

**PROCEEDINGS OF THE AUTHORITY**

**BEFORE BENCH 5**

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

**COMPLAINT NO: CMP/1018/2023**

**DATED THIS 08<sup>th</sup> DAY OF FEBRUARY 2024**

COMPLAINANT : 1. Mr.Bhushan Iyer  
2. Ms.Divya P Mohan

Both are residing at No.A5,  
Elita Promenade, JP Nagar  
7<sup>th</sup> Phase, Bangalore : 78

(M/s.Tatva Legal Bangalore,  
Advocates)

RESPONDENT /  
PROMOTER : 1. M/s.Altius Realcom Development  
India Pvt Limited  
No.191, 5<sup>th</sup> Main, Amarjyothi Layout  
Domlur, Bangalore : 560 071

2. Mr.Tatghagata Chatterjee  
Flat No.NE B2 302, Shriram Spandana  
Apartment, Challaghatta, Varthur  
Hobli, Yemlur Post, Bangalore:37

3. Ms.Arundhati Pradhan Sen  
Flat No.NE B2 302, Shriram Spandana  
Apartment, Challaghatta, Varthur  
Hobli, Yemlur Post, Bangalore:37

4. Dr.N.G.Anand, represented by  
GPA Holder Mr.J.Krishnamurthy  
No.2067, 16 D Main, HAL 2<sup>nd</sup> Stage  
Bangalore : 560 008

(None Represented)



PROJECT NAME & : ALTIUS ARDOUR  
REGISTRATION NO. PRIM/KA/RERA/1251/308/PR/  
171102/001048

### **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 **ALTIUS ARDOUR** praying for a direction to Refund the booking 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 complainants have paid a sum of Rs.43,46,461/- (Rupees Forty three lakhs forty six thousand four hundred sixty one only) towards purchase of apartments in the project known as **ALTIUS ARDOUR** on various dates and entered into agreement for sale on 06.06.2016 with completion date as 06.06.2018. After entering into agreement, the complainants have not received any update on the construction of the apartment from the Respondents. When the complainants visited the site found that the work has been completely stopped and there is no progress in the construction activities. There is no response or communication from the Respondent in respect of continuation and completion of the project. After seeing the stoppage of construction work and there is no progress in the construction activities, the complainants have decided to exit from the project and requested for refund of the amount paid. The Respondent assured refund of the amount through their email but not refunded the amount so far. Hence, the complainants have filed the above complaint before the Authority praying for

following relief and the same is admissible for relief in accordance with Section 18 of the Act.

### **REFUND OF THE AMOUNT WITH EXIT**

2. After registration of the complaint, notice was sent to both the complainants and respondents to appear before the Authority on 31.10.2023. Complainants have appeared before the Authority and filed MOC together with supporting documents and the same was served on the respondents. The respondents were absent and no one represented on behalf of respondents.

3. The complainants have submitted in their complaint that the respondents have unilaterally changed the allotment of apartment from 314 to 411 and unilaterally increased the sale consideration from Rs.59,86,633/- to Rs.67,91,808/- accordingly the agreement was entered into between the complainants and the respondents. The complainants have availed housing loan from HDFC Bank and are paying EMI for the said loan. The completion date agreed was 24 months from the date of agreement. In spite of receiving full sale consideration the respondents have not completed and handed over the apartments even after lapse of 84 months. Being aggrieved by the delay in completion of the construction work, the complainants have issued a letter dated 11.07.2022 calling upon the respondents to refund the entire amount paid. The respondents have replied vide their letter dated 18.07.2022 admitting the delay and the project has not commenced and had offered to refund the amounts paid by the complainants. Since there was no response from the Respondents in refunding



the amount, the complainants have issued Legal Notice dated 15.5.2023 calling upon the respondents to refund the amount paid by the Complainants. In spite of sending the legal notice, the respondents have not refunded the amount paid by the complainants nor replied to the legal notice sent by the complainants. As stated earlier, the complainants have filed MOC with supporting documents and served the same on the respondent. The Respondents were absent and did not file any statement of objections nor disputed the MOC filed by the complainants.

4. 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?

5. Findings on the above points are as under:

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

**FINDINGS:**

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. Therefore, as per Section

18 of the Act, the promoter is liable to return the amount received along with interest.

7. From the averments made in the complaint it is evident that the complainants have paid the sale consideration and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the Complainants. The complainants have submitted copies of agreement of sale, construction agreement, email communications, receipts for having paid the amount and received by the respondents, Legal Notice in support of his contention. The Promoter-Respondent has not submitted any memo of calculation or filed objections to the MOC filed by the complainants. The respondents also not filed any statement of objections or produced any document and contested the case. Hence, the respondents are placed ex-parte. As stated earlier, it is apparent that the complainants have paid the sale consideration and the respondents have received and acknowledged the same and failed to refund the amount in spite of emails and legal notice sent by the complainants.

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

**Memo of Calculation for Refund submitted by the  
Complainants as on 02.02.2024**

<b>Principle amount (A) Rs.</b>	<b>Interest (B) As on 02.02.2024 Rs.</b>	<b>Refund from Promoter (C) Rs.</b>	<b>Total Balance Amount (A+B) Rs.</b>
<b>43,46,461</b>	<b>32,79,703</b>	<b>4,20,330</b>	<b>72,05,834</b>



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

9. **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/1018/2023 is hereby allowed.

2. Respondent is directed to refund a sum of **Rs. 72,05,834/- (Rupees Seventy two Lakhs five thousand eight hundred thirty four only)** towards refund with interest to the complainants within 60 days from the date of this order as per the calculation of the Complainants, calculated from 13.08.2014 till 02.02.2024. The interest due from 03.02.2024 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are 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**