

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 22nd DAY OF DECEMBER 2023

COMPLAINT No: CMP/UR/ 220728/0009825

COMPLAINANT..

AJIT GOVINDRAY KAMAT
NO; 1051/2, DEV DAYA
NEAR PWD QUARTERS
KAIKINI ROAD
UTTARA KANNADA
KARNATAKA-581301

(IN PERSON)

V/s

RESPONDENTS....

1.M/S DREAMZ INFRA INDIA
LIMITED
577/B, 2ND FLOOR
OUTER RING ROAD
TEACHERS COLONY
KORAMANGALA
BENGALURU URBAN-560034

2.DISHA CHOUNDHARY
MANAGING DIRECTOR
M/S DREAMZ INFRA INDIA
LIMITED
577/B, 2ND FLOOR
OUTER RING ROAD
TEACHERS COLONY
KORAMANGALA
BENGALURU URBAN-560034.

(EX-PARTE)

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

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**DREAMS SAMARPIT**" developed by "**M/s DREAMZ INFRA INDIA PRIVATE LIMITED**" for the relief of refund with interest.
2. This project is not registered in RERA.
3. The promoter has developed this project in the limits of Sy.No.33/2(New Sy.No: 33/28) situated at Nagavara Village, Kasaba Hobli, Bengaluru North Taluk.
4. The gist of the complaint is that the complainant has booked a flat no. 311 in the project "DREAMZ SAMARPIT" and entered into an Memorandum of Understanding dated 20/10/2014 with the respondent for a sale consideration of Rs.24,00,000/- (Rs. Twenty four lakhs only). The complainant had paid an amount of Rs.50,000/- on 19/10/2014, Rs.2,50,000/- on 20/10/2014, Rs.2,00,000/- on 24/10/2014 and Rs.2,20,000/- on 30/4/2014 altogether Rs.7,20,000/- (Rs. Seven lakhs twenty thousand only) which has been duly acknowledged by the respondent. It is contended that he had bought this pre-launch property with a payment of 30% advance for which construction was supposed to start in December 2014. After waiting for two years, he had cancelled the booking. He got a cheque that bounced and filed a criminal case for recovery of his amount. The said case was dismissed for default. Therefore, he has approached this forum seeking for the relief of refund with interest. Hence, this complaint.



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

5. After registration of the complaint, in pursuance of the notice, the respondent did not appear before this Authority and has been continuously remained absent during the hearings held on 5/12/2022, 23/12/2022, 19/01/2023, 17/2/2023, 28/3/2023, 27/4/2023, 27/4/2023, 7/6/2023, 6/7/2023, 7/8/2023, 15/9/2023 and hence he has been placed as Ex-Parte. Further, in spite of providing sufficient opportunity, it is seen that the respondent did not appear before the Authority to put forth his defence and has not taken any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf but remained continuously absent on all the aforesaid dates of hearings.
6. In support of his claim, the complainant has produced documents such as copy of MOU dated 20/10/2014 entered into between both the parties, payment receipts and memo of calculation.
7. The respondent in support of his defence has not produced any documents.
8. Heard arguments of the complainant.
9. On the above averments, the following points would arise for my consideration:-
 1. Whether the complainant is entitled for the relief claimed?
 2. What order?



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

10. Findings on the above points are as under:-

1. In the Affirmative.
3. As per final order for the following:

FINDINGS

11. Findings on point no.1:- The complainant has approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainant has booked a flat no. 311 in the project "DREAMZ SAMARPIT" and entered into an Memorandum of Understanding dated 20/10/2014 with the respondent for a sale consideration of Rs.24,00,000/- (Rs. Twenty four lakhs only). The complainant had paid an amount of Rs.7,20,000/- (Rs. Seven lakhs twenty thousand only) which has been duly acknowledged by the respondent. He had earlier filed a criminal case against the respondent herein with regard to cheque bounce before the Additional Civil Judge and JMFC in CC No: 6419/2016 on 18/11/2016 and the same came to be dismissed for default on 23/10/2019. Subsequently, he has filed this present complaint before this forum on 28/7/2022.

12. Though the complainant has paid the amount of Rs.7,20,000/- (Rs. Seven lakhs twenty thousand only), till date there is no response from the respondent's side. In general, to have their own cozy house is everyone's dream. To fulfill that dream one would take risk of investing all his lifetime savings and raise loans in terms of lakhs or crores which would take rest of his life in repaying the same. That being so, the developer who promises to fulfill the dream of owning the house shall conduct himself in equally responsible and transparent manner. If he resorts to hard earned money of allottees in a reckless manner, it would

2/3/20

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

not only shatter the dream of allottees, but also makes him to run from pillar to post by incurring heavy investment as well as legal expenses.

13. As per the decision of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

"23. 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 RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

14. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021 (arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, 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 of his business as a developer either on account of suspension or revocation

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

of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund or the amount with interest at such rate as may be prescribed in this behalf"

The said principle is aptly applicable to the present case on hand.

15. As per Section 18 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.

16. 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 /plot in accordance with sale agreement.

17. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get their amount paid along with interest as per the memo of calculation submitted by the complainants. The complainant has claimed an amount of Rs.12,94,910/- (Rs. Twelve lakhs ninety four thousand nine hundred ten only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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



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

Memo Calculation submitted by the complainant as on 16/12/2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 16/12/2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
7,20,000	5,74,910	0	12,94,910

19. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for refund along with interest.

20. Sum and substance of the case is as under:

Date of agreement of sale/MOU	20/10/2014
Date of construction agreement	Nil
Sale consideration	Rs.24,00,000/- (Rs. Twenty four lakhs only)
Amount paid	Rs.7,20,000/- (Rs. Seven lakhs twenty thousand only)
Promised date of possession as per agreement of sale	-
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

21. Accordingly, the point raised above is answered in the Affirmative.

22. Despite several notices have been served upon the respondent, he did not appear before this Authority and has been continuously remained absent during all the dates of hearings. Further, in spite of providing sufficient opportunity, it is seen that the respondent did not appear before the Authority to put forth his defence and has not taken

6/12/22

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

any interest to participate in the proceedings by filing statement of objections, producing documents if any on his behalf. Hence, the claim of the complainant remained unchallenged. In the absence of any resistance by the respondent and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant.

23. **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/UR/220728/0009825 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs.12,94,910/- (Rs. Twelve lakhs ninety four thousand nine hundred ten only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 19/10/2014 to 30/4/2017. Further, at the rate of SBI MCLR 2% from 1/5/2017 till 16/12/2022.
2. The interest due from 17/12/2022 shall be calculated likewise and paid to the complainant till the date of entire realization.
3. The complainant is at liberty to initiate action in accordance with law, in case if the respondent fails to comply with the said order.
4. The respondent is hereby directed to register the project "DREAMS SAMARPIT" as required under section 3 of RERA Act.

No order as to costs.


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