of the order is amended
- (iv) The Authority's judgement dated 19th September 2022 is declared Non Est and replaced by this order dated 12 /1/2023.

3. Hence this complaint.

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4. The complainant has sought for the following relief from RERA:

- (a) Refund of the amount paid
- (b) Interest paid to bank
- (c) Rent paid loss
- (d) Interest on down payment
- (e) Loss on customization expenses
- (f) Recovery of capital gain losses
- (g) Recovery of income tax
- (h) Losses on home loan

5. After registration of the complaint ,in pursuance of notices, the respondent has appeared before the authority through his counsels Mrs. Bindushre P and Akshay, and have made their written submissions.

6. The complainant in his written submission said that this case was raised in December 2020 as a follow up case for "compensation and registration case-3534' since judgement of the case 3534 was not enforced by RERA.

7. It is submitted that the respondent has executed the sale agreement in July 2014. As per the sale agreement, the builder has agreed to pay compensation if there was any delay beyond April 2016. The builder has completed the apartment in August 2019 and thus had delayed the apartment by 3 years and 3 months. The complainant claimed that the builder has to pay him compensation of 7,93,633/-.

8. It is further submitted by the complainant that this Authority on 20.1.2020 in their Judgement of case no. 3534 have directed the builder to pay compensation amount and registration of the apartment since the builder has

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delayed the construction of the apartment and handing over possession by 3 years.

9. The respondent has filed his objections as under:

10. The respondent contended that the complaint filed by the complainant is false, frivolous and vexatious and not maintainable either in law or on facts and is liable to be dismissed.


11. It is submitted that the respondent has formulated a scheme for developing the land situated in Sy.No. 85/6, Chokkanahalli Village, Yelahanka-2 Hobli, Yelahanka taluk, Bangalore District into a residential development under the name and style of "SKYGOLD ELEGANCE".

12. It is submitted that the respondent that the complainant has not made payments as per the schedule.

13. It is further submitted by the respondent that he has paid Rs.2.00 lakhs to the complainant as delayed compensation as it was agreed orally.

14. It is further submitted by the respondent that he has informed the complainant regarding the delay in handing over possession due to delay in receiving the occupancy certificate from the Government authority, change in norms, obtaining NOC from BESCO & BWSSB and the same was accepted by the complainant by receiving the compensation of rupees two lakhs.





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15. It is further stated that the respondent has sent the demand notice to the complainant on 21.07.2019 for registration and handing over of Block-A, flat no 102 of Skygold Elegance apartment, but the same was denied by the complainant.

16. It is further contended by the respondent that the complainant owes due amount of Rs.7,25,318/- and the calculated amount has been stated in the demand notice and that the respondent has suffered loss due to pending amount from the complainant.

17. The respondent further claimed that the entire work has been completed and the registration and possession of the property long back and also issued demand notice but the complainant did not respond and has not made the remaining sale consideration.

18. In support of his claim, the complaint has furnished the following documents:

(a) Refund calculation request as on April 2022 (b) Intimation to builder of case 7200 in Dec. 2020 (c) Summary of case 3534 raised in Aug. 2019 (d) Case 3534 Judgement (e) Case 3534 Judgement – enforcement request (f) Proof of home loan (g) Case judgement enforcement request-3 (h) Case Judgement 3534 – dated 20.1.2020 (i) Answers to objection by Respondent-1 & 2 (j) Sale agreement (A-203) August 2014 (k) Sale agreement (A-102) – August 2015 (l) Form 16 – proof of HRA claimed and home loan interest not claimed (m) Rent agreement (n) home loan interest paid since August 2014 (o) Loan disbursement and receipts for payment made (p) Proof for rent paid – receipt and (q) e-mail and whatsapp intimation letter to builder.





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19. In support of his defence the respondent has not furnished any documents.

20. On the above averments, the following points would arise for our consideration.

(1) Whether the complainant is entitled for the relief sought for?

(2) What order?

21. Our findings on the above points are as under:

1. In the affirmative

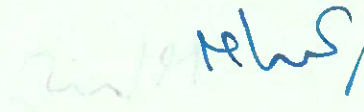
2. As per final order

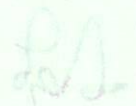
22. Our findings to point No.:1.

(a) The present complaint is filed for the relief of refund of amount with interest. It is brought to the notice of the Authority that the present complainant has earlier filed the complaint in CMP/190808/0003534 for the relief of interest on delay period before the Adjudicating Officer and the said complaint came to be disposed of on 21.1.2020 by allowing the complainant and directing the respondent to pay delay compensation. Further, the contention of the complainant that the respondent has not complied with the directions of the Adjudicating Officer and not paid delay compensation till now. Hence he has approached this Authority for the relief of refund of the amount with interest and loss of rent he has paid.

(c) From the materials available on record, it clearly goes to show that the respondent has not paid the interest amount on delayed period as ordered in







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CMP/190808/0003534 as applicable under Section 18 of RERA Act which reads as follows:

"Section 18(1) – 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.

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.

(d) From the averments of the present complaint and copies of agreements between the parties, it is prudent that the complainant has already paid the substantial sale consideration. Having accepted the said amount and failure to keep up the promise to hand over possession of apartment, undoubtedly complainant herein entitled for refund of entire amount which he has paid already with interest. It is needless to say that the earlier complaint was filed by the complainant for interest on delay and the present complaint is filed for refund of amount with interest and the relief claimed in difference circumstances. However the same person cannot be awarded both the reliefs. Therefore, this Authority is of the opinion that the complainant should forego his right to enforce the award passed in CMP/190808/0003534 for delay

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compensation. Therefore, this Authority is of the considered opinion that the complainant cannot proceed further for enforcement of the order passed in CMP/190808/0003534 when he is claiming the entire amount to be refunded with interest and whereby he is not entitled for delay compensation. In view of the above averment, the complainant shall forego his right to enforce the award passed in CMP/190808/0003534. With these above observations, we conclude that the complainant is entitled for refund of amount with interest from the date of receipt of amount by the respondent. Accordingly the point raised above is answered in the affirmative.

23. **Our findings to point no 2:** In view of the above discussions, 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, the complaint bearing No: **CMP/201202/0007200(amended vide order dated 12.1.2023)** is hereby allowed.

2. Respondent is directed to pay the entire amount paid by the complainant towards refund with interest within 60 days from the date of this order, calculated from 9% 06.07.2014 to 30.4.2017 and MCLR of SBI + 2% per annum commencing from 1.5.2017 till the entire realization, failing which the complainant is at liberty to enforce the said order in accordance with law.

3. Further, the complainant is directed not to enforce the award passed in CMP/190808/0003534 for delay compensation and cannot proceed further for enforcement of the order for delay compensation when he has been awarded with refund of amount with interest in the present complaint. Therefore, the complainant is not entitled for delay compensation and he shall forego his right to enforce the award passed in CMP/190808/0003534.

No order as to costs


(H.C. Kishore Chandra)
Chairman
K-RERA


(Neelmani N. Raju)
Member
K-RERA