

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

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

Dated 28th November 2023

COMPLAINT NO: CMP/00908/2023

COMPLAINANT...

**1. Venkatram Subramanian Iyer
2. S. Lakshmi,
No. 203, Golden Gate Apartments, 5th A
Main Road, NRI Layout,
Kalkere Cross, Ramamurthynagar,
Bangalore-560016.
STATE: KARNATAKA.
(In Person)**

Vs

RESPONDENT.....

**Allam Infinite India Pvt. Ltd.,
No. 44/1, Azeem Pearl,
Dickenson Road,
Yellappa Chetty Layout,
Bangalore-560042.
(Ex-parte)**

*** * * * ***

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "GM North Enclave" developed by M/s. Allam Infinite India Pvt. Ltd., for the relief of refund along with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/309/PR/190410/002520 valid till 30-06-2022.
3. This project is situated at, Chokkanahalli Village, Yelahanka Hobli, Bangalore North(Addl.) Talu, Bangalore Urban District, Bangalore North, Bangalore.

Brief facts of the complaint are as under:-



4. The complainants have booked a flat bearing no. 505 in the project of the respondent namely "GM North Enclave" for a total sale consideration of Rs.49,50,000/- (Rs. Forty Nine Lakhs Fifty Thousand only). At the time of entering into an agreement of sale, the complainant had paid a sum of Rs.9,90,000/- (Rupees Nine Lakhs Ninety Thousand only) to the respondent. The complainant had applied for housing loan in HDFC for Rs.39,60,000/- (Rupees Thirty Nine Lakhs Sixty Thousand only) and got approval for the same. The said finance company released Rs.7,42,500/- (Rupees Seven Lakhs Forty Two Thousand and Five Hundred only) out of Rs.39,60,000/- (Rupees Thirty Nine Lakhs Sixty Thousand only). The respondent was supposed to handover the possession of the said flat to the complainants on 31-10-2023. The respondent did not start construction till April 2021, the complainant try to contact the builder by phone and email but there were no response from there end. After multiple follow ups the complainant decided to cancel his booking. The respondent has agreed to refund the collected amount to the complainant, but again there is no response. 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 copies of email conversation between both the parties etc. The respondent did not appear before this Authority and remained absent. Hence, the respondent was placed ex-parte.

6. In support of his claim, the complainant has produced documents such as copy of sale agreement dated 29-04-2021, payment receipts, bank statement, Tripartite agreement, Details of Home Loan and memo of calculation as on 03/10/2023.

7. This matter is heard on 11-10-2023.

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.

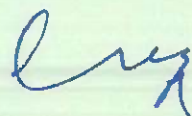
11. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters v/s The State Of Uttar Pradesh it is held as under:

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 complainant has 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 terms and condition of agreement of sale to complete the project, certainly entitles the complainant for refund of entire amount with interest.

16. The complainant has filed his memo of calculation as on 03-10-2023 claiming a refund of Rs.23,26,514/- (Rupees Twenty Three Lakhs Twenty Six Thousand Five Hundred and Fourteen only) including interest. The respondent has not resisted the said memo of calculation filed by the complainant 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

complainant. 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 complainant is entitled for refund along with interest as claimed vides his memo of calculation 03-10-2023.

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 INTE REST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-03-2021	75,000	946	03-10-2023	7.3	9.3 as on 10-02-2021	18,077
2	03-03-2021	1,72,500	944	03-10-2023	7.3	9.3 as on 10-02-2021	41,490
3	13-04-2021	7,42,500	903	03-10-2023	7.3	9.3 as on 10-04-2021	1,70,833
4	21-06-2021	7,42,500	834	03-10-2023	7.3	9.3 as on 15-06-2021	1,57,780
5	25-06-2021	1,937	830	03-10-2023	7.3	9.3 as on 15-06-2021	409
6	05-07-2021	1,67,132	820	03-10-2023	7.3	9.3 as on 15-06-2021	34,919
7	05-08-2022	3,50,296	424	03-10-2023	7.8	9.8 as on 15-07-2022	39,878
8	05-06-2023	1,000	120	03-10-2023	8.7	10.7 as on 15-05-2023	35
9	04-07-2023	275	91	03-10-2023	8.7	10.7 as on 15-06-2023	7
10	27-09-2023	120	6	03-10-2023	8.75	10.75 as on 15-08-2023	0
11	TOTAL AMOUNT	22,53,260				TOTAL INTEREST (I2)	4,63,428

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)
22,53,260	4,63,428	0	27,16,688

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/00908/2023** is hereby allowed as under.

1. The respondent is directed to pay a sum of **Rs.23,26,514/- (Rupees Twenty Three Lakhs Twenty Six Thousand Five Hundred and Forteen only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 01/05/2017 till 03/10/2023.
2. The interest due from 04/10/2023 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.
4. The complainant is hereby directed to pay all the EMI to the bank for the loan amount of Rs.7,42,500/- (Rupees Seven Lakhs Forty Two Thousand Five Hundred only)

No order as to the costs.


(G R REDDY)
Member, K-RERA

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

affirmative.

21. My answer to point No.3 - 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 Rate (Regulation and Development) Act, 2016, the complainant bearing CMP/00908/2023 is hereby allowed as under:

1. The respondent is directed to pay a sum of Rs.2,50,000/- (Rupees Twenty Three Lakhs Twenty Six Thousand Five Hundred and Forteen only) towards the interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 01/01/2023 till 05/10/2023.

2. The interest due from 05/10/2023 up to the date of final payment will be calculated at 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.

4. The complainant is hereby directed to pay all the EMI to the bank for the loan amount of Rs.7,50,000/- (Rupees Seven Lakhs Forty Two Thousand Five Hundred only).

No order as to the costs.

(G R REDDY)
Member, K-ERA

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