

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 SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN**

**Dated 7<sup>th</sup> DAY OF NOVEMBER 2023**

**COMPLAINT No: CMP/ UR/191209/0004801**

**COMPLAINANT..**

VINOD NAIR  
FLAT 3-A, SUNDER  
RESIDENCY-IV, NO; 592  
14<sup>th</sup> CROSS, 5<sup>TH</sup> MAIN  
DOLLARS COLONY  
RMV 2<sup>ND</sup> STAGE  
BENGALURU URBAN-560094

(BY SRI. VIJAY SINGH M  
ADVOCATE)

V/s

**RESPONDENT....**

M/S GM INFINITE DWELLING  
(INDIA) PRIVATE LIMITED  
NO;6, GM PEARL, BTM LAYOUT  
1<sup>ST</sup> STAGE, 1<sup>ST</sup> PHASE  
BENGALURU URBAN-560068

(BY SRI. T.P. DARSHAN  
ADVOCATE)

**JUDGEMENT**

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "E-CITY TOWN PHASE II" developed by "M/s GM INFINITE DWELLING INDIA PRIVATE LIMITED" for the relief of refund with interest.

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2. This project is not registered in RERA. This Authority has passed an interim order dated 28<sup>th</sup> November 2022 directing the respondent to register the project as required under section 3 of the Act within two weeks from the date of receipt of the said order.
3. The promoter has developed this project in the limits of Thirupalya village, Jigani Hobli, Anekal Taluk, Bengaluru Rural District.
4. The gist of the complaint is that the complainant has booked a flat bearing no. B2150, situated on 2<sup>nd</sup> floor in the project " E-CITY TOWN PHASE-2" and thereafter entered into an agreement of sale and construction agreement dated 15/4/2015 with the respondent for a total sale consideration of Rs.48,18,000/- (Rs. Forty eight lakhs eighteen thousand only). The complainant has paid an amount of Rs.1,00,000/- on 19/3/2015, Rs.600/- on 31/3/2015, Rs.8,63,000/- on 8/4/2015, Rs.12,04,500/- on 28/5/2015, Rs.4,81,800/- on 30/6/2015, Rs.4,81,800/- on 14/9/2015, Rs.1,79,626/- on 28/7/2016, Rs.12,45,774/- on 30/7/2016 altogether Rs.45,57,100/-(Rs. Forty five lakhs fifty seven thousand one hundred only) as per memo of calculation dated 22/8/2023 to the respondent-builder which has been duly acknowledged by him. The builder was required to hand over the possession of the said flat to the complainants within 24 months with a grace period of 6 months i.e. by 15/10/2017. It is contended that even after two years after the due dates, the said unit was not completed for handover and possession. The builder has been repeatedly requested for photographic evidence of completion of work, completion certificate and occupancy certificate but the respondent

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has failed to respond. Further, the respondent-promoter has shirked his responsibility for delay citing frivolous reasons such as climatic conditions. It is further contended that the GM infinite has requested payment of electricity bills directly to GM Infinite and not BESCOM and has failed to provide an invoice, evidence of paper work from BESCOM for provision of electricity meter for the said unit which was claimed to be available. Further, the sewage treatment which is away from the residential structure has been constructed under the residential structure causing inconvenience to residents and risk due to noise and vibration including at night time and health risk from foul smell of sewage. The builder is currently pressurizing the buyer to register the incomplete flat and refusing to complete the remaining work. Having lost confidence with the respondent, the complainant has approached this forum for the relief of direction to the respondent to refund the entire amount paid along with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent did appear before this Authority through its counsel on 24/3/2023 and 21/4/2023 and filed Vakalat. Whereas he remained absent during the hearings held on 21/11/2022, 16/12/2022, 23/01/2023, 24/02/2023, 12/6/2023, 10/7/2023, 21/7/2023 and on 4/8/2023. Subsequently, neither the respondent nor his counsel put forth their grievances before this Authority and have not taken any interest to file statement of objections, producing documents if any on its behalf.

