

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

PRESIDED BY MR. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

DATED 30th DAY OF AUGUST 2023

COMPLAINT NO. CMP/220811/0009872

COMPLAINANTS:

**GIRIDHAR PARAMBATH &
NAMITHA SURESHBABU
D-106, DSR GREENFIELDS
IMMADIHALLI ROAD
WHITEFIELD
BENGALURU URBAN-560066.**

(IN PERSON)

v/s

RESPONDENT...

**M/s REGAL DWELLINGS
PRIVATE LIMITED
LEVEL 3 & 4, EMBASSY
DIAMONDS
34, VITTAL MALLYA ROAD
BENGALURU URBAN-560 001**

**(BY SRI. E. SUHAIL AHMED
ADVOCATE)**

PROJECT NAME &

BEVERLY WOODS

REGISTRATION NO.

**PRM/KA/RERA/1265/347
PR/191220/003073**

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JUDGEMENT

1. This complaint has been filed under section 31 of the RERA Act against the project "**BEVERLY WOODS**" developed by "**M/s REGAL DWELLINGS PRIVATE LIMITED**" for the relief of refund of booking amount and e-stamp amount.
2. The promoter has developed this project situated at Kalkere Village, Lakkur Hobli, Malur Taluk, Kolar District, Malur, Kolar.
3. **Brief facts of the complaint are as under:** The complainant herein had booked a villa site bearing no. **21** measuring 1500 Sft in the project "**BEVERLY WOODS**" of the respondent by paying booking amount of Rs.1,00,000/- on 23/5/2022 and an amount of Rs.8,000/- on 23/5/2022 towards e-stamp altogether Rs.1,08,000/- (Rs. One lakh eight thousand only) which has been duly acknowledged by the respondent vide email dated 30th May 2022. The complainants in their email dated 6th June 2022 has stated that they will be unable to proceed with the project due to apprehension about the road connectivity to this project. Therefore, the complainant has approached this Authority seeking relief of refund of booking amount along with e-stamp amount. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through his counsel on and filed statement of objections as under:
5. It has denied each and every allegation made against it by the complainant as false. It is submitted that under the booking form dated

6/3/22

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26/5/2022, the first complainant and his wife have booked unit no.21 in the project by advancing a sum of Rs.1,00,000/- (Rs. One lakh only) towards booking amount. The complainants further paid a sum of Rs.8,000/- towards e-stamping costs. Altogether, the complainants have paid a sum of Rs.1,08,000/- (Rs. One lakh eight thousand only) till date and the respondent has duly acknowledged receipt of the said amount. Further, it is the specific case of the respondent that the booking form dated 26/5/2022 executed by the complainants amounts to a contract between the complainants and the respondent.

6. It is also the case of the respondents that the booking amount paid by the complainants is earnest money. It is a well settled principle of common law that earnest money must be given at the moment at which the contract is concluded, because it is something given to bind the contract, and, therefore, it must come into existence at the making or conclusion of the contract. It is contended that the booking amount paid by the complainants is in the nature of earnest money and the contract having been terminated on account of the default of the complainants and their failure to make further payments towards the sale consideration, the respondent has the right to forfeit the booking amount. Clause 4 of the booking form reads as under:

"The respondent herein reserves the right to cancel the allotment and forfeit any amount paid if the balance amounts are not paid as per the terms of booking and the agreed payment schedule. In case the applicant/s desires to withdraw the booking before the sale agreements are entered into, an amount of 2% of the sale value would be withheld as cancellation fee and administrative charges"

7. Further, the complaint filed by the complainant based on the reasoning in the email dated 6th June 2022 to withdraw from the project based

Ans

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on an apprehension as aforesaid and for no fault of the respondent. It is submitted that the total sale consideration of the unit purchased by the complainants is Rs.68,47,009/- inclusive of all the charges and taxes. In view of the aforesaid provision of law, the covenant under the booking form dated 26/5/2022, the respondent is entitled to forfeit 2% of the sale consideration being Rs.1,36,940/-. It is further submitted that the complainants have till date paid a sum of Rs.1,08,000/- (Rs. One lakh eight thousand only) which is lower than the amount, the respondent is entitled to forfeit firstly, as agreed under the booking form and secondly, as permissible by law. Hence, prayed to dismiss the complaint.

8. In support of his claim, the complainant has produced documents such as copy of booking form and payment receipts.

9. In support of his defence, the respondents has produced documents such as RERA registration certificate, copy of the judgement passed by the Hon'ble National Consumer Disputes Redressal Commission in DLF Ltd Vs Bhagwanthi Narula, copy of email dated 6/6/2022 sent by the complainant to respondent to cancel booking.

10. This matter was heard on 27/6/2022, 11/7/2022, 26/8/2022, 19/9/2022, 14/10/2022, 7/11/2022 and on 25/11/2022.

11. On the above averments, the following points would arise for my consideration.

- 1) Whether the complainant is entitled for the relief claimed?
- 2) What order?

12. **Answer to the above points are as under:**

- 1) Partly Affirmative

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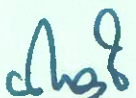
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2) As per final order for the following:

FINDINGS

10. **My findings on point no.1:** From the payment receipt furnished by the complainant, it is apparent that the complainant had booked a villa site bearing no.21 in the project "BEVERLY WOODS" by paying booking amount of Rs.1,00,000/- on 23/5/2022 and an amount of Rs.8,000/- on 23/5/2022 towards e-stamp altogether Rs.1,08,000/- (Rs. One lakh eight thousand only) which has been duly acknowledged by the respondent vide email dated 30th May 2022. Now, they have approached this Authority seeking for refund of said booking amount on the grounds they will be unable to proceed with the project due to apprehension about the road connectivity to this project.
11. The same is resisted by the respondent that the complainants have filed the above complaint for no fault of the respondent seeking the relief of refund of Booking amount from the respondent without any sufficient cause. It is the specific case of the respondent that the booking form dated 26/5/2022 executed by the complainants amounts to a contract between the complainants and the respondent. *Clause 4 of the booking form states that the respondent herein reserves the right to cancel the amount and forfeit any amount paid if the balance amounts are not paid as per the terms of booking and the agreed payment schedule. In case applicant/s desires to withdraw the booking before the sale agreements are entered into, an amount of 2% of the sale value would be withheld as cancellation fee and administrative charges.*
12. It is apparent from the payment receipt that the complainant have paid an amount of Rs.1,08,000/- (Rs. One lakhs eighty thousand only)



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and which has been duly acknowledged by the respondent. However, this issue is not related to delay but due to the complainants voluntarily seeking withdrawal of amount. Hence, they can claim that much of the advance amount paid after proper deductions as per their booking form towards the said villa site but without any interest. Accordingly, the point raised above is answered as partly Affirmative.

13. **My findings on point no.2:** In view of the above discussion, the complaint deserves to be partly 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/220811/0009872** is hereby partly allowed.

1. The respondent is hereby directed to refund booking and e-stamp amount with permissible deductions as per clause 4 provided in the Booking form out of Rs.1,08,000/- (Rs. One lakh eight thousand only) to the complainants within 60 days from the date of this order.
2. The complainant are at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.



(H.C. Kishore Chandra)

Chairman

K-RERA