

PROCEEDINGS OF THE AUTHORITY

BEFORE BENCH 5

PRESIDED BY HON'BLE MEMBER G.R. REDDY

COMPLAINT NO: CMP/00588/2023

DATED THIS 26th DAY OF DECEMBER, 2023

COMPLAINANTS : 1. Mr.Vivek Kumar
2. Ms.Ritu Kumari

Both are Residing at
Q.No.237/2/3, Chhota Govindpur
Near kali Puja Maidan, Govindpur
Jharkhand : 835 015

(Mr.Ankur Tripathi, Advocate)

RESPONDENT /
PROMOTER : M/s.Hoskote Neo Homes Limited
No.110/37, Solitaire Building
Service Road, Outer Ring Road
Marathahalli, Bangalore:560037

(By M/s.Smriti Legal LLP, Advoctes)

PROJECT NAME &
REGISTRATION NO. : EMPRASA STARTUP CITY
PRM/KA/RERA/1250/304/PR/
171031/001084

J U D G E M E N T

This complaint is filed under Sec-18 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project **EMPRASA STARTUP CITY** situated at No.642, Kambalipura Village, Sulibele Hobli, Hoskote,



Bangalore Rural, praying for a direction to Refund the amount paid with Interest.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

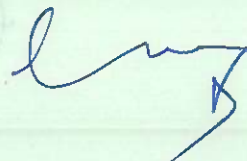
1. As per the details furnished by the Complainants in the memo of calculation, the complainants have entered into an agreement of sale dated 08.02.2017 for purchase of apartments and paid a sum of Rs.29,28,645/- (Rupees Twenty Nine lakhs twenty eight thousand six hundred forty five only) towards purchase of an apartment in the project known as **EMPRASA STARTUP CITY.**

2. The project completion date as per agreement was 07.02.2019. The Respondent has not completed the project as per the date agreed in the agreement of sale and handed over the apartments to the complainants. Since it is more than 3 years delay from the date of completion agreed by the Respondent and the Respondent failed to communicate the probable date of completion to the complainants. Hence, the complainants have filed the above complaint before the Authority praying for following reliefs:

a) Refund of the amount paid together with Interest

b) Assured Rentals

3. As regards claims towards assured rentals of Rs.15,000/- per month and compensation of Rs.5.0 lakhs claimed by the complainant on account of false commitments, unfair trade practice etc., the complainant may seek an appropriate relief by filing separate complaint before the Adjudicating Officer who is



empowered to adjudge the compensation under the provisions of the Act.

4. From the records produced by the Complainant, the completion date agreed as 07.02.2019. The promoter-respondent was required to complete the project and hand over possession of the apartment by 07.02.2019. Since the respondent-promoter has failed to complete the construction and handover the apartment within the due date mentioned in the agreement, the complaint filed by the Complainants is admissible for relief in accordance with Section 18 of the Act.

5. After registration of the complaint, Notice was sent by the Authority to both complainants and respondent to appear before the Authority on 01.08.2023. Both Complainants and the Respondent entered appearance. Advocate appearing for the Respondent filed vakalath and prayed for time to file statement of objections and the matter was adjourned to 13.09.2023.

6. On 13.09.2023, both complainants and the respondent were absent. One more opportunity was given to both Complainants and the Respondent to file written submissions / statement of objections and the hearing was adjourned to 16.11.2023. On 16.11.2023, the advocate appearing for the complainant filed Vakalath together with MOC and supporting documents and served the same on the respondents. The Respondent was absent and did not file any statement of objections in spite of giving sufficient opportunities.



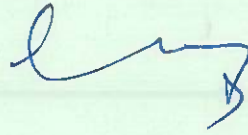
7. The complaint was heard on 01.09.2023, 13.09.2023 and 16.11.2023.

8. On the above averments, the following points would arise for my considerations:-

- a) Whether the Complainants are entitled for the relief claimed?
 - b) What order?
9. Findings on the above points are as under:
- a) In the Affirmative
 - b) As per final order

FINDINGS:

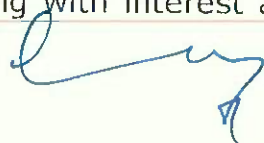
10. The Complainants have approached this Authority seeking for the relief of refund of the amount paid with interest. The grounds urged are that the complainants have booked residential units in the project known as "Empresa Startup City - Residential Phase-I" for a total consideration of Rs.23,20,000/- (Rupees Twenty three lakhs twenty thousand only) and entered into an agreement of sale dated 08.02.2017. As per the agreement, the Respondent agreed and was bound to pay the PRE-EMIs to the India Bulls and the PRE-EMIs were paid up to January 2020. From February, 2020 the Respondent stopped paying PRE-EMI quoting NHB Guidelines. The complainants were paying PRE-EMIs from February, 2020 onwards. Further, the complainants have submitted that the



Respondent agreed, promised and assured rentals of Rs.15,000/- for 2 years from the date of execution of agreement to the date of possession but failed to pay the same. Despite several follow-ups and reminders and agreed terms and conditions, the respondent failed to deliver the project and failed to refund the amount. The complainants have also issued Legal Notice dated 03.03.2023 calling upon the respondent to refund the amount paid with interest. The Respondent received the notice but did not reply to the notice nor refunded the amount paid with interest. Hence, the complainants have terminated the agreement executed by the Respondent and cancelled the bookings and claimed the refund of the amount paid with interest.

11. 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. Therefore, as per Section 18 of the Act, the promoter is liable to refund the amount received along with interest.

12. From the averments made in the complaint and the documents produced by the Complainants such as Brochure of the Project, Sale and construction agreement, transaction summary and payment receipts, email correspondence, copy of the legal notice etc., it is evident that the complainants have paid the advance sale consideration amount and is entitled to get refund of their amount paid along with interest as per the



memo of calculation submitted by the Complainants. The Respondent did not file any MOC nor filed objections to the MOC filed by the Complainants. Therefore, it is incumbent upon the respondent to refund the amount paid with interest as per the MOC submitted by the complainants which is determined as under:

Memo of Calculation for Refund submitted by the Complainants as on 17.07.2023

Principle amount (A) Rs.	Interest (B) As on 17.07.2023 Rs.	Refund from Promoter (C) Rs.	Total Balance Amount (A+B) Rs.
29,28,645	16,31,456		45,60,101

Accordingly, the **point (a)** raised above is answered in the affirmative.

13. **Findings on Point No.b** : In view of the above observations, I conclude that, this complaint deserves to be allowed and accordingly, I proceed to pass the following:

ORDER

1. In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint Bearing No. CMP/00588/2023 is partly allowed.

2. Respondent is directed to refund a sum of **Rs. 45,60,101/- (Rupees Forty five lakhs sixty thousand one hundred one only)** towards refund with interest to the complainant within 60 days from the date of this order as per

the calculation of the Complainants, calculated from 01/05/2017 till 17.07.2023. The interest due from 18.07.2023 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are at liberty to initiate action for recovery in accordance with law, if the respondent fails to pay the amount as per the order of this Authority.

3. As regards the claim towards assured rentals of Rs.15,000/- per month, the complainant may seek appropriate relief by filing separate complaint before the Adjudicating Officer who is empowered to adjudge the compensation under the provisions of the Act.


(G.R. REDDY)
MEMBER
FIFTH ADDITIONAL BENCH
K-RERA

