

**PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5**

**PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER**

**Dated : 8<sup>th</sup> JANUARY, 2024**

**COMPLAINT NO: 10587**

**COMPLAINANT:**

**MR. GOURAV KUMAR TIWARI  
residing at 513, Ground Floor,  
Sector 19, Faridabad  
Haryana**

**(Through his GPA holder)**

**Vs**

**RESPONDENT:**

**M/S ALLAM INFINITE INDIA PRIVATE  
LIMITED, # 44/1, Azeem Pearl,  
Dickenson Road, Yellappa Garden,  
Yellappa Chetty Layout,  
Bangalore-560042.**

**(By J P Darshan, Advocate)**


**JUDGEMENT**

1. This complaints are filed under section 31 of the RERA Act against the project “GM NORTH ENCLAVE” developed by “ALLAM INFINITE INDIA PVT. LTD” for the relief of refund with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/309/PR/190410/002520.
3. This project is situated at, Chokkanahalli Village, Yelahanka Hobli, Bangalore North (Addl.) Taluk, Bangalore North, Bangalore Urban Dist.



**Brief facts of the complaint are as under:-**

4. The complainant had booked 3 BHK residential Flat No. N-07-10 on the seventh floor of the Block 'N' in the project developed by the respondent namely **"GM NORTH ENCLAVE"** and the complainant had paid an amount of Rs. 18,48,000/- (Rupees Eighteen lakhs Forty eight thousand) against the total sale consideration of Rs,52,80,000/- (Rupees Fifty two lakhs Eighty thousand only).
5. The Respondent had received the amount of Rs.18,48,000/- (Rupees Eighteen lakhs Forty eight thousand only). The respondent has acknowledged the receipt of the said amount through e-mail dated 13<sup>th</sup> December, 2022.
6. It is further alleged by the complainant that, the project office was closed after four months of his booking. When enquired with the respondent, the respondent informed that there was some litigation in the project, hence the respondent did not want to proceed with the project and and it is also intimated to the complainant through e-mail dated 18<sup>th</sup> May. 2022.
7. This is the situation, the complainant requested to respondent to refund of the amount of Rs. 18,48,000 (Rupees Eighteen lakhs Forty eight thousand only). But, the respondent keep on postponing by giving false promises. Finally last the respondent has agreed to refund the amount subject to the complainant signing the cancellation of Sale Agreement. Accordingly the Complainant and Respondent have entered into cancellation of Agreement of Sale dated 9<sup>th</sup> Jan. 2023.
8. The respondent has issued cheque bearing No. 003166 dated 29/03/2023 drawn on Karur Vyasa Bank, for an amount of Rs. 21,51,152/- (Rupees Twenty one lakhs Fifty one thousand One hundred fifty two only) with interest @ 8.5% per for the amount received from the Complainant.



9. The complainant has received e-mail from the respondent one day before of cheque date i.e. on 28/03/2023 to hold the cheque till last week of April. Till today the respondent has not refunded the amount. Hence this complaint.

10. After registration of the complaint, notice was issued to both complainant and respondent to appear before the Authority. The complainant appeared before the Authority and submitted Memo of Calculation dated 14-09-2023, Agreement of Sale, Bank Statement, e-mail of respondent and cancellation of Agreement of Sale in respect of his claim. The copies of the documents also sent to the respondent through e-mail. The Advocate for respondent filed vakalath on behalf of respondent and not chosen to file written submissions / objections, MOC and documents if any to defend their claim in spite of sufficient opportunity is given. This matter is heard on 03-08-2023 and on 23-11-2023.

11. The complainant argued on his complaint with the support of documents.

12. **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?

13. **My answer to the above points are as under:-**

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

#### REASONS

14. **My answer to Point No.1:-** From the materials available on record, it is apparent that the respondent had received an amount of Rs. 18,48,000/- (Rupees Eighteen lakhs Forty eight thousand only) on various dates and the respondent had also acknowledged the same. It is clearly shown on the documents available on



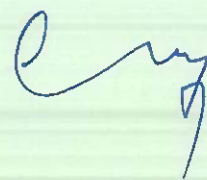
records that the respondent had received total amount of Rs. 18,48,000/- (Rupees Eighteen lakhs Forty eight thousand only) from the Complainant.

