

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 17TH DAY OF JANUARY 2024

COMPLAINT No: CMP/ 220615/0009633

COMPLAINANT:

MOHAMMED KASIM KORSE
SHAUWAB MANZIL
FIRDOUS NAGAR
HEBLE, BHATKAL
KARWAR-581320

(REP BY KOWSHIK RAJA
ADVOCATE)

V/s

RESPONDENT....

M/S GODREJ HOME
CONSTRUCTIONS PRIVATE
LIMITED
GODREJ ONE, 5TH FLOOR
PIROJSHANAGAR
EASTERN EXPRESS HIGHWAY
VIKROLI(EAST)
MUMBAI CITY-400079
BENGALURU URBAN-560025

(REP BY HARISH S. PAREKH
TEJAS KHIRAIYA,ADVOCATES)

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**ZEST AT GODREJ ETERNITY**" developed by "**M/s GODREJ HOME CONSTRUCTIONS PRIVATE LIMITED**" for the relief of refund with interest.



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2. This project is registered in RERA bearing registration no.PRM/KA/RERA/1251/310/PR/171102/002191.
3. The promoter has developed this project in the limits of Sy.No. 18/1A and 22, Mallashandra Village, Uttarahalli Hobli, Bengaluru South Taluk, Bengaluru South, Bengaluru Urban.
4. The gist of the complaint is that the complainant has booked a flat bearing no. B3G02 situated on the ground floor, Tower-B in the project " ZEST AT GODREJ ETERNITY" of the respondent for a sale consideration of Rs.56,36,616/- (Rs. Fifty six lakhs thirty six thousand six hundred sixteen only). Accordingly, the respondent has issued allotment letter dated 4/9/2020 to the complainant. The complainant has paid an amount of Rs.1,00,000/- on 9/6/2020, Rs.1,37,555/- on 9/6/2020, Rs.75,036/- on 9/6/2020, Rs.1,00,000/- on 31/8/2020, Rs.2,12,590/- on 31/8/2020 altogether Rs.6,25,181/- (Rs. Six lakhs twenty five thousand one hundred eighty one only) which has been duly acknowledged by him. It is contended that at the time of making application for allotment of flat/apartment, he had put a specific condition to the respondent that he should be allowed to alienate his flat at any point of time after entering into agreement of sale although he has not paid the final payment of the apartment to the respondent. Further, the respondent has accepted the complainant's application for allotment of a flat and later when the complainant questioned the respondent on the same issue, the respondent irresponsibly denied any such oral acceptance by them. After more than one year, the respondent has sent an agreement for his signature through courier dated 17th July 2021 on different terms and conditions and hence he has not signed the said agreement. Therefore, the complainant has approached this forum seeking for the relief of refund with interest. Hence, this complaint.

2021

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5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and filed objections as under:
6. The respondent has denied all the allegations made against it by the complainant as false. It is contended that the complainant has approached the respondent for booking a flat in the project "ZEST AT GODREJ ETERNITY PHASE II". The respondent has sent an application form along with the terms and conditions vide email communication dated 5/6/2020. The complainant had agreed to the terms and conditions of the application form and communicated the same vide email dated 7/6/2020. The complainant had applied for allotment of a flat vide application form dated 8/6/2020. On 10/6/2020, the respondent had sent an email communication acknowledging the receipt of token booking amount paid by the complainant i.e Rs.1,25,035.78/-. The sale consideration for the flat as enumerated in the said email communication was Rs.55,71,240/- (Rs. Fifty five lakhs seventy one thousand two hundred forty only). The complainant has paid the respondent a total sum of Rs.6,25,181/- (Rs. Six lakhs twenty five thousand one hundred eighty one only) and proportionate GST on the sale consideration amounting to Rs.68,057/- in various instalments on 9/6/2020 and on 31/8/2020.
7. It is submitted that the complainant was allotted a flat bearing no.B3G02 situated on the ground floor in Tower No.B3 vide allotment letter dated 4/9/2020. The respondent had shared a copy of agreement of sale vide an email communication dated 16/9/2020 wherein the complainant was called upon to execute and register the agreement for sale as per the Act and Rules. Despite the respondent has issued repeated reminders and extended timelines for execution and



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registration of agreement for sale vide email communications dated 31/1/2021, 6/2/2021, 14/2/2021, 20/2/2021 the complainant failed to execute and register the agreement and hence respondent was constrained to issue a letter for termination of the allotment letter vide an email communication dated 27/2/2021. It is contended that the complainant has made unreasonable and unrealistic demands in the above complaint without there being any justification. Hence, prayed to dismiss this complaint.

8. The complainant in support of his claim, has produced documents such as payment receipts dated 9/6/2020, 31/8/2020, legal notice dated 20/7/2022, reply to legal notice dated 2/8/2022, allotment letter dated 10/6/2020 and memo of calculation.
9. The respondent in support of his defence has produced documents such as (1) copy of application form sent vide email dated 6/6/2020 and confirmation email dated 7/6/2020 (2) copy of email communication dated 10/6/2020 (3) copy of receipt of payment dated 9/6/2020 and 31/8/2020 (4) copy of allotment letter dated 4/9/2020 and the agreement for sale (5) copy of email communication dated 16/9/2020, 9/1/2021, 16/1/2021, 31/1/2021, 6/2/2021, 14/2/2021 and 20/2/2021 along with the termination letter (6) copy of email communication dated 18/6/2021 (7) copy of email communications dated 1/7/2021, 19/7/2021, 12/10/2021, 20/1/2022, 14/3/2022, 17/3/2022, 28/3/2022, 29/3/2022 and 19/4/2022.



