

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 26TH DAY OF DECEMBER 2023

COMPLAINT No: CMP/ UR/210729/0008172

COMPLAINANT..

SHIRLEY MATHEW
NO: 23, 5TH CROSS
HUTCHINS ROAD
COOKE TOWN
BENGALURU URBAN-560084

(REP BY MAITREYI BHAT
ADVOCATE)

V/s

RESPONDENT....

1. M/S ELEGANT PROPERTIES
NO:1, ELEGANT DESIRE
COLES ROAD
FRAZER TOWN
BENGALURU URBAN-560005

(ABSENT)

2. B. RAJASHEKAR
BUILDER
NO:1, ELEGANT DESIRE
COLES ROAD
FRAZER TOWN
BENGALURU URBAN-560005

**ALSO AT: NO:42, CASTLE STREET
ASHOKNAGAR
BENGALURU-560005**

(REP BY H.S. HAYATH KHAN
ADVOCATE)

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3. R. VIJAYA CHAMUNDI

PARTNER

NO:1, ELEGANT DESIRE

COLES ROAD

FRAZER TOWN

BENGALURU URBAN-560005

ALSO AT: NO:42, CASTLE STREET

ASHOKNAGAR

BENGALURU-560005

(ABSENT)

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**ELEGANT ALTIS**" developed by "**M/s ELEGANT PROPERTIES**" for the relief of refund with interest.
2. This project is not registered in RERA. During the course of hearing of the complaint, it was brought to the notice of the Authority that despite the fact that the project was not completed as on the date of the commencement of the Act, the promoter of the project failed to register the project as an ongoing project under Section 3 of the Act. The developer/promoter of the project and the landowners of the project were heard on 29/4/2022, 26/5/2022 and 6/7/2022 during which the promoters together have undertaken to comply with the requirement of the registration of the project by uploading the registration application and the requisite documents for completion of the registration process. However, the applications uploaded for registration of the project by the developer-promoter did not comply with all the requisite submission and uploading of the documents in accordance with the procedure laid down by the Authority. The deficiencies in the documents has been brought to the notice of the

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Promoters of the project by sending emails and further conducting hearing by the Full Bench of the Authority on 8/9/2022 and 22/9/2022. During the hearing, the promoters of the project i.e. developer-promoter as well as land owners, have once again undertaken that they will comply with the application procedure and upload all the documents which are pre-condition for granting registration of the project. It is noticed that there is a failure on the part of the promoter of the project in complying with the uploading of all the requisite documents even as on date. The Full Bench of the Authority has taken into consideration the failure on the part of the promoter of the project to register the project as an ongoing project, despite the fact that the project was incomplete as on the date of commencement of the Act and by the order dated 4/11/2022 has directed the promoter to comply with the requirement of registration under section-3 of the Act. In view of the direction of the Full Bench of the Authority, this project is deemed to be a registered project and accordingly falls within the ambit and jurisdiction of the Authority for adjudicating the complainants filed by the complainants against the promoter of the project.

3. The promoter has developed this project in the limits of Sy.No: 115/2(Old Sy.No: 115) situated at Byrathi Village, Bidarahalli hobli, Bengaluru East Taluk now bearing new Corporation No.7 of Sy.No: 115/2(Old Sy.No.115) Byrathi in Corporation Ward No.54, Bengaluru.
4. The gist of the complaint is that the complainant has booked a flat bearing no. TO2-B2-808, situated on the 8th floor in the project “




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ELEGANT ALTIS" and thereafter entered into an agreement of sale and construction agreement both dated 2/3/2013 with the respondent for a total sale consideration of Rs.58,56,579/- (Rs. Fifty eight lakhs fifty six thousand five hundred seventy nine only). The complainant has paid an amount of Rs.3,00,000/- on 10/10/2011, Rs.4,39,244/- on 2/3/2013, Rs.5,78,487/- on 30/3/2013, Rs.13,47,014/- on 17/3/2014, Rs.4,68,525/- on 15/7/2014, Rs.4,68,527/- on 19/8/2014, Rs.4,68,525/- on 8/12/2024 altogether Rs.40,70,322/-(Rs. Forty lakhs seventy thousand three hundred twenty two only) as per memo of calculation dated 6/10/2022 to the respondent-builder which has been duly acknowledged by him. The builder was required to hand over the possession of the said flat to the complainant within 24 months with a grace period of 6 months i.e. by 2/9/2015. It is contended that even after seven years from the date of agreements, the respondent-promoter has not completed the project. Further, the respondents have not communicating to the complainant the reasons for delay in handover of the said unit. The project is not registered in RERA. There has been no development for the past 5 years and the site has been abandoned. Having lost confidence with the respondent, the complainant has approached this forum for the relief of direction to the respondent to refund the entire amount paid along with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondents did not appear before this Authority and has been remained absent during the hearings held on 18/10/2022, 4/11/2022, 21/11/2022, 13/12/2022, 10/1/2023, 1/2/2023, 7/2/2023, 24/2/2023. 9/3/2023, 5/4/2023,



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22/5/2023, 21/8/2023, 31/8/2023. This Authority on 11/4/2023 has permitted and directed to serve the summons to respondents through newspaper publication. Accordingly, the complainant has completed newspaper publication which appeared in "Hosadiganta" leading daily newspaper on 20/4/2023. Thereafter, upon newspaper publication dated 20/4/2023, the respondent no.2 did appear before this Authority through its counsel and filed statement of objections as under:

6. It has denied all the allegations made against it by the complainant as false. It is contended that the complainant has executed agreement for construction of the under a scheme wherein the complainant invests her money making payments to the builder/developer i.e. respondent no.1 towards construction costs. Respondents are governed by the terms agreed to between the parties specifically in the agreement between the complainant and the respondents. It is submitted that the date stipulated for the delivery of the said apartment is subject to variation on the amount of force majeure or acts of God or Government Orders/Restrictions/Controls and other reasons which are beyond the control of the agreement holder/builders. Respondent no.1 shall make every effort to obtain electrical, sanitary and water connections within the stipulated date.
7. It is further submitted that the project "ELEGANT ALTIS" is under the process of registration under the RERA Act 2016 as an ongoing project and the project is yet to be registered by this Authority. In order to carry out the construction and development at a faster pace, the respondent has availed advances/borrowings from various financial institutions and Banks for funding the execution of construction works on the land. The respondent had to face a set



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back and holdup situation as there no bookings, selling and also due to poor cash flow from all quarters. The respondent had to suffer many no work days leading to slower pace of works. Further, respondent had filed the relevant application with all mandated documents and records and statutory fees for registration of the project "ELEGANT ALTIS" on 1/9/2017. But the Hon'ble Authority insisted that the respondent do file a fresh application seeking registration of the project with more specific details and he had submitted fresh application before this Authority with all relevant data. It is submitted that the construction agreement between the parties is a commercial agreement for construction of certain building and the terms agreed to by the complainant under the construction agreement provided for the conduct of arbitration. Hence, prayed to dismiss the complaint.

8. In support of her claim, the complainant has produced documents such as (1) copy of agreement of sale construction agreement dated 2/3/2013 (2) details of payment made to the respondent (3) memo of calculation.(4) photographs of the project (5) legal notice dated 15/9/2020 to the respondents (6) courier receipts (7) tracking details
9. In support of their defence, the respondents have not submitted any documents.
10. 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?



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

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

FINDINGS

12. 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 unit flat no.T02-B2-808 in the project "ELEGANT ALTIS" of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale and construction agreement both dated 2/3/2013 for a total sale consideration of Rs. 58,56,579/- (Rs. Fifty eight lakhs fifty six thousand five hundred seventy nine only). The respondent had promised to hand over the possession of the said flat within 24 months with a grace period of 6 months i.e. by 2/9/2015. However, the respondent has failed to abide by the terms and conditions enumerated in the agreement of sale dated 2/3/2013 and miserably failed to hand over the said unit within the stipulated timeline as agreed.

13. Looking to the averments of agreement, parties herein have entered into an agreement of sale and construction agreement both dated 2/3/2013. 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. As per the terms of agreement of sale and construction agreement dated 2/3/2013, the respondent was supposed to handover the possession of the said flat to the complainant by 2/9/2015. But the respondent had not completed and handed over the possession of the said flat to the complainant till date.



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14. 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.

15. 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 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"

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

16. 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.

17. 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.

18. The respondent no.2 in its statement of objection contended that the project has not been completed within the stipulated timeline due to force majeure events such as acts of God or Government orders/restriction/controls. In addition COVID-19 pandemic and nation-wide lockdown have also contributed significantly to the obstacles faced by the respondent. The respondent has sought to explain the delay in referring to above issues which are nothing but routine requirements of compliances and construction related issues which are required to be handed 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.

19. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant on 6/10/2022. The

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complainant has claimed an amount of Rs.75,54,755/- (Rs. Seventy five lakhs fifty four thousand seven hundred fifty five only) as refund with interest from 10/10/2011 till 6/10/2022. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

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

Memo Calculation submitted by the complainant as on 6/10/2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 6/10/2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
40,70,322	34,84,433	0	75,54,755

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

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

Date of agreement of sale	2/3/2013
Date of construction agreement	2/3/2013
Sale consideration	Rs.58,56,579/- (Rs. Fifty eight lakhs fifty six thousand five hundred seventy nine only)
Amount paid	Rs.40,70,322/- (Rs.Forty lakhs seventy thousand three hundred twenty two only)
Promised date of possession as per agreement of sale	Within 24 months with a grace period of 6 months i.e. by 2/9/2015
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet

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Prayer	Refund of amount paid along with interest.
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23 Accordingly, the points raised above is answered in the Affirmative.

24. Findings on point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed. 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/210729/0008172 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **75,54,755** (Rupees Seventy five lakhs fifty four thousand seven hundred fifty five only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 10/10/2011 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 6/10/2022.
2. The interest due from 7/10/2022 shall be calculated likewise and paid to the complainant till the date of entire realization.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.


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

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