

**BEFORE THE REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU**

COMPLAINT NO. CMP/UR/200628/0005939

BETWEEN:

Yogesh Kalluraya Eshwara

.....Complainant

AND

Maaz Dawood

.....Respondent

**APPLICATION UNDER SECTION 23 RULE 3 READ WITH SECTION 151
OF CIVIL PROCEDURE CODE:-**

The Complainant and the Respondent above named begs to submit as follows:

The complainant submits that the complainant has filed the above complaint for recovery of money with interest from the respondent.

The complainant further submits that the complainant and his wife has filed an application before MONARCH PROPERTIES for purpose of purchasing the complaint schedule property. Thereafter, the respondent has confirmed the allotment by issuing an allotment letter and has acknowledge the payment of amount for a sum of Rs. 7,51,982 and 200,000/-on 30.01.2027 and 28.08.2017 respectively. Subsequently, complainant and respondent has entered into a sale agreement, construction agreement and a buy back agreement respectively.

The complainant has opted for buy back and has intimated the same within time. Further the complainant has filed the above complaint for recovery of money with interest from the respondent. Whereas, this Hon'ble authority issued notice to the respondents which was duly served upon the respondents and the respondents has appeared before this Hon'ble authority through their counsel and filed their objections. And this Hon'ble authority after hearing both

Mangal

For MONARCH
[Signature]

the sides passed an order 27.03.2023 directing the respondent to pay a sum of Rs.15,23,621/- as on 14.02.2023 towards recovery of money with interest to the complainants within 60 days from the date of this order. However, the respondent has failed to pay the ordered amount, complainant with on other remedy has filed an execution petition before this Hon'ble authority.

The complainant further submits that, now the complainant and respondent have settled the said dispute between them on the following terms and conditions.

The respondent admits the claim of the complaint and they are due to this complaint in a sum of Rs.15,23,621/- together with interest. Both the complainant and the respondent have settled the above suit and respondent have agreed to pay sum of Rs.13,00,000/- to the complainant and the complainant has agreed to receive the same as full and final settlement for the same.


The respondent shall pay the same in the following manner:

Firstly the respondent have agreed to pay a sum of Rs. 13,00,000/- (Rupees Thirteen Lakhs Only) through D.D. No.017318 Dated 04.09.2023 drawn on HDFC Bank, Empire Infantry Road Branch in favour of the complainant.

Whereas the complainant herein submits that they have no right, title or interest whatsoever in the **Apartment No. 3A8, 3rd floor, in Block "Crest"** of "**Monarch Aqua**" located in the project Monarch Aqua. Whereas the complainant herein submits that that he and his wife Mrs.Mangala, have entered into an Cancellation of Agreement of Sale and Construction Agreement dated 11-10-2023

Wherefore, both the complainant and the respondent pray's that this Hon'ble authority be pleased to pass Judgment and Decree in the above complaint in terms of compromise petition, in the interest of justice and equity.

Mangala


FOR MONARCH

Mangal
Complainant

Nayab
Advocate for Complainant

For *M. N. Arch*
Respondent

[Signature]
Advocate for Respondent

Bangalore

Date: 11.10.2023

NOT AN OFFICIAL COPY

KARNATAKA STATE LEGAL SERVICES AUTHORITY
BEFORE THE LOK ADALAT
IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU

DATED: 11th October 2023

: CONCILIATORS PRESENT:

Smt. Maheshwari S Hiremath Judicial Conciliator

AND

Smt. M Mohan Kumar Advocate conciliator

COMPLAINT NO : CMP/UR/200628/0005939

Between

Yogesh Kalluraya Eshwara Complainants

AND

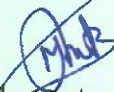
Maaz Dawood Respondent/s

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, as per the joint memo dated: 11.10.2023 filed during the pre Lok Adalat sitting on dated: 11.10.2023, same is accepted. The settlement entered between the parties is voluntary and legal one.

The complaint stands disposed of as per the joint memo and joint memo is ordered to be treated as part and partial of the award.


11/10/23
Judicial conciliator


Advocate conciliator

Complaint No. CMP-5939

11.10.2023

Before the Lok-Adalat

The execution proceedings in this case are taken up before the pre-Lok-Adalat held on 11.10.2023. The joint memo filed by both the parties is hereby accepted. Hence, the dispute in connection with the execution proceedings of this complaint is settled before the Lok-Adalat as per joint memo dated:11.10.2023. The joint memo filed by the parties shall be part and parcel of award/order.