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10. Heard arguments of both the parties. The written submissions of the respondents has been taken note of by this Authority.

11. This matter was heard on 6/12/2022, 26/12/2022, 22/01/2023, 23/2/2023, 27/3/2023, 26/4/2023, 29/5/2023, 4/8/2023, 1/9/2023, 22/9/2023, 6/11/2023 and on 20/11/2023

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

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

FINDINGS

14. 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 was allotted flat no. B3GO2 situated on the ground floor in the Tower B3 in the project "ZEST AT GODREJ ETERNITY" of the respondent-promoter vide allotment letter dated 4/9/2020. As per the allotment letter dated, he has paid a total sum of Rs.6,25,181/- to the respondent which has been duly acknowledged by him. The complainant has decided to purchase the said flat on the promise of the respondent that it will allow the complainant to sell and alienate his flat at any point of time subsequent to entering into agreement of sale. The respondent had also promised that it would add a clause in the agreement of sale which would enable the complainant to sell or alienate his property at any point of time even if the complainant has not completely paid the total amount of the flat



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to the respondent. Though the respondent accepted the complainant's application for allotment of a flat and later when he questioned the respondent on the same issue the respondent irresponsibly denied any such oral acceptance by them.

15. The respondent has taken a contention that he has not made any such promise/oral acceptance to the complainant. He has sent several email communications with the draft agreement for sale to the complainant requesting him to reach out if any changes were to be made to the agreement of sale. However, the complainant kept delaying the execution and registration of the agreement for sale and did not come forward to register the agreement of sale despite follow up reminders vide email communications dated 9/1/2021 and 16/1/2021. In spite of evident efforts of the respondent, the complainant failed to execute and register the agreement and hence the respondent was constrained to issue a termination of the allotment letter vide email communication dated 27/2/2021.

16. Undisputedly, the complainant has booked a flat B3G02 situated on the ground floor in the Tower B3 in the project "ZEST AT GODREJ ETERNITY" of the respondent-promoter. He has paid an amount of Rs.6,25,181/- to the respondent out of total sale consideration of Rs.55,71,240/- (Rs. Fifty five lakhs seventy one thousand two hundred forty only) which has been duly acknowledged by the respondent.

17. From the materials placed on record, it is apparent that there is no agreement of sale between the parties. It is to be noted here that as per the contention of the complainant, the respondent had promised that it would add a clause in the agreement of sale which would enable the complainant to sell or alienate his property at any point of time even if the complainant has not completely paid the total amount of the flat to the respondent. Further, the respondent having accepted the complainant's application for allotment of a flat and later when he questioned the respondent on the same issue, he



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denied any such oral acceptance by them. It has made false promise at the time of allotment of a flat and subsequently has failed to keep up its promise and to add a clause in the agreement of sale to enable the complainant to sell off the flat at any point of time, as was promised by the respondent at the time of allotment.

18. The contention of the respondent is that he has not made any promise or representation that he will permit the complainant to sell and alienate his flat at any point of time subsequent to executing and registering the agreement for sale. The respondent has shared the details of the link of the agreement for sale uploaded on the Karnataka RERA website in the allotment letter and has also shared a copy of the sale agreement for sale vide email communication dated 16/9/2020. It is apparent that the respondent had duly informed the complainant about the transfer clause in the agreement for sale ("**Transfer Clause**") vide email communication dated 1/7/2021, 19/7/2021, 12/10/2021, 20/01/2022, 14/3/2022, 17/3/2022, 28/3/2022, 29/3/2022 and 19/4/2022. The transfer clause in the agreement for sale states as follows:

" Clause-34: Only after (i) payment of minimum 50%(Fifty percent) of the sale consideration by the allottee/s and (ii) a term of one and a half years (i.e. eighteen months) has elapsed from the date of allotment letter dated 4th September 2020 from the application page whichever is the later the allottee/s may transfer his rights, title and interest in the apartment under this agreement to any third person/entity after obtaining prior written consent of the Developer. Any such transfer by the allottee/s shall be subject to the terms and conditions of this agreement, relevant laws, notifications/government directions. All allottee/s submitting documentary proof as may be required by the Developer, payment of monies due and payable by the allottee/s under this agreement and payment of applicable transfer/administrative fee of Rs.2500/- (Rupees two thousand five hundred only) per square meter plus taxes as applicable on the total area of the apartment to the developer. Further, the developer reserves the right to allow such transfer as its sole discretion".

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In spite of the aforesaid communications, the complainant has failed to execute and register the agreement and hence respondent was constrained terminate the allotment letter dated 4/9/2020. These being the facts, the complainant has not produced any single iota of evidence to establish his claim that the respondent has promised to add a clause in the agreement for sale as was requested by him. Therefore, he is entitled only for refund of his amount paid but without any interest.

19. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for refund of his amount but without any interest. Accordingly, the point raised above is answered as partly Affirmative.

20. Findings on point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed in part. 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/220615/0009633 is hereby partly allowed as under:

1. The respondent is hereby directed to refund an amount of Rs.6,25,181 (Rs.Six lakhs twenty five thousand one hundred eighty one only) to the complainant within 60 days from the date of this order.
2. The complainant is at the 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