

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 8th DAY OF DECEMBER 2023

COMPLAINT No: CMP/ 210223/0007661

COMPLAINANT..

ARUN GOVINDASAMY &
ANITHA RAMASAMY
A-705, SOWPARNIKA
SWASTIKA, PHASE-2
SARJAPUR-ATTIBELE ROAD
BIDRAGUPPE
BENGALURU RURAL-562107

(IN PERSON)

v/s

RESPONDENT....

M/S DAMDEN PROPERTIES
4th CROSS, VENKATESHWARA
LAYOUT, TAVAREKERE
MAIN ROAD, NEAR BIG BAZAR
KORAMANGALA
BENGALURU URBAN-560029

(REP.BY N. KUMAR, ADVOCATE)

JUDGEMENT

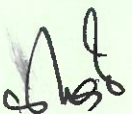
1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "DAMDEN VIVO" developed by "M/s DAMDEN PROPERTIES" for the relief of refund of booking amount paid along with interest.

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2. This project is not registered in RERA bearing registration no.PRM/KA/RERA/1251/308/PR/171201/001217
3. The promoter has developed this project in the limits of Sy.No: 270 situated at Bidiruguppe Village, Attibele Hobli, Anekal Taluk, Bengaluru District.
4. The gist of the complaint is that the complainants have booked a flat bearing no. 302 situated on 3rd floor in the project "DAMDEN VIVO" and thereafter entered into an agreement of sale and construction agreement dated 24/7/2019 with the respondent for a total sale consideration of Rs.27,00,000/- (Rs. Twenty seven lakhs only). The complainants have paid an amount of Rs.50,000/- on 8/7/2019 and Rs.3,50,000/- on 25/7/2019 altogether Rs.4,00,000/- (Rs. Four lakhs only to the respondent-builder as per memo of calculation dated 16/2/2022 submitted by the complainants which has been duly acknowledged by him. The builder was required to hand over the possession of the said flat to the complainants within May 2020 with a grace period of 6 months i.e. by November 2020. It is contended that the respondent has not handed over the agreement of sale and construction agreement to the complainants even after multiple requests. They have submitted all the documents from their side to the builder for processing of loan. There was no clear communication from the builder with regard to their loan process as well as construction status. The construction was completely stopped. Therefore, they looking at the situation, have written an email to builder on 27/9/2019 asking him to cancel the sale agreement and to refund



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the booking amount of Rs.4,00,000/- (Rs. Four lakhs only). However there is no response from the builder. Despite of cancellation request the builder have raised demand notice for Rs.13,50,000/- on 18/10/2019 as next payment which is absolute immoral. Therefore, the complainants have approached this forum seeking for the relief of direction to the respondent 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 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 entered into an agreement of sale and construction agreement dated 24/7/2019 with regard to purchase of a flat bearing bearing No.302 situated in 3 floor in the project known as "DAMDEN VIVO" with the respondent. The complainant has paid an amount of Rs.4,02,700/- towards booking charges and further assured that he will pay 90% of the balance sale consideration by obtaining loan from the Bank. Thereafter, the complainants have not paid the balance sale consideration as agreed by giving one or the other evasive reasons. Finally, the complainants have informed that they may not be able to pay the balance sale consideration as loan was not sanctioned by the bank. Further, due to non- payment of the balance amount by the complainants, the respondent had to suffer huge loss and unable to meet the financial commitments. The bank where loan is availed from Reliance Home Finance Limited, had

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taken action against the respondent and attached the property demanding a non-payment under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Hence, prayed to dismiss the complaint.

