

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 2ND DAY OF DECEMBER 2023

COMPLAINT No: CMP/ UR/220922/0010042

COMPLAINANTS..

**K. KIRAN SHARATH &
SUBHAGYA S. KUMAR
C-104, LUB MEADOWS
HIRANANDANI
APARTMENTS
AKHAYA NAGAR
BENGALURU URBAN-560068.**

**(REP. BY C RAVINDRAN
ADVOCATE)**

V/s

RESPONDENT....

**M/s SUADELA
CONSTRUCTIONS PRIVATE
LIMITED
757/B, 100 FEET ROAD
HAL 2ND STAGE
INDIRANAGAR
BENGALURU URBAN-560038**

**(REP. BY GIRISH KUMAR B.M.
DEEPAK C.K. ADVOCATES)**

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "QUEENSGATE" developed by " M/s SUADELA CONSTRUCTIONS PRIVATE LIMITED" for the relief of refund with interest.


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2. This project is registered in RERA bearing No. PRM/KA/RERA/1251/310/PR/171016/000971 valid from 1/8/2017 to 30/11/2021. Further extended for 9 months and shall be valid until 30/8/2022.
3. The promoter has developed this project in the limits of property khatha No. 46/323/5, 323/1, 322/1, 328/3, 328/1,323/4,323/7, 325/2,327, 328/4,323/6, 321/2C, 331, 332/2, 328/2,325/1,330, 323/3, Begur Village, Begur Hobli, Bommanahalli Zone, Ward No.192, Bengaluru.
4. The gist of the complaint is that the respondent-developer had offered to construct and sell to the complainants an flat bearing No.A-404 situated on the 4th floor at A-Wing in the project known as '**QUEENSGATE**', Bannerghatta Road, Bengaluru for a total sale consideration of Rs.80,18,000/- (Rs. Eighty lakhs eighteen thousand only). Accordingly, the respondent-developer has issued allotment letter dated 31/10/2013. The complainants have paid an amount of Rs.3,96,000/- on 21/9/2013, Rs.13,04,736 on 21/10/2013, Rs.12,00,000/- on 20/7/2017, Rs.5,44,923 on 22/8/2017 altogether Rs.34,45,659/- (Rs. Thirty four lakhs forty thousand six hundred fifty nine only) to the respondent-builder which has been duly acknowledged by him. The respondent was expected to execute agreement of sale containing the terms and conditions of construction and the delivery of the flat. However, the respondent avoided executing the agreement containing the terms of construction and delivery of the said flat. It was agreed to by the respondent that the apartment would be handed over within a period of 4 years from 31/10/2013 i.e. by 31/10/2017. It is



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contended that the complainants were expected to make the payment in instalments based on the stages of construction. The respondent had shown the model agreement relating to the project and had informed them that similar agreement would be executed between the parties. Even though they have made payments amounting to Rs.34,45,659/- to the respondent on various dates commencing from 31/10/2013 until 22/8/2017, the respondent was very slow in completing each stage of construction. The respondent did not execute the agreement for sale as agreed to by it and therefore they had no option but to stop further payments. A legal notice dated 9/11/2020 was got issued to the respondent requesting to refund the amount paid by the complainants due to inordinate delay in completion of the project. However, the respondent had failed to make the payment with interest. Therefore, the complainants have approached this Authority for a direction to the respondent to refund the amount paid along with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and filed objections as under:
6. The respondent has denied all the allegations made against it by the complainants as false. It is contended that the complainants have filed this complaint seeking for refund of amount in respect of a flat bearing no. A-404 booked on 23/9/2013, much before RERA Act was in existence. However, this complaint is filed on 22/9/2022 after a delay of 9 years from the date of booking. Therefore, the



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complaint is not only hit by delay and laches, but also barred by limitation.

