

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

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

Dated 21ST November 2023

COMPLAINT NO: CMP/00034/2023

COMPLAINANT...

1. Nirmala Nayak
2. Gutpur Varadaraja Nayak,
No. 201, Pilerne Apartments,
No. 13, Hayes Road,
Bangalore-560025.
STATE: KARNATAKA.
(Mr. Suraj Sampath, Advocate)

Vs

RESPONDENT.....

Legacy Global Projects Pvt. Ltd.,
No. 333, Nova Miller,
2nd Floor, Thimmaiah Road,
Bangalore-560052.
(Mrs. H.H Sujatha, Advocate)

JUDGEMENT


1. This complaint is filed under section 31 of the RERA Act against the project "Legacy Altamira" developed by M/s. Legacy Global Projects Pvt. Ltd., for the relief of refund along with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/310/PR/190307/002480 valid till 30-06-2023 and extended until 30-03-2024.
3. This project is situated at, No. 48-50-78. Mission Road, Bangalore.

Brief facts of the complaint are as under:-



4. The complainants have booked a flat bearing no. A-10 in the project of the respondent namely "Legacy Altamira" for a total sale consideration of Rs.4,50,00,000/- (Rupees Four Crores Fifty Lakhs only). At the time of entering into an agreement of sale, the complainants had paid a sum of Rs.4,00,00,000/- (Rupees Four Crores only) to the respondent on the various dates. As per the agreement of sale the respondent supposed to handover the possession on or before April 2021 with the grace period of 6 months. After few days, the complainants came to know that the respondent had failed to carry out the construction work and has practically abandoned the project from the day one. The foundation work of the project has not been laid out and it has been grossly failed to fulfil its obligations under the aforesaid. The complainants tried to contact the builder by phone and emails, but there was no response from their end. The complainants have issued a legal notice to the respondent and the landowner on 19-05-2022 to refund their sum of Rs. 4,00,00,000/- (Rupees Four Crores only) along with interest at the rate of 18% per annum. After multiple follow ups the complainants decided to go for cancel their flat and they were asked for refund their amount. But there is no response from the other side. Hence, this complaint.

5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notice, the complainants have appeared before the Authority and filed Memo of Calculation, Agreements of Sale and construction, payment receipts and photographs of the project etc. The respondent has appeared before the Authority through its counsel and filed memo of appearance.



6. In support of their claim, the complainants have produced documents such as copy of agreement of sale without possession dated 11-05-2017, payment receipts, and memo of calculation as on 25/04/2023.

7. This matter was heard on 03-03-2023, 13-06-2023, 13-07-2023 and 12-09-2023.

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

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

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

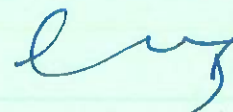
1. In the Affirmative.
2. As per final order for the following.

REASONS

10. **My answer to Point No.1:-** From the materials available on record, it is apparent that in spite of entering into sale agreement having received a substantial sale consideration from the complainant, the respondent has not handed over the possession and the respondent has neither completed the project, nor refunded the amount with interest till date.

11. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters v/s The State Of Uttar Pradesh 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 by the date specified therein or on account of discontinuance 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 of the amount with interest at such rate as may be prescribed in this behalf.

12. Further, the judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

“ 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 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 case of Himanshu Giri came under the letter

category. 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. 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.

14. 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.

15. From the averments of the complaint and documents of the complaint, it is obvious that the complainants have paid substantial sale consideration to the respondent towards the purchase of said flat. Having accepted the substantial sale consideration and having failed to abide by the completion date certainly entitles the complainants for refund of entire amount with interest as per RERA act.

16. The complainants have filed their memo of calculation as on 25-04-2023 claiming a refund of Rs.6,40,94,292/- (Rupees Six Crores Forty Lakhs Ninety Four Thousand Two Hundred and Ninety Two only) including interest. The respondent has not resisted the said memo of calculation filed by the complainants and he has not submitted his Memo of calculation inspite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainant reveals that his claim is genuine.



17. In response to the notice, the respondent has not taken any interest to participate in the proceedings and to resist the claim of complainants. Hence, the claim of complainant remained unchallenged and his claim is corroborated with cogent materials. There is no reason to discard the claim of complainant.

18. Having regard to all these aspects as mentioned above, this Authority concludes that the complainants are entitled for refund along with interest as claimed vide their memo of calculation 16-11-2023.

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

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	11-05-2017	5,00,000	2175	25-04-2023	8.15	10.15 as on 01-05-2017	302,414
2	20-05-2017	39,50,000	2166	25-04-2023	8.15	10.15 as on 01-05-2017	23,791,878
3	TOTAL AMOUNT	4,00,00,000				TOTAL INTEREST (I2)	24,094,292

MEMO OF CALCULATION			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 03-10-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
4,00,00,000	24,094,292	0	64,094,292

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

21. **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

22. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/00034/2023** is hereby allowed as under.

1. The respondent is directed to pay a sum of **Rs.6,40,94,292/- (Rupees Six Crores Forty Lakhs Ninety Four Thousand Two Hundred and Ninety Two only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 11/05/2017 till 25/04/2023.

2. The interest due from 26/04/2023 up to the date of final payment will be calculated as per MCLR + 2% and paid to the complainant.

3. 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

ORDER

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complainant bearing No. GM/0004/2023 is hereby allowed as under:

1. The respondent is directed to pay a sum of Rs. 40,94,393/- (Rupees Six Crores Forty Lakhs Ninety Four Thousand Two Hundred and Ninety Two only) towards refund within 60 days from the date of the order, calculated as per MCR + 3%.

2. The interest due from 26/04/2023 up to the date of final payment is calculated as per MCR + 3% and paid to the complainant.

3. The complainant is directed 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, RERA

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