

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 2nd DAY OF DECEMBER 2023

COMPLAINT NO. CMP/221029/0010139

COMPLAINANT:

DENI KUMAR P
#5, SAI BRINDAVANAM
3rd CROSS, 4TH MAIN
BGS LAYOUT, SURABHI
NAGAR WEST
JP NAGAR 8TH PHASE
BENGALURU URBAN-560076

(IN PERSON)

V/s

RESPONDENTS...

1. M/s RADIANT STRUCTURES
PRIVATE LIMITED
ABOVE IDBI BANK, 75/775
10TH MAIN ROAD, 4TH BLOCK
JAYANAGAR
BENGALURU URBAN-560011

(ABSENT)

2. RAJESH GOYAL
INVESTOR
FLAT NO. 307, RADIANT ELTAIRE
#1, JAMBU SAVARI DINNE
BUS STOP, JP NAGAR 8TH PHASE
BENGALURU URBAN-560076

(IN PERSON)

PROJECT NAME &

RADIANT ELTAIRE

REGISTRATION NO.

**PRM/KA/RERA/1251/310
PR/171019/000773**



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JUDGEMENT

1. This complaint has been filed under section 31 of the RERA Act against the project "**RADIANT ELITAIRE**" developed by "**M/s RADIANT STRUCTURES PRIVATE LIMITED**" for the relief of refund of booking amount paid along with interest.

2. The promoter has developed this project in the limits of Sy.Nos.12/3, 12/4, 47/3 situated at Kothanur Village, Uttarahalli Hobli, Bengaluru South Taluk.

3. Brief facts of the complaint are as under: The complainant herein during May 2022, had come to know about the flats on sale in the project "RADIANT ELITAIRE" had visited the project wherein one Rajesh Goyal showed him the flat and mentioned that he is an investor and that he is selling the flats under the builder share. He told him that the payment will have to be made to the builder and for security reasons he has an agreement with the builder and that he is authorized to sell it as their business partner. One Mr. Arul Swamy, an employee/representative from the builder has showed him the flat no.901 in the said project. Further, he said that they will be signing documents after legal verification from him and all payments will have to be made to the builder. The builder will take responsibilities for all practical purposes. He has made payment of Rs.2,00,000/- (Rs.Two lakhs only) as token advance to the builder on 25/5/2022 which has been acknowledged by the builder vide receipt no.2349 dated 25/5/2022. Later, he has asked for occupancy certificate and RERA extension certificate and few other documents based on the feedback from his lawyer from the builder and they gave some documents but did not provide occupancy certificate on the ground that the said property is still under construction. He insisted the builder to add a clause for the reasonable timeline and a liability if they do not fulfil the promise. The builder said that he will not add any further clause.

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4. Further, the complainant has asked the builder to cancel the existing agreement of sale dated 21/10/2020 executed in the name of Sarika Goyal W/o Rajesh Goyal for the same flat no.901 in the said project but the builder denied to add that clause. The respondents were forcibly asking him to sign the agreement of sale but he had refused to sign due to non-availability of occupancy certificate, fire clearance. Since, he did not sign the sale agreement and sale deed without transparency and written commitment from them. For this, they have exhibited unilateral, arbitrary, unlawful and high handed actions and interpreting everything to their convenience and pressurising him to sign the sale agreement as per their terms. Therefore, the complainant has approached this forum for the relief of direction to the respondents to refund the booking amount paid along with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent-1 has not appeared before this Authority during the hearings held on 12/01/2023, 9/2/2023, 10/3/2023, 17/4/2023, 3/5/2023, 9/6/2023 and on 18/8/2023 but has been continuously remained absent on all the aforesaid dates of hearings. Subsequently, the respondent-1 has not put forth his grievances before this Authority and has not taken any interest to file statement of objections, producing documents if any on its behalf. Whereas, respondent no.2 did appear before this Authority and filed reply to present complaint as under:

6. It is contended that he own a flat no.901 in the project "Radiant Elitaire" which is registered in the name of his wife Sarika Goyal. Mr. Deni Kumar was in search of the flat in the same project. They both have finalized the said flat on mutually understanding agreement dated 25/5/2022 and booked the flat number 901 in the said project by paying Rs.2,00,000/- (Rs. Two lakhs only) as booking advance in favour of M/s RADIANT STRUCTURES PRIVATE LIMITED, which has been duly acknowledged by him. Though Deni Kumar is



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residing in the same locality, knowing fully well that due to non-availability of occupancy certificate and NOC from fire department and well aware of slow movement of the project, he had entered into the agreement for legal verification. Further, in this agreement it was clearly mentioned that if the project is illegal he is eligible to get money back and if the project is not legal then the money will be forfeited since the project is still under construction. After many times, the complainant has demanded the documents he gave him each and every time. Beyond all this, he had taken almost 75 days and that he has lost other buyers who came to purchase the said flat by trusting him. Later, after the regular mail communication, he was insisting to mention few more points for his safety which was communicated to him on 8/8/2022. Then he took the initiate and agreed for the same vide email dated 21/8/2022. He further contends that he had requested him to have a final meeting in the office of the builder to discuss all the final points, draft sale agreement, terms of payment and to close the deal, for which there was no reply from his side. On 22/8/2022, he received the mail which does not indicate any final decision. It is submitted that in case the builder agrees to pay the refund amount, he can collect it from him directly and that he is in no way concerned.