7. It is contended that the complainants being interested in the project had approached the respondent and booked a flat/unit no.A-404 on 21/9/2013 in the project "QUEENSGATE" of the respondent. The complainants were intimated that the construction would be commenced only upon receipt of all the necessary approvals and permissions from the concerned authorities for the project. Upon agreeing to the same, a sale quotation letter dated 20/9/2013 was signed by the complainants. In terms to this, the complainants were required to make payments linked to construction milestones i.e. as and when the respective slabs were completed, the complainants were required to make payments. It is pertinent to note that there is no communication/agreement between the complainants and the respondents regarding the date of completion of the project. After receipt of necessary approvals and permissions, the construction of the project was commenced and accordingly he has sent an email dated 22/12/2016 communicating the same to the complainants. Further, he has requested them to furnish demand drafts towards preparation/execution of agreement. In spite of repeated follow-ups and reminders, the complainants did not come forward to get the agreement executed by furnishing the demand drafts and the complainant did not reply the emails sent by the respondent.
8. Further, as and when the construction work was completed for the respective slabs, demand letters were raised and sent to the complainants from time to time. However, the complainants have

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failed to make payments in terms of the agreed payment schedule and as per the demand letters. The respondent has sent final reminder towards outstanding payment dated 11/9/2018 and similar reminder email dated 4/10/2018 requesting for timely payments of the outstanding dues. However, the complainants despite being put to notice once again failed to make payment of the outstanding dues. Despite of repeated reminders, the complainants did not make payments and hence he was constrained to send a "Pre-cancellation notice" dated 26/10/2018 calling upon the complainants to make payment of outstanding dues of Rs.34,53,096/-. Further it was clearly informed that allotment would be cancelled and appropriate amount would be forfeited. In spite of this notice, the complainants neither replied nor come forward to regularize their payments. Since the complainants failed to make payment, the respondent was forced to cancel the allotment in favour of the complainants vide cancellation notice dated 22/2/2019.

9. It is further submitted that pursuant to issuance of cancellation notice, the respondent had sent an email dated 4/12/2018 to the complainants stating that the refund would be credited subject to deductions as stated in the cancellation notice and requested the complainants to share their bank account details. Further, reminder email were sent on 13/2/2019 and 20/6/2019 but the complainants have failed to respond. Upon coming into force the RERA Act, the respondent has registered the said project in RERA which was valid for the period from 01/8/2017 to 30/11/2021. Further, an extension was granted on 8/1/2021 for a period of 9 months i.e. till 30/8/2022. Within the time prescribed by the



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RERA, he has completed the project and obtained occupancy certificate from the BBMP on 9/3/2022. It is again reiterated that no time was fixed for completion of the project and that the project has been completed within the time granted by RERA. Hence, prayed to dismiss the complaint.

10. In support of their claim, the complainants have produced documents such as allotment letter dated 31/10/2013, receipts of payment made to the respondent, copy of legal notice dated 9/11/2020 sent to respondent, memo of calculation
11. The respondent in support of his defence has produced documents such as (1) copy of the sale quotation letter dated 20/9/2013 (2) copy of the allotment letter dated 31/10/2013 (3) copies of emails dated 22/12/2016, 16/2/2017, 6/7/2017, 20/8/2018, 12/9/2018, 4/10/2018 (4) copy of final reminder towards outstanding payment dated 11/9/2018 (5) copy of pre-cancellation notice dated 26/10/2018 (6) copy of the cancellation notice dated 22/2/2019 (7) copy of emails dated 4/12/2018, 13/2/2019 and 20/6/2019 (8) copy of registration certificate dated 16/10/2017 (9) copy of the certificate for extension dated 8/1/2021 (10) copy of occupancy certificate dated 9/3/2022.
12. Heard arguments of both the parties. The written arguments submitted by both the complainants and the respondents were taken note of.
13. This matter was heard on 14/12/2022, 16/1/2023, 14/2/2023, 7/3/2023, 12/4/2023, 24/5/2023, 27/6/2023, 11/7/2023, 12/7/2023, 10/8/2023, 23/8/2023, 15/9/2023.

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14. 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?

