

**PROCEEDINGS OF THE AUTHORITY**

**BEFORE BENCH 5**

**PRESIDED BY HON'BLE MEMBER G.R. REDDY**

**COMPLAINT NO: CMP/200529/0005940**

**DATED THIS 14<sup>th</sup> DAY OF SEPTEMBER, 2023**

**COMPLAINANTS** : 1. Mr.Thimmiah Guddanda Somana  
S/o Mr.G.C.Somana  
2. Mr.Tushar Thimmiah  
S/o Thimmiah Guddanda Somana

Both are residing at Flat NO.10,  
Aqua Forte Apartment, Kensington  
Road, Ulsoor, Bangalore:560042

(Party in Person)

**RESPONDENT /  
PROMOTER** : M/s.Legacy Global Projects (P) Ltd  
No.333, Thimmaiah Road  
Bangalore : 560 052

(Ms.Sujatha, Advocate)

**PROJECT NAME &  
REGISTRATION NO.** : LEGACY VIVIENDA  
PRM/KA/RERA/1251/309/PR/  
171015/000885

**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 **LEGACY VIVIENDA** praying for a direction to Refund the amount paid with Interest and for other relief.



**BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-**

1. As per the details furnished by the Complainants in the memo of calculation, the complainants have entered into an agreement of sale on 07.11.2017. The project completion date as per agreement was 06.05.2020. The complainants have paid an amount of Rs.56,15,000/- (Rupees Fifty Six lakhs fifteen thousand only) to the Respondent. Since the project could not be completed and the apartment is not handed over to the complainants as per the agreed date i.e., 06.05.2020 and there is no communication from the Respondent intimating the probable date of completion and handing over the apartment booked by the complainants. Hence, the complainants have filed the above complaint before the Authority praying for following reliefs:

- i) Direct the Respondents to pay PRE-EMI charges
- ii) Direct the Respondent to refund all monies disbursed

2. As per the agreement, it is seen that the completion date is agreed as 06.05.2020. The promoter-respondent was required to complete the project and hand over possession of the apartment by 06.05.2020. Since the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for relief in accordance with Section 18 of the Act.

3. After registration of the complaint, notice was sent to both complainants and respondent to appear before the Authority. Hearings were conducted on 13.9.2022, 12.10.2022, 27.10.2022, 21.06.2023, 05.07.2023, 12.07.2023 and 30.08.2023. Complainants

have appeared before the Authority filed memo of calculation for refund with interest and an application praying this Authority to include the name of Complainant's father Mr.Thimmiah Guddanda Somana in the complaint as his name was erroneously not mentioned in the complaint and he was party to the agreement of sale entered with the Respondent. The Application and the MOC filed by the complainants were taken on record. The respondent entered appearance through their counsel and admitted that there is a delay in completion of the project. On the request of both the parties, the Authority has granted some time for amicable settlement. During the hearing on 05.07.2023, the complainants have submitted that they could not arrive at amicable settlement and wanted to exit from the project, prayed for refund with interest. During the hearing on 12.07.2023 the respondent stated that their payment to the Complainants towards PRE-EMI is to be considered for MOC for refund with interest, which the complainants have no objection. Further, the Respondent also prayed for providing fresh link to file statement of objections and objections to the MOC filed by the complainants and accordingly fresh link was provided to both the parties and the hearing was adjourned to 30.08.2023. On 30.08.2023, the Respondent neither filed any statement of objections nor filed objections to the MOC filed by the complainants. On the other hand the complainants have filed revised MOC taking into account the refund made by the respondent towards PRE-EMI, thereby reducing their claims from the previous MOC filed by them.

4. Based on the documents and information furnished by the Complainants in their memo of calculation for refund with interest, it is apparent that the promoter has to deliver the apartment on or before 06.05.2020, but failed to handover possession of the



apartment. Since the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee as per the agreed time schedule, this complaint is admissible for relief in accordance with Section 18 of the Act.

5. 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 refund the amount received along with interest.

6. From the averments made in the complaint and the documents produced by the Complainants, it is evident that the complainants have paid the advance sale consideration amount and are entitled to get refund of 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 or objections to 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 submitted by the Complainants as on 05.09.2023**

<b>Principle amount (A) Rs.</b>	<b>Interest (B) As on 05.09.2023 Rs.</b>	<b>Refund from Promoter (C) Rs.</b>	<b>Total Balance Amount (A+B) Rs.</b>
<b>56,15,000</b>	<b>33,93,956</b>	<b>12,34,064</b>	<b>77,74,892</b>

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/200529/0005940 is hereby partly allowed.

2. Respondent is directed to refund a sum of **Rs. 77,74,892/- (Rupees Seventy Seven lakhs seventy four thousand eight hundred ninety two only)** towards refund with interest to the complainants within 60 days from the date of this order as per the calculation of the Complainants, calculated from 01/05/2017 till 05.09.2023. The interest due from 06.09.2023 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**