7. In support of their claim, the complainants have produced documents such as (1) copy of agreement of sale and construction agreement both dated 24/7/2019, (2) payment receipts (3) memo of calculation.
8. The respondent in support of his defence has produced documents such as (1) copy of agreement of sale and construction agreement both dated 24/7/2019 (2) notice for payment dated 18/10/2019 to the complainants (3) copy of possession notice from Reliance Home Finance
9. Heard arguments of both the parties.
10. This matter was heard on 19/9/2022, 12/10/2022, 28/10/2022, 15/11/2022, 19/1/2023, 17/2/2023, 5/5/2023, 7/8/2023 and finally on 1/9/2023.
11. 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?
12. **Findings on the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following:

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FINDINGS

13. Findings on point No.1:- The complainant have approached this forum seeking for the relief of refund of booking amount paid along with interest. The grounds urged are that the complainants have booked a unit flat no.302 situated on the 3rd floor in the project "DAMDEN VIVO" of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale construction agreement dated 24/7/2019 for a total sale consideration of Rs.27,00,000/- (Rs. Twenty seven lakhs only). The respondent had promised to hand over the possession of the said flat within May 2020 with a grace period of 6 months i.e. by November 2020. It is contended that the construction activity was stalled and there is no significant activity taken up by the respondent to complete the project. Though he has sent an email dated 27/9/2019 asking the respondent to cancel the sale agreement and to refund the booking amount, there is no response from the builder.

14. The same is resisted by the respondent on the ground that the complainants are defaulter in paying the balance sale consideration as agreed under the agreement of sale dated 24/7/2019. It is contended that due to non-payment of the balance sale consideration by the complainants, the banks where loan is availed from Reliance Home Finance Limited, had taken action against the respondent and attached the property.

15. Looking to the averments of agreement, parties herein have entered into an agreement of sale and construction agreement both dated 24/7/2019. 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



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ambiguity and vagueness. As per the terms of agreement of sale and construction agreement both dated 24/7/2019, the respondent was supposed to handover the possession of the said flat to the complainants by May 2020 with a grace period of 6 months i.e. by November 2020. But the respondent had not completed and handed over the possession of the said flat to the complainants till date.

16. The respondent in its statement of objections contended that the project has not been completed within the stipulated timeline due to reasons beyond the control of the respondent. In addition COVID 19 pandemic and the lockdown have also contributed significantly to the obstacles faced by the respondent. The respondent has sought to explain the delay by referring to above issues which are nothing but routine requirements of compliances and construction related issues. These issues are required to be handled by the promoter of any project who has undertaken to develop the real estate project. None of the reason submitted by the respondent has any force and legal validity to justify the delay in completion of the project and provide any exception from the application of Section 18 of the Act. Therefore, as per Section 18 of the Act, the promoter is liable to refund the booking amount paid along with interest.

17. From the materials placed on record, it is apparent from the payment receipt that the complainants have paid an amount of Rs.50,000/- on 8/7/2019 and Rs.3,50,000/- on 25/7/2019 altogether Rs.4,00,000/- (Rs. Four lakhs only) which has been duly acknowledged by the respondent. The claim of the complainant is remained unchallenged. However, this issue is not related to delay but the complainant seeking withdrawal of the amount due to construction activity is completely stopped and issues of the



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respondent with Reliance Home Finance Limited. Therefore, it is just and necessary to direct the respondent to refund the booking amount paid along with interest. The complainants have filed memo of calculation dated 18/4/2023 claiming an amount of Rs.5,33,798/- (Rs. Five lakhs thirty three thousand seven hundred ninety eight only) from 8/7/2019 till 16/9/2022. The respondent-builder has not produced any memo of calculation in spite of sufficient opportunities given to him.

18. Therefore, it is incumbent upon the respondent to pay refund of booking amount paid along with interest to the complainants which is determined as below:

MEMO OF CALCULATION DATED 16/9/2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 16/9/2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
4,00,000	1,33,798	0	5,33,798

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

20. 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/210223/0007661** is hereby allowed.

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1. The respondent is hereby directed to pay a sum of Rs.5,33,798/- (Rs. Five lakhs thirty three thousand seven hundred ninety eight only) towards booking amount along with interest to the complainants **within 60 days** from the date of this order calculated at the rate of SBI MCLR + 2 from 8/7/2019 till 16/9/2022.
2. The interest due from 17/9/2022 shall be calculated likewise and paid to the complainants till the date of entire realization.
3. The complainants are 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