15. Due to some litigation the respondent didn't want proceed with the project. The respondent has finally declared to scrape this project. The respondent failed to complete the project as per agreement executed in favour of the complainant. Hence, the complainant has decided to exist from the project and demanded to refund the entire amount with interest.

16. The complainant has made several requests to the respondent for refund of entire amount with interest. But, the respondent went on by giving false promises, and at last the cancellation of Agreement of Sale was entered between both the parties. The respondent has agreed to refund the amount of Rs. 18,48,000/- (Rupees Eighteen lakhs Forty eight thousand only) with interest @ 8.5% per annum. Accordingly the respondent has issued cheque bearing No. 003166 dated 29/03/2023 drawn on Karur Vyasa Bank, for an amount of Rs. 21,51,152/- (Rupees Twenty one lakhs Fifty one thousand One hundred fifty two only). But, the respondent by e-mail requested to the complainant to hold the cheque till end of April and did not refund the amount.

17. The complainant has filed Memo of Calculation, copies of Sale Agreement, Receipts, Bank statement and copy of e-mail for having sent the documents to the respondent and other relevant documents in support of his claim. On the other hand the respondent filed vakalath and not chosen to file any documents, written submissions / objections in support of its defend.

18. As per section 18(1) 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.



19. 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 etc., in accordance with sale agreement.

20. From the averments of the complaint and the documents submitted by the complainant, it is evident that the complainant has paid an amount of Rs. 18,48,000/- (Rupees Eighteen lakhs Forty eight thousand only) and the respondent had also accepted the same.

21. The complainant has filed his memo of calculation as on 14-09-2023 claiming a refund of Rs. 22,59,257/- (Rupees Twenty two lakhs Fifty Nine thousand and Two hundred fifty seven only) including interest. The respondent has not resisted the said memo of calculation filed by the complainant and he has not submitted his Memo of calculation in spite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainant it reveals that complainant claim is genuine.

22. Having regard to all these aspects as mentioned above, this Authority concludes that the complainant has made prima facie case and entitled for refund with interest as claimed vide his memo of calculation dated 14/09/2023.

23. 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 14-09-2023.**

S. NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	0	0	30-04-2017	0



S. NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
2				TOTAL INTEREST (1)	0

**Interest Calculation From 01/05/2017 (After RERA)**

S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	2327	14-09-2023	8.15	10.15 as on 01-05-2017	0
2	19-04-2021	75,000	906	14-09-2023	7.3	9.3 as on 10-3-2021	17,313
3	19-04-2021	1,30,000	878	14-09-2023	7.3	9.3 as on 10-03-2021	29,082
4	19-04-2021	1,60,000	878	14-09-2023	7.3	9.3 as on 10-03-2021	35,793
5.	19-04-2021	88,000	878	14-09-2023	7.3	9.3 as on 10-3-2021	19,686
6.	19-04-2021	15,000	878	14-09-2023	7.3	9.3 as on 10-3-2021	3,355
7.	19-04-2021	10,000	878	14-09-2023	7.3	9.3 as on 10-3-2021	2,237
8.	19-04-2021	50,000	878	14-09-2023	7.3	9.3 as on 10-3-2021	11,185
9.	27-04-2021	13,20,000	870	14-09-2023	7.3	9.3 as on 10-3-2021	2,92,606
10.	TOTAL AMOUNT	18,48,000				TOTAL INTEREST (2)	4,11,257

**MEMO OF CALCULATION**

PRINCIPLE AMOUNT (A)	INTEREST (B) 12+13 AS ON 14-09-2023	REFUND FROM PROMOTER	TOTAL BALANCE AMOUNT (A+B+C)
18,48,000	4,11,257	0	22,59,257

24. Accordingly the point raised above is answered in the Affirmative.

25. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I proceed to pass the following:

**ORDER**

26. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/221230/10587** is hereby allowed as under.

1. The Respondent is hereby directed to pay a sum of **Rs. 22,59,257/- (Rupees Twenty two lakhs Fifty nine thousand two hundred fifty seven only)** till 14-09-2023 towards refund with interest as per MCLR + 2 to the complainant within 60 days from the date of this order.
2. The interest due from 15-09-2023 up to the date of final payment will be calculated as per MCLR + 2 and paid to the complainant.

The complainant is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to the costs.

  
**(G R REDDY)**  
**Member, K-RERA**