

PROCEEDINGS OF THE AUTHORITY
PRESIDED BY HON'BLE MEMBER G.R. REDDY

BEFORE BENCH 5

COMPLAINT NO: CMP/210706/0008104

DATED THIS 17th DAY OF AUGUST, 2023

COMPLAINANTS : 1. Mr.Udit Mital,
2. Ms.Bela Agarwal and
3. Ms.Nisha Mital

Residing at E3, Versova Sky,
Kagadasapura Main Road
C V Raman Nagar
Bengaluru : 560 093

(Party in Person)

RESPONDENT / PROMOTER : M/s.Sukritha Buildmann Pvt Ltd.
1st Floor, Batra Center
No.27, Ulsoor Road
Bangalore : 560 042

(By Dilip Kumar I.S & Associates)

PROJECT NAME & REGISTRATION NO. : BUILDMANN AAROHA-1 (BLOCK-1)
PRM/KA/RERA/1251/446/PR/171102/
001451

J U D G E M E N T

This complaint is filed under Sec-18 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project



BUILDMANN AAROHA-1 (BLOCK-1) praying for a direction to Refund the amount paid with Interest.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. As per the details furnished by the Complainants in the memo of calculation for refund with interest, the complainants have entered into an agreement of sale with the Respondent on 18-04-2018. The project completion date as per agreement was 30-06-2021. The complainants have paid an amount of Rs.30,65,697/- (Rupees thirty lakhs sixty five thousand six hundred ninety seven only) to the respondent till date of complaint. The complainants have submitted in their complaint that there was delay of more than one and a half year from the date of booking, the respondent has not started the construction activities and hence the complainants have filed the above complaint before the Authority praying for the following reliefs:

i) Refund of the amount paid together with interest.

2. As per the agreement submitted by the Complainants, it is seen that the completion date is agreed as 30.06.2021. The promoter-respondent was required to complete the project and hand over possession of the apartment by 30.06.2021. Since the respondent-promoter has failed to start construction activities even after completion of one year six months from the date of agreement and there is no communication from the Respondent to the complainants about probable date completion of the project and the reasons for not starting the project. Since there is no communication from the Respondent, the complainants have sent an email on 2nd July, 2019

with a request to cancel the booking and refund the advance amount paid. Since the Respondent has not refunded the advance amount paid by the complainants, the complainants have filed the present complaint seeking for refund of the advance paid together with interest and the same is admissible for relief in accordance with Section 18 of the Act.

3. After registration of the complaint, notice was issued to both complainants and respondent to appear before the authority. In pursuance of the notice, the complainants have appeared and submitted their memo of calculation for refund with interest together with supporting documents. The Complainants have also submitted copy of the agreement for sale, statement of account for having paid the amount, bank statement and other email correspondence between the complainants and the respondents in support of its claim. The respondent has appeared before the Authority through its counsel and filed statement of objections without producing any documents in support of its contention.

4. The Respondent has pleaded in its statement of objection that the project has started and substantial completion of works including the excavation, laying of footings and foundation, casting of main columns up to the slab level as well as the construction of basement retaining walls around the project have been achieved. No documents were produced by the Respondent in support of its contention. 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 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 of the Act, the promoter is liable to return the amount received along with interest.

5. The further submission made by the Respondent that the complainants have not followed the procedure to cancel the sale agreement and seek refund is not supported by any documentary evidence. On the contrary, the complainants have produced various email communications addressed to the respondent terminating the agreement and cancelling the booking and personally met the representative of the respondent. The respondent addressed a communication to the complainants vide their letter dated 28.09.2019, wherein the respondent have accepted the cancellation of the booking made by the respondent and assured to refund the amount within 90 days. In the said communication the respondent also sought the acceptance of the complainants for cancellation of the booking. The complainants have signed the said letter and handed over to the Respondent and the Respondent after accepting the cancellation has refunded a sum of Rs.1,50,000/- only on three instalments during the period from March 2021 to May, 2021 and failed to make the balance amount.

6. From the averments made in the complaint it is evident that complainants have paid the advance sale consideration amount and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the Complainants. The Promoter-

Respondent has not submitted any memo of calculation nor disputed the memo of calculation submitted by the complainants.

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

Memo of Calculation for Refund with Interest submitted by the Complainants as on 03-04-2023

Principle amount (A) Rs.	Interest (B) As on 03.04.2023 Rs.	Refund from Promoter (C) Rs.	Total Balance Amount (A+B) Rs.
30,65,697	14,79,480	1,50,000	43,95,177

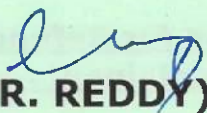
And accordingly the Authority passes the following:

ORDER

1. In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint Bearing No.CMP/210706/0008104 is hereby allowed.

2. Respondent is directed to refund a sum of **Rs. 43,95,177/- (Rupees Forty three lakhs Ninety five thousand one hundred seventy seven only)** towards refund with interest to the complainants within 60 days from the date of this order as per the memo of calculation of Complainants, calculated from 01/05/2017 till 03.04.2023. The interest due from 04.04.2023 up to the date of final payment will be calculated likewise and paid to the complainants.

The complainants are 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.


(G.R. REDDY)

**MEMBER
FIFTH ADDITIONAL BENCH
K-RERA**

Total Project Amount (A+B) Rs.	Amount from Respondent (C) Rs.	Amount (A) Rs.
43,82,177	1,80,000	38,22,897

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