

PROCEEDINGS OF THE AUTHORITY

BEFORE BENCH 5

PRESIDED BY HON'BLE MEMBER G.R. REDDY

COMPLAINT NO: CMP/221007/10053

DATED THIS 05TH DAY OF JANUARY, 2024

COMPLAINANT : Mr.Rajesh Bhagwandas Naik
Flat No.106, Oceanus Lily Apartment
Ashirwad Colony 16th Cross
3rd Main, Hormavu,
Bengaluru : 560 016

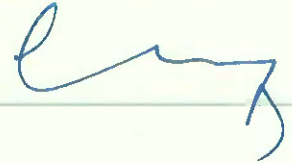
(Party in Person)

RESPONDENTS /
PROMOTER : 1. M/s.Azeem Infinite Dwelling
India Pvt Ltd.
No.6, GM Pearl, 1st Stage
1st Phase, BTM Layout
Bengaluru : 560 068

2. M/s.Rupen Patel & Patel
Engineering Limited
Patel Estate, Jogeswari (W)
Maharashtra : 400 102

(Mr.Akshay Vashisht, Advocate)

PROJECT NAME &
REGISTRATION NO. : GM ELEGANCE TOWER-1 (E-12)
PRM/KA/RERA/1251/308/PR
170928/001476



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 **GM ELEGANCE TOWER-1 (E-12)** praying for a direction to Refund of the amount paid with Interest.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. As per the details furnished by the Complainant in the memo of calculation, the complainant has entered into an agreement dated 16.01.2018 with the Respondents for purchase of an apartment in the project known as **GM ELEGANCE TOWER-1 (E-12)**. The Complainant has paid a sum of Rs.14,35,080/- on various dates towards purchase of the apartment to the Respondents. After entering into agreement, the Respondent announced that they will not continue with development of the project. Hence, the complainant requested for refund of the amount paid. Since there was delay of more than four years in refunding the amount, the complainant has filed the above complaint before the Authority praying for following reliefs:

Direct the Respondents to refund the amount with interest

2. After registration of the complaint, notice was sent to both the complainant and respondents to appear before the Authority on 27.09.2023. Complainant appeared and filed MOC with supporting documents and served the same on the respondents. Respondent filed vakalath and pleaded for short

time to file statement of objections and the case was adjourned to 14.12.2023. During the hearing on 14.12.2023, the complainant confirmed service of MOC along with documents to the Respondents and the Respondents did not file any statement of objections in spite of availing more than 03 months time nor produced any documents and contested the case.

3. On the above averments, the following points would arise for my consideration:

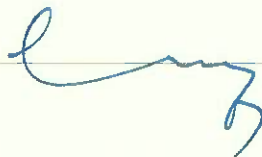
- a) Whether the complainant is entitled for the relief claimed?
- b) What Order?

4. Findings on the above points are as under:

- a) In the affirmative
- b) As per the final order as per the following findings:

FINDINGS:

5. From the averments made by the Complainant in its memo of calculation for refund with interest, it is apparent that the complainant has paid the advance amount and the respondents have received the same. The complainant has produced copy of the agreement of sale, construction agreement, payment receipts in support of his contention. On the other hand the Respondents entered appearance by filing vakalath and did not file statement of objections nor filed objections to the MOC filed by the complainant.



6. 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. The respondents have also informed their inability to continue with the project. Therefore, as per Section 18 of the Act, the promoter is liable to return the amount received along with interest.

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

Memo of Calculation for Refund submitted by the Complainant as on 09.09.2023

Principle amount (A) Rs.	Interest (B) As on 09.09.2023 Rs.	Refund from Promoter (C) Rs.	Total Balance Amount (A+B) Rs.
14,35,080	7,97,061		22,32,141

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

8. **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/221007/10053 is hereby allowed.
2. Respondent is directed to refund a sum of **Rs. 22,32,141/- (Rupees Twenty two lakhs thirty two thousand one hundred forty one only)** towards refund with interest to the complainant within 60 days from the date of this order as per the calculation of the Complainant, calculated from 01.05.2017 till 09.09.2023. The interest due from 10.09.2023 up to the date of final payment will be calculated likewise and paid to the complainant. The complainant is 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.


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