ASD

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6. On perusal of the sale and construction agreement, it is seen that the completion date is agreed as 15/10/2017. The Promoter-respondent was required to complete the project and hand over possession of the unit no. B-2150 in the project " E-CITY TOWN PHASE-2" to the complainant by 15/10/2017. In cases wherein the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for the relief in accordance with Section 18 of the Act.

7. In support of his claim, the complainants has produced documents such as (1) copy of agreement of sale construction agreement dated 15/4/2015 (2) details of payment made (3) memo of calculation.(

8. On the above averments, the following points would arise for my consideration:-

1. Whether the complainants is entitled for the relief claimed?
2. What order?

9. **Findings on the above points are as under:-**

1. In the Affirmative.
2. As per final order for the following:

**FINDINGS**

**10. Findings on point No.1:-** The complainant has approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainant has booked a unit flat no.B2150 in the project "E-CITY TOWN PHASE-2" of the respondent-

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promoter. Accordingly, both the parties have entered into an agreement of sale and construction agreement both dated 15/4/2015 for a total sale consideration of Rs.48,18,000/- (Rs. Forty eight lakhs eighteen thousand only). The respondent had promised to hand over the possession of the said flat within 24 months subject to further extension/grace period of 6 months. However, the respondent has failed to abide by the terms and conditions enumerated in the agreement of sale dated 15/4/2015 and miserably failed to hand over the said unit within the stipulated timeline as agreed.

11. Looking to the averments of agreement, parties herein have entered into an agreement of sale and construction agreement both dated 15/4/2015. The agreement of sale is key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale and construction agreement dated 15/4/2015, the respondent was supposed to handover the possession of the said flat to the complainants by 15/10/2017. But the respondent had not completed and handed over the possession of the said flat to the complainant till date.

12. As per the decision of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

*"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter*

*Asst*

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*would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)..... The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.*

13. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021 (arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, it is held as under:

*"Section-18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund or the amount with interest at such rate as may be prescribed in this behalf"*

The said principle is aptly applicable to the present case on hand.

14. 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



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prescribed in this behalf including compensation in the manner as provided under this Act.

15. 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 /plot in accordance with sale agreement.

16. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainants on 22/8/2023. The complainant have claimed an amount of Rs.81,10,322/- (Rs. Eighty one lakhs ten thousand three hundred twenty two only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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

**Memo Calculation submitted by the complainant as on 22/08/2023**

| PRINCIPLE AMOUNT ( A ) | INTEREST ( B = I1 + I2 + I3 ) AS ON 22/8/2023 | REFUND FROM PROMOTER ( C ) | TOTAL BALANCE AMOUNT ( A + B - C ) |
|------------------------|---|----------------------------|------------------------------------|
| 45,57,100              | 35,53,222                                     | 0                          | 81,10,322                          |

18. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for refund along with interest.



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19. Sum and substance of the case is as under:

|   |   |
|---|---|
| Date of agreement of sale                             | 15/4/2015   |
| Date of construction agreement                        | 15/4/2015   |
| Sale consideration                                    | 48,18,000/- (Rs. Forty eight lakhs eighteen thousand only)                  |
| Amount paid   | Rs.45,57,100/- (Rs. Forty five lakhs fifty seven thousand one hundred only) |
| Promised date of possession as per agreement of sale  | 15/10/2017  |
| Date of occupancy certificate                         | Nil   |
| Whether the possession has been handed over with date | Not yet   |
| Prayer  | Refund of amount paid along with interest.                                  |

20. Despite of several notices served upon the respondent, the counsel for the respondent did appear before this Authority on 24/3/2023 and filed vakalat. Thereafter, during the preceding and subsequent dates of hearings from 21/4/2023 onwards neither the counsel for the respondent nor the respondent did appear before this Authority and have been remained absent. Further, they have failed to file statement of objections and furnishing documents in support of their defence and hence not contested the matter. In the absence of any resistance by the respondent and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant. Accordingly, the points raised above is answered in the Affirmative.

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**21. Findings on point no.2.** In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, 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/UR/191209/0004801 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **81,10,322/-** (Rupees Eighty one lakhs ten thousand three hundred twenty two only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 19/3/2015 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 22/8/2023.
2. The interest due from 23/3/2023 shall be calculated likewise and paid to the complainants till the date of entire realization.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.

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

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