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

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

FINDINGS

16. Findings on point No.1:- The complainants have approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainants have booked a unit flat no.A-404 in the project "QUEENSGATE" of the respondent-promoter. for a total sale consideration of Rs.80,18,000/- (Rs. Eighty lakhs eighteen thousand only). It is contended that the respondent's official had shown the model agreement relating to the project and had informed the complainants that similar agreement would be executed between the parties. Even though they have made payments amounting to Rs.34,45,659/- (Rs. Thirty four lakhs forty five thousand six hundred fifty nine only) to the respondent on various dates commencing from 31/10/2013 to 22/8/2017, the respondent was very slow in completing each stage of construction. The respondent did not execute the agreement for sale as agreed. Though the respondent has contended that there was no time limit agreed between the parties for delivery of the said unit, however, either in the statement of objections nor in the written argument, the respondent has not specifically denied the contention of the complainants that the respondent agreed to deliver the said unit within four years from 21/9/2013 on which date the first

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instalment was made by the complainants. The respondent has not placed any material before this Authority to show that he had made progress in the matter of construction as agreed and to deliver the flat/unit. Hence, they had no option but to stop further payments. Therefore, they got issued a legal notice dated 9/11/2020 calling upon the respondent to refund the amount paid by them along with interest.

17. The same is resisted by the respondent that there is no agreement between the complainants and the respondent regarding the date of completion of the project. In terms of allotment letter dated 31/10/2013, the complainants were required to make payments linked to construction milestones i.e. as and when the respective slabs were completed. The complainants did not make payments of the outstanding dues in spite of repeated reminders, therefore he was forced to cancel the allotment in favour of the complainant vide cancellation notice dated 22/2/2019. Within the time prescribed by the RERA, he has completed the project and obtained occupancy certificate from the competent authority on 9/3/2022.

18. Undisputedly, the complainants have booked a flat no. A-404 in the project "QUEENSGATE" and have paid an amount of Rs.34,45,659/- (Rs. Thirty four lakhs forty five lakhs six hundred fifty nine only) out of total sale consideration of Rs.80,18,000/- (Rs. Eighty lakhs eighteen thousand only) to the respondent on various dates which has been duly acknowledged. The contention of the complainants is that though they had requested the respondent to execute an agreement containing the terms and conditions of construction, but the respondent has avoided executing the agreement. It is apparent that the respondent in his reply to legal notice dated 22/2/2021 issued by the complainants on

Ans

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9/11/2020 has denied that he has neither assured nor agreed to deliver the flat/unit to the complainants within four years from 21st September 2013. He contended that it is just an assumption and not backed with appropriate documents. It is to be noted here that in support of the contention of the respondent, the complainants have produced copy of the construction agreement dated 14th March 2012 executed by the respondent in favour of one M.K. Mohan. As per the model construction agreement dated 14th March 2012 executed by the respondent in favour of M.K. Mohan, who is one of the allottee in the project "LAKE VERANDAHS" in para-6 of the said agreement, the respondent was required to hand over the possession to the allottee within 30 months from the date of the said agreement with a grace period of 6 months. The contention of the complainant that the same analogy is applicable to the complainants also since they are one of the allottees in residential apartment building as per the occupancy certificate issued by BBMP on 9/3/2022 has no relevance whatsoever and hence cannot be considered by this Authority.

19. 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.

20. Herein this case, there is no binding between both the parties on a fixed time limit for the possession of the said flat no. A-404 in the project "QUEENSGATE". A fixed time limit for the handing over possession of the said flat has also not been agreed to by the parties. A sale agreement has not been entered into by the parties as the same was supposed to be made. Since the complainants have exited from the project on their

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own besides there is no binding between both the parties on a fixed time limit for the delivery of the flat, the complainants are entitled only for refund of their principal amount but without any interest from the respondent since the complainants have not produced any single iota of evidence to substantiate their claim.

21. Accordingly, the point raised above is answered as Partly Affirmative.


22. Findings on point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed in part. 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/220922/0010042 is hereby allowed as under:

1. The respondent is hereby directed to refund a sum of Rs.34,45,659/- (Rs. Thirty four lakhs forty five thousand six hundred and fifty nine only) to the complainants within 60 days from the date of this order.
2. The complainants are at the liberty to enforce the said 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