

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

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

Dated: 1ST FEBRUARY, 2024

COMPLAINT NO. CMP/UR/220321/9190

COMPLAINANT:

**MRS. USHA N
24, 19th Cross, 24th Main,
J.P.Nagar, 5th Phase,
Bangalore-560078**

(Party in person)

Vs

RESPONDENT:

**M/S GM INFINITE DWELLING
INDIA PVT. LTD.
06 GM Pearl BTM 1st Stage,
1st Phase, Bangalore-560068.**

**(By Mrs. Anuparna Bordoloi
Advocate)**

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "GM E-CITY TOWN PHASE-II" developed by M/s GM Infinite Dwelling India Pvt. Ltd., for the relief of refund with interest.
2. This project has not registered with RERA.
3. Said project is situated at Thirupalya Village, Jigani Hobli, Anekal Taluk, Bangalore Dist.



Brief facts of the complaint are as under:-

4. The complainant has booked Flat No. B 4247 with the respondent on 10-04-2017 and has paid an amount of Rs. 1,00,000/- (Rupees One lakh only) through cheque bearing No. 547108 dated: 20-04-2017 drawn on Karnataka Bank Ltd. against total consideration of Rs. 41,50,000/- (Rupees Forty one lakhs Fifty thousand only) as booking amount. The respondent has not intimated to the complainant with regard when further payments have to be paid till October, 2018. When the complainant had enquired with the respondent in the month of December, 2018, the respondent informed the complainant the present cost of the same flat is Rs. 60,00,000/- (Rupees Sixty lakhs only). Due to financial problem the complainant was not able to pay said amount and decided to withdraw from the project and requested the Respondent to cancel the flat. After several negotiations, the respondent has also accepted cancellation and agreed to return the booking amount.
5. The Respondent had received the amount of Rs. 1,00,000/- (Rupees One lakh only) and also issued allotment letter and receipt No.15314 dated: 13-04-2017 in favour of complainant. The complainant had requested to the respondent several times, but the respondent had failed to refund the booking amount. Hence, the complainant had filed this complaint before this Authority.
6. After registration of the complaint, notice was issued to both complainant and respondent to appear before the Authority. The complainant has appeared before the Authority and submitted documents in respect of her claim. The copies of the documents also sent to the respondent through Professional Courier. The Advocate for Respondent filed vakalath on behalf of respondent, but not filed any written objection and documents in support of its claim.
7. In support of the complainant claim, the complainant has produced documents such as Memo of Calculation date 07-12-2023, Copy of the Cheque issued in favour

of respondent, receipt, allotment letter, Booking form and Courier receipt. This matter is heard on 21-09-2023, 06-12-2023 and on 09-01-2024.

8. 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?

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

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

REASONS

10. My answer to Point No.1:- From the materials available on record, it is apparent that the respondent had received an amount of Rs. 1,00,000/- (Rupees One lakh only) on 13-04-2023 and the respondent had also acknowledged the same. It is clearly shown on the documents available on records that the respondent had received the amount of 1,00,000/- (Rupees One lakh only) from the Complainant.

11. The complainant has requested the respondent to refund the booking amount of Rs. 1,00,000/- (Rupees One lakh only) with interest. But, the respondent has not responded the request made by the complainant.

12. The complainant has filed Memo of Calculation, receipt, courier receipt and other relevant documents in support of her claim and served the same on the respondent also.

13. The respondent had not filed its written submission along with documents even though sufficient opportunities are given. The complainant has made prima facie case against the respondent.

14. Section 18(1) of RERA Act clearly stated that, 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.

15. 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.

16. From the averments of the complaint and the documents submitted by the complainants, it is evident that the complainant has paid an amount of Rs. 1,00,000/- (Rupees One lakh only) and the respondent had also acknowledged the same.

17. The complainant has filed their memo of calculation as on 25-01-2024 claiming a refund of Rs. 1,68,827/- (Rupees One lakh Sixty Eight thousand Eight hundred twenty seven only) including interest. The respondent has not resisted the said memo of calculation filed by the complainant and respondent has not submitted its Memo of calculation in spite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainant it reveals that complainants claim is genuine.

18. Having regard to all these aspects as mentioned above, this Authority concludes that the complainant is made prima facie case entitled for refund with interest as claimed vide their memo of calculation dated 25-01-2024.

19. 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



Complainants as on 25-01-2024.

SL. NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	13-04-2017	1,00,000	17	30-04-2017	419
2		1,00,000		TOTAL INTEREST (1)	419

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

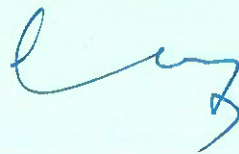
SL. NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	1,00,000	2460	25-01-2024	8.15	10.15 as on 01-05-2017	68,408
2	TOTAL AMOUNT	1,00,000				TOTAL INTEREST	68,408

MEMO OF CALCULATION

PRINCIPLE AMOUNT (A)	INTEREST (B) 12+13 AS ON 25-01-2024	REFUND FROM PROMOTER	TOTAL BALANCE AMOUNT (A+B+C)
1,00,000	68,827	0	1,68,827

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

21. **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

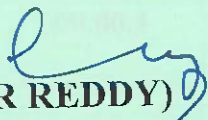
22. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/UR/220321/9190** hereby allowed.

1. The Respondent is hereby directed to pay a sum of **Rs. 1,68,827/- Rupees One lakh Sixty Eight thousand Eight hundred twenty seven only**) towards refund of amount with interest calculated at 9% from 13-04-2017 till 30/04/2017 and MCLR + 2% from 01/05/2017 till 25-01-2024 to the complainants within 60 days from the date of this order.

2. The further interest due from 26-01-2024 up to the date of final payment will be calculated likewise 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