7. In support of his claim, the complainant has produced documents such as (1) payment receipt (2) bank statement (3) a handwritten note between respondent no.2 and complainant (4) email communication between R1 & R2 on 8/8/2022, 13/8/2022, 6/9/2022 (5) copy of agreement of sale dated 21/10/2020 executed in favour of Sarika Goyal (6) copy of draft unsigned agreement of sale provided by the builder to the complainant (7) TDR document in the name of N. Bharath Kumar (8) TDR document in the name of Pattalappa (9) conveyance deed between Pattalappa and Radiant.

8. In support of his defence, the respondent no.2 has not produced any documents on his behalf.

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

10. 1) Whether the complainant is entitled for the relief claimed?

2) What order?

11. **Answer to the above points is as under:**

1) In the Affirmative

2) As per final order for the following:

FINDINGS

12. Findings on point no.1: From the payment receipt furnished by the complainant, it is apparent that the complainant had booked a flat no.901 in the project "RADIANT ELITAIRE" by paying booking amount of Rs.2,00,000/- (Rs.Two lakhs only) dated 25/5/2022. Now, he has approached this Authority seeking for refund of said booking amount on the grounds that the respondents were forcibly asking him to sign the agreement of sale but he has refused to sign due to non-availability of occupancy certificate, fire clearance and without transparency and written commitment from them. For this, they have exhibited unilateral, arbitrary, unlawful and high handed actions and interpreting everything to their convenience and pressurising him to sign the sale agreement as per their terms. But, they have denied.

13. The same is resisted by the respondent no.2 on the ground that though Deni Kumar is residing in the same locality, knowing fully well that due to non-availability of occupancy certificate and NOC from fire department and delay in construction of the project, he had entered into the agreement for legal verification. Further, in the agreement it was clearly mentioned that if the project is illegal he is eligible to get money back and in case if the project is not legal then the amount will be forfeited since the project is still under construction. It is further contended that he had requested the complainant



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to have a final meeting in the office of the builder to discuss all the final points, draft sale agreement, terms of payment and to close the deal. But the complainant did not respond. It is submitted that in case the builder agrees to pay the refund amount, he can collect it from him directly and that he is in no way concerned.

13. Despite several notices served upon the respondent no.1 he has neither appeared before this Authority nor has contested the matter by filing statement of objections, producing documents etc., on its behalf. The claim of the complainant is remained unchallenged. It is apparent from the payment receipt that the complainant has paid an amount of Rs.2,00,000/- on 25/5/2022 and which has been duly acknowledged by the respondent no.1 on 25/5/2022. However, this issue is not related to delay but the complainant seeking withdrawal of the amount due to non -availability of OC. Further, it apparent from the records that the builder has already executed a agreement of sale in respect of the same flat no.901 in favour of one Sarika Gooyal. From this it is crystal clear that there cannot be two parallel signed agreement for the same flat which may cause serious litigations. Therefore, it is just and necessary to direct the respondent no.1 to refund the booking amount paid along with interest. The respondent-builder-1 has not produced any memo of calculation in spite of sufficient opportunities given to him. The complaint has filed memo of calculation dated 18/4/2023 which determined as below:

MEMO OF CALCULATION DATED 18/4/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 18/4/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
2,00,000	16,969	0	2,16,969

ASB

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13. Having regards to all these aspects, the complainant is entitled for refund of booking amount paid along with interest. Accordingly, the point raised above is answered in the Affirmative.

14. Findings on point no.2: In view of the above discussion, the complaint deserves to be 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/221029/0010139** is hereby allowed.

1. The respondent no.1 is hereby directed to pay a sum of Rs.2,16,969/- (Rs. Two lakhs sixteen thousand nine hundred sixty nine only) towards booking amount along with interest to the complainant **within 60 days** from the date of this order calculated at the rate of SBI MCLR + 2 from 27/5/2022 till 18/4/2023.
2. The interest from 19/4/2023 shall be calculated likewise and paid to the complainant till the date of entire realization.
3. The complaint against respondent no.2 is hereby dismissed.
4. The complainant is at liberty to enforce this order in accordance with law if the respondent fails to comply with the same.

No order as to costs.


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

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