

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

Present

SHRI. G.R. REDDY HON'BLE MEMBER

Dated 6th February 2024

COMPLAINT NO: CMP/00458/2023

COMPLAINANTS..

1. Parikh Priteshkumar Ishvarbhai
2. Parikh Rita Priteshkumar
No. 29/2, 2nd Floor,
1st Cross, 1st Main,
Amarjyothi Layout,
Dr. Rajgopal Road,
Sanjaynagar, Bangalore-560094.
STATE: Karnataka.

(In Person)

Vs

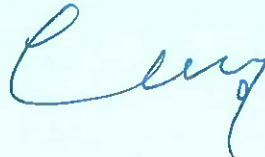
RESPONDENT.....

M/s Allam Infinite India Pvt. Ltd.,
No. 44/1, Azeem Pearl, Dickenson
Road, Yellappa Garden,
Bengaluru-560042.

(Ex-parte)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "GM Ambitious Enclave" developed by **M/s. Allam Infinite India Pvt. Ltd.**, of the relief of refund with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/308/PR/180406/001467 valid till 31-07-2024.



3. This project is situated at, Margondanahalli Village, Jigani Hobli, Anekal Taluk, Bangalore urban District, Bangalore-560069.

Brief facts of the complaint are as under:-

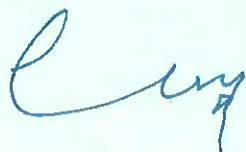
4. The complainants had booked a flat bearing No. B1-09-21 in the project of the respondent namely GM Ambitious Enclave and entered into an agreement of both sale and construction on 30-09-2019 for total sale consideration of Rs.32,61,000/- (Rupees Thirty Two Lakhs Sixty One Thousand only). The complainants had paid the substantial sale consideration of Rs.17,36,483/- (Rupees Seventeen Lakhs Thirty Six Thousand Four Hundred and Eighty Three only) from their own money and Rs.13,45,162/- (Rupees Thirteen Lakhs Forty Thousand One Hundred and Sixty Two only) from the HDFC Loan on the various dates to the respondent. The respondent was supposed to handover the possession along with the common amenities of the said flat to the complainants on or before 01-04-2022. Though more than two years have been lapsed, the respondent has failed to complete the project as agreed and to handover the possession of the said flat to the complainants. The complainants had tried to reach the respondent through telephone and email, there was no response. After multiple efforts, the complainants had failed to find the actual date of possession of the said flat from the respondent. Hence, complainants had cancelled their booking and seeking refund of entire amount along with interest. Hence, this complaint.

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5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainants had appeared before the Authority and filed memo of calculation, agreements of sale and tripartite, payment receipts and copies of email conversation between both the parties etc. The respondent did not appear before this Authority and remained absent. Hence, the respondents was placed as ex-parte.
6. In support of their claim, the complainants have produced documents such as copy of agreement of sale and tripartite, payment receipