

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 18TH DAY OF JANUARY 2024

COMPLAINT No: CMP/221125/0010402

COMPLAINANT..

**THRILOKESHA K.
NO: 20, 5th CROSS
2ND STAGE, 3RD BLOCK
NAGARABHAVI
BENGALURU URBAN-560072**

(IN PERSON)

V/s

RESPONDENT....

**M/S SAHA DEVELOPERS &
PROMOTERS
#1112, KRISHA, SECOND
FLOOR, G & H BLOCK
GAGANACHUMBI
DOUBLE ROAD
KUVEMPUNAGAR
MYSORE-570023**

**(REP BY SUBRAMANYA
S. UDUPI, ADVOCATE)**

PROJECT NAME:

SKANDA ENCLAVE 1

REGISTRATION NO.

**PRM/KA/RERA/1268/
378/PR/191025/002970**

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "SKANDA

CSA

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ENCLAVE 1” developed by “ **M/s SAHA DEVELOPERS & PROMOTERS**” for the relief of refund with interest.

2. The promoter has developed this project in the limits of Janthagalli Village, Varuna Hobli, Mysuru Taluk and Mysore District.
3. The gist of the complaint is that in the year 2014, the respondents have launched a project by name “SKANDA ENCLAVE” and circulated brochures to the public. The respondents offered him to buy plot in easy 6 instalments and each instalment have to be paid within 6 months and the sixth instalment would be payable at the time of registration. As per the booking schedule, the complainant has paid Rs.7,51,600/- (Rs. Seven lakhs fifty one thousand six hundred only) on instalment basis out of total sale consideration of Rs.8,10,200/- (Rs. Eight lakhs ten thousand two hundred only) on various dates as per memo of calculation dated 3/2/2023. The payment made by the complainant to the respondent was duly acknowledged by him and issued receipts. Thereafter, the respondent has issued a letter of allotment dated 25/12/2019 in favour of the complainant and allotted the site bearing No: 136 in Block-2 measuring 1288 Sq.Ft. in the project “ SKANDA ENCLAVE LAYOUT PHASE-1”. Though allotment letter has been issued, till date the respondents have not initiated any action to register the property in favour of the complainant. Despite several calls and visits to the developer’s office, there was no response from the respondents. Besides, the respondents are not ready to receive final instalment even he has been asking them to receive the balance sale consideration right from the year 2017. It is contended that



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he is ready to pay the balance sale consideration if the developer agrees to register the property immediately. The respondents have delayed to deliver the site to the complainant within the stipulated timeline. Further, on 15/11/2019, the respondent has issued a letter about the development and status of the project and stated that balance work is in progress and would be completed by March 2020. Having no other alternative, the complainant has approached this forum for a direction to the respondent to refund the amount paid along with interest. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent appeared before this Authority through its counsel and filed objections as under:
5. The respondent has denied all the allegations made against it by the complainant as false. It is contended that he has to undergo various process starting from negotiation of land and then finalizing the sale of residential sites as per the guideline value fixed by the Government. The respondent had carried out certain tests such as testing of water distribution line, testing of underground drainage line, provision of electrical line, testing of over-head tank, testing of sewage treatment plant to ensure delivery of quality of site at the layout. It is contended that the complainant was fully aware regarding the delay of the project even on the last day of payment. The reasons for the delay of 4 to 5 years was due to Government to give its approval for comprehensive development plan. Due to this the respondent lost crucial 4 to 5 years at the initial stage itself. Further, the developer has complied all the directions issued by



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RERA and due to unforeseen circumstances i.e COVID-19 Pandemic, the development of both physical as well as approvals from the concerned authorities, it applied for extension of time for completion of the project and the Authority was pleased to extend date of completion for 9 months i.e. till 26/4/2027 which was earlier upto 26/7/2026. The respondent is ready to register any other available site in favour of the complainant at any date as per say of the complainant. The respondent made sincere efforts to allot and register alternate site to the complainant and also as per instructions of the complainant he had made arrangements for site visit on 23/7/2023 and on 22/11/2023 where the complainant was not satisfied with the location. Hence, prayed to dismiss the complaint.

6. In support of his claim, the complainants has produced documents such as payment receipts, payment confirmation letter, allotment letter from builder, memo of calculation.
7. The respondent in support of his defence has produced documents such as 3 RERA registration certificates
8. Heard arguments of both the parties. The written submission filed by both the complainant and respondent has been taken note of.
9. 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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10. Findings on the above points are as under:-

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

FINDINGS

11. 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 as per booking schedule, the complainant has paid Rs.7,51,600/- (Rs. Seven lakhs fifty one thousand six hundred only) on instalment basis out of a total sale consideration of Rs.8,10,200/- (Rs. Eight lakhs ten thousand and two hundred only) which was duly acknowledged by the respondent. On receipt of the payment, the respondent has issued a letter of allotment dated 25/12/2019 in favour of the complainant and allotted a site bearing No.136 in the project "SKANDA ENCLAVE LAYOUT PHASE-1". The respondents have launched the project on 15th August 2014 and promised to complete in the year 2017. It is contended that till date the respondent has neither registered the site in favour of the complainant nor handed over the site. Though he has sent email, text messages and visited the respondent's office and contacted concerned persons, there was no proper response with regard to the completion of the project.

11. The respondent has taken contention that the complainant and various other prospective buyers of residential sites are fully aware of the various steps in procurement of land and finalizing the market value of the site based on the IGR to transfer the site in the name of the complainant and other prospective buyers. There was considerable delay of 4 to 5 years from the Government to give its approval for



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Comprehensive Development Plan. Due to this, he has lost crucial 4 to 5 years at initial stage itself and unable to proceed with any developmental works with respect of layout formation. The development work was completely stalled due to unforeseen circumstances like COVID 19 Pandemic and hence it applied for extension of time for completion of the project. Further, there is a litigation pending for adjudication even till date with respect to one of the Sy.No. 158/2 of the above said layout. He made all the efforts to allot and register alternate site to the complainant and made arrangements for site visit where the complainant was not satisfied with the location.

12. Undisputedly, the complainant has been allotted a site bearing No;136 in Block-2 measuring 1288 Sq.ft in the project" SKANDA ENCLAVE LAYOUT PHASE-1" for a total sale consideration of Rs.8,10,200/- (Rs. Eight lakhs ten thousand two hundred only). The complainant has paid an amount of Rs.7,51,600/- on instalment basis on various dates which has been duly acknowledged by the respondent.

13. In the statement of objections, the respondent has sought to explain the delay by referring to several issues such as delay in granting approval for comprehensive development plan by Government, additional requirements and approvals which were mandatory by MUDA, legal issues, which are nothing but routine requirements of compliances and construction related issues which are required to be handled by the promoter of any project who has undertaken to develop the real estate project. None of the reasons 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. In addition to which the respondent pleaded that COVID-19

12/8

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Pandemic and the lockdown have contributed significantly to be obstacles faced by the respondent.

13. 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.

14. 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.

15. 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. The complainant has claimed an amount of Rs.12,27,243/- (Rs. Twelve lakhs twenty seven thousand two hundred forty three only) as refund with interest. The Promoter-respondent has filed objection to this effect stating that the memo of calculation filed by the complainant is incorrect and against the law and liable to be dismissed. Further, the complainant has not taken any reference from the Act and hence miserably miscalculated the interest that is to be paid.

16. As per Section 13(1) of RERA Act, it is the bounden duty of the promoter to execute agreement of sale on the receipt of above 10% of the total sale consideration. Herein this case, the respondent has

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received an amount of Rs.7,51,600/- out of total sale consideration of Rs.8,10,200/- towards purchase of the said site. The respondent could have executed the agreement of sale in favour of the complainant after having received 92.76% of the sale consideration. Therefore, the respondent is liable to pay the interest on the amount received by the complainant.

17. 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 3/2/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 3/2/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
7,51,600	4,75,643	0	12,27,243

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

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

19. 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/221125/0010402 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **12,27,243/-** (Rupees Twelve lakhs twenty seven



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thousand two hundred forty three only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate of 9% from 29/9/2014 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 03/02/2023.

2. The interest due from 4/3/2023 shall be calculated likewise and paid to the complainants till the date of realization.
3. The complainant is at liberty to enforce the said order in accordance with law in case 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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