

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 17th November 2023

COMPLAINT NO: CMP/UR/211029/0008501

COMPLAINANT ...

**1. MR. JAYAKUMAR
S/O VEERASAMY,**

**2. MRS. DAKSHAYINI
W/O JAYAKUMAR**

**BOTH RESIDING AT
No. 3/2, B Cross Street
Agrahara Dasarahalli,
BENGALURU-560079.**

(Parties in person)

Vs

RESPONDENTS ...

**1. Mr. Rathish
M/s Golden Gate Properties Ltd.,
Golden Home, # 820, 80 feet Road,
8th Block, Koramangala,
BENGALURU-560095.**

**2. Mr. Ravi,
Nestoya Homes, No.589, 1st Floor,
Above State Bank of India,
C Block, AECS Layout,
Brookfield, BENGALLURU**

(By Sri. Venkatesh R Bhagat)

JUDGEMENT

This complaint is filed under section 31 of the RERA Act against the project "GOLDEN GATE PHASE 4" developed by M/s Golden Gate Properties Ltd.," for the relief of refund with interest.



2. This project has been not registered with RERA.
3. This project is situated at, Sy.No. 86 Indebele village, Liberty Acres, Attibele to Sarjapura Road, Bangalore-562107.

Brief facts of the complaint are as under:-

4. The complainants have booked plot No.33, in the project developed by the respondent namely “GOLDEN GATE PHASE 4” and the complainants have paid an amount of Rs. 7,42,500/- (Rupees Seven lakhs Forty two thousand five hundred only) and various dates and entered into Agreement of Sale on 12/07/2017. The Respondents have issued receipts for having acknowledge the amount by the Complainant.
5. The complainants are ready to get registration of the plot, but the respondents are prolonging citing one or the other reasons saying that drainage and road are to be developed. The complainants came to know that, the respondents have sold the plot of the complainants by entering into Joint Venture.
6. The complainants approached the respondents and demanded for refund the amount with interest. Hence this complaint.
7. After registration of the complaint, notice were issued to both complainants and respondents to appear before the Authority. The complainants appeared before the Authority and submitted documents in respect of their claim. The Advocate appeared on behalf of Respondents filed vakalath without filing any documents, statement of objections and not contested the matter.
8. At the time of filing Complaint the complainants sought relief for same plot is to be registered as per Sale Agreement price. Later on the complainants have filed application requested for change of relief for refund with interest.
9. In support of his claim, the complainants have produced documents such as Memo of Calculation date 09-06-2023, copy of Agreement of Sale, receipts, etc;

10. This matter is heard on 19-04-2023, 24-05-2023, 20-06-2023, 13-07-2023, 12-09-2023 and 04-10-2023.

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

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

REASONS

13. **My answer to Point No.1:-** From the materials available on record, it is apparent that the respondents have received an amount of Rs. 7,42,500/- (Rupees Seven lakhs Forty two thousand five hundred only) on various dates and the respondents have also acknowledged the same. It is clearly shown on the documents available on records that the respondents have received total an amount of Rs. 7,42,000/- from the Complainants.

12. The respondents failed to complete the project as per agreement executed in favour of the complainants. Hence, the complainant has decided to exist from the project and demanded to refund the amount with interest.

13. On the demand of the Complainant the respondents have refunded total an amount of Rs. 6,50,000/- on various dates to the complainants through NEFT to the account of 1st complainant.

14. The complainant has filed Memo of Calculation, copies of Sale Agreement, Receipts, cheque, Bank endorsement and other relevant documents in support his

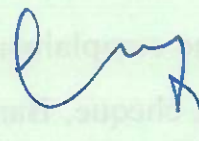
claim. On the other hand the respondent appeared before the Authority and filed Vakalat.

15. As per section 18(1) 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.

16. 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 etc., in accordance with sale agreement.

17. From the averments of the complaint and the documents submitted by the complainants, it is evident that the complainants have paid an amount of Rs.7,42,500/- (Rupees Seven lakhs Forty two thousand Five hundred only) and the respondent had also accepted the same.

18. The complainants have filed their memo of calculation as on 09-06-2023 claiming a refund of Rs.3,06,994/- (Rupees Three lakhs Six thousand Nine hundred Ninety four only) by deducting an amount of Rs. 6,50,000/- (Rupees Six lakhs Fifty thousand only) refunded by the respondent and interest on balance amount. The respondents have not resisted the said memo of calculation filed by the complainants. The respondents are given sufficient of opportunities to file their written submission and any other documents to defend the claim. In spite of sufficient of time the Respondents are neither filed any written submission nor defend their claim. On verification of the memo of calculation filed by the complainants reveals that their claim is genuine.



19. Having regard to all these aspects as mentioned above, this Authority concludes that the complainants are entitled for refund with interest as claimed vide his memo of calculation dated 09-06-2023.

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

Interest Calculation Till 30/04/2017 (Before RERA)

S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	0	0	30-04-2017	0
2		0		TOTAL INTEREST (11)	0

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 INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	1683	09-12-2021	8.15	10.15 as on 01-05-2017	0
2	27-05-2019	1,00,000	927	09-12-2021	8.65	10.65 as on 10-05-2019	27,048
3	15-07-2019	6,42,500	878	09-12-2021	8.6	10.6 as on 10-07-2019	1,63,825
4	TOTAL AMOUNT	7,42,500				TOTAL INTEREST (12)	1,90,873

Refund Interest Calculation From 01/05/2017 (After RERA)

S.NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	7,42,500	09-12-2021	3,00,000	4,42,500	69	16-02-2022	7.3	9.3 as on 15-11-2021	7,779
2	4,42,500	16-02-2022	1,00,000	3,42,500	36	24-03-2022	7.3	9.3 as on 15-02-2022	3,141
3	3,42,500	24-03-2022	1,00,000	2,42,500	23	16-04-2022	7.3	9.3 as on 15-03-2022	1,421

S.NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
4	2,42,500	16-04-2022	1,00,000	1,42,500	81	06-07-2022	7.4	9.4 as on 15-04-2022	2,972
5	1,42,500	06-07-2022	50,000	92,500	338	09-06-2023	7.7	9.7 as on 15-06-2022	8,308
6								TOTAL INTEREST (3)	23,621

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = 1 + 2 + 3) AS ON 09-06-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
7,42,500	2,14,494	6,50,000	3,06,994

21. Accordingly the point raised above is answered in the Affirmative.

22. 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

23. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/UR/211029/0008501** is hereby allowed as under.

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/UR/211029/0008501** hereby allowed. Respondent is directed to pay a sum of **Rs. 3,06,994/- (Rupees Three lakhs Six thousand Nine hundred ninety four only)** towards refund with interest to

the complainant within 60 days from the date of this order, calculated at MCLR + 2% till 09-06-2023.

2. The interest due from 10-06-2023 up to the date of final payment will be calculated likewise and paid to the complainant.

The complainant is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to the costs.


(G R REDDY)
Member, K-RERA

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The complainant within 90 days from the date of this order.

calculated at 4% I.R. - 2% till 04-06-2023

2. The interest due from 10-06-2023 up to the date of final

payment will be calculated likewise and paid to the

complainant.

The complainant is at liberty to initiate action in

conformance with law, if the respondent fails to comply with this

order as to the costs.


(G. R. K. R. S. S.)
Member, K-RTR

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