The execution proceedings in this complaint referred above stands disposed off accordingly.


11/10/23
Judicial Conciliator.


Advocate Conciliator.

NOT AN OFFICIAL COPY



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ CMP.No., 5939

ಪುಟ ಸಂಖ್ಯೆ -01-

ವಿಷಯ Yogesh Kalluraya Eshwara V/S
Maa2 Dawood

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

Date: 11.10.2023

Complaint No: 5939

The complainant is present.

Advocate for respondent Sri. Bonny karyappa. present.

As per the request of the complainant and Sri. Sri. Bonny karyappa Advocate for respondent, the execution proceedings in connection with above case is referred before the Lok Adalat.

W/S
11/10/23
Registrar
K-RERA

Mangal
Karyappa

NOT AN OFFICIAL COPY



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ CMP. No. 5939

ಪುಟ ಸಂಖ್ಯೆ -01-

ವಿಷಯ Yogesh Kalluraya Eshwara V/S
Maaz Dawood

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ


ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು


CMP- 5939

11.10.2023

As per the request of the complainant and Sri. Bonny karyappa Advocate for respondent, the execution proceedings in the above case is taken-up for amicable settlement, in the National Lok Adalat to be held on 09.12.2023.

The complainant Mr. Yogish Kalluraya Eshwara and Sri. Bonny karyappa Advocate for respondent present, in the pre-Lok-Adalat sitting held on 11.10.2023, the dispute between the parties with regard to the execution proceedings has been settled between the parties. The settlement entered between the parties is voluntary and legal one and as per which the complainant & the respondent have no further claim against each other whatsoever in connection with execution proceedings in the above case. Therefore in view of aforesaid settlement entered in the pre-Lok Adalat in terms of the joint memo dated:11.10.2023, signed by the parties, the execution proceedings in connection with above case are closed. The amount of Rs. 13,00,000/- (Rupees Thirteen Lakhs Only) through DD No.017318 dated 04.09.2023 in the name of the complainant is ordered to be released in-favor of the complainant Yogish Kalluraya Eshwara, if any, under proper identification. The RRC if any issued against the respondent is hereby recalled and office is directed to issue intimation accordingly to the concerned DC. The matter referred to conciliators to pass award.


Judicial Conciliator.


Advocate Conciliator.



Yogish

NOT AMICABLE COPY

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

Dated 27th MARCH 2023

PRESIDED BY HON'BLE MEMBER SRI. G.R. REDDY, IRS.

COMPLAINT NO: CMP/200628/0005939

COMPLAINANTS ...

**YOGISH KALLURAYA ESHWARA
R/AT 158/1, SNEHA THIRA MT ROAD,
HALLIGATTU-571216
KODAGU DIST.
STATE: KARNATAKA**

**(BY B.C.NAYANA & B.C.SAHANA
ADVOCATES)**

Vs

RESPONDENT ...

**SRI. MAAZ DAWOOD S/o DAWOOD
MOHAMMED, No. 54, 4TH FLOOR,
MONARCH PLAZA, BRIGADE ROAD,
BANGALORE-560001.**

**(BY PVR LEGAL ASSOCIATES,
ADVOCATE)**

JUDGMENT

1. This complaint is filed under section 31 of the RERA Act against the project "MONARCH AQUA" developed by Sri. Maaz Dawood, for the relief of refund with interest.
2. The project has been registered under RERA vide Registration No. PRM/KA/RERA/1251/446/PR/171016/000466.
3. This project is situated at Krishnarajapuram village, Krishnarajapuram Hobli, Bangalore East Taluk, Bangalore.

Contd....2



Brief facts of the complaint are as under:-

4. The complainant has booked a plot in Monarch Aqua through a property consultancy named Square Yards Muscat Oman. The complainant had paid booking amount of Rs. 7,51,982 (Rupees Seven lakhs Fifty one thousand Nine hundred Eighty two only) on 30th January 2017 and an amount of Rs.2,00,000/- (Rupees two lakhs only) as a Bank disbursement amount. The complainant as per the buy back policy during the booking stage cancelled the plot and demanded M/s Monarch to return the total amount of Rs. 9,51,982/- (Rupees Nine lakhs Fifty one thousand Nine hundred eighty two only). The Respondent has not responded to phone calls and emails made by the complainant with regard to refund of amount. The respondent has collected all the original documents including cancellation letter before one year back on the date of complainant. The respondent had not settled the amount and there is no response from the respondent side. Hence, this complaint.

5. After registration of the complaint, this authority had issued notice to both the parties to appear before this Authority. In response to the notice, the respondent has appeared before the Authority through an advocate.

6. The respondent filed statement of objection to complaint stating that, he has agreed to complete the project in time, but the said commitment also depends on all the purchaser who have to pay and clear their dues in time. Further in their statement of objection stated that the time for completion of the project is 2024. It is also alleged in the objection that the complainant has filed this complaint in the ill motive to get unlawful gains. The claim made by the complainant in the complaint is not maintainable, and prays for dismissal of the complaint.

Contd....3



7. In support of their claim, the complainant has produced documents such as copies of Allotment letter, cheque No. 11673, receipt and voucher, Sale Agreement, Construction agreement, Buy Back Agreement, E-mail correspondence and Memo of calculation as on 14/02/2023. The respondent has not produced any documents in support to its claim except Registration Certificate.

8. Heard arguments.

9. **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?

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

1. In the Affirmative.

2. As per final order for the following

REASONS

11. **My answer to Point No.1:-** From the materials placed on record, it is apparent that, the Buy Back Agreement dated 13th May, 2017, at clause (i) (j) are stated as under:

(i) If the purchaser agree to avail the buy-back scheme then he/she will intimate the builder on the 15th month.

The builder agrees to buy back the unit from the customer and foreclose the outstanding loan availed by the customer before the 21st month, post which the same agreement stands cancelled. Upon execution of buy back the builder agrees to pay back the customer the principle

Contd....4

amount (10% of agreement value) with 50% absolute returns by the 21st month. The 50% returns will be calculated from the date of this agreement.

(j) In the event where the Builder delays in settling the customers assured returns on the 21st month, the Builder agrees to pay the customer 10% interest on the accumulated amount (Principal+50%) till the date, the amount is settled”

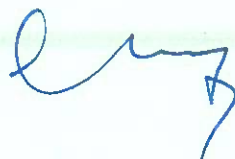
12. Due to this enormous delay the complainant is facing financial burden. The promoter has failed to return the amount to the complainant as per Buy Back agreement clause (i) and (j) referred supra. As per averments made by the complainant the builder has not returned the amount as on date of filing of this Complaint.

13. As per section 18(1) of RERA Act, in case the allottees wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the entire 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 from the complainants 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 agreement between the parties, it is obvious that the complainant has already paid

Contd....5



substantial amount. Having accepted the said sale consideration amount and failure to keep up promise to return the entire amount as per buy back agreement. The complainant has filed his memo of calculation as on 14/02/2023 claiming an amount of Rs.15,23,621/- (Rupees Fifteen lakhs Twenty three thousand Six hundred twenty one only) as refund with interest. The respondent has not filed its Memo of Calculation.

16. 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 14/02/2023.

17. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under: –

MEMO OF CALCULATION

SL. NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	21-01-17	751,982	99	30-04-17	18,356
2				TOTAL INTEREST (1)	18,356

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 INTER EST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-17	751,982	2115	14-02-23	8.15	10.15 as on 01-05-2017	442,273
2	28-08-17	200,000	1996	14-02-23	8.15	10.15 as on 01-08-2017	111,010
3	TOTAL AMOUNT	951,982				TOTAL INTEREST (2)	553,283

Contd....6

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 14-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
951,982	571,639	0	1,523,621

Accordingly the point raised above is answered in the Affirmative.

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

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.CMP/200628/0005939 is hereby allowed. Respondent is directed to pay a sum of **Rs.15,23,621/- (Rupees Fifteen lakhs Twenty three thousand Six hundred twenty one only)** as on 14/02/2023 towards refund with interest to the complainants within 60 days from the date of this order.

The interest due from 15/02/2023 is to be calculated as per MCLR + 2 up to the date of final payment and paid to the complainant. The complainant is 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 costs.


(G R REDDY, IRS)
Member, K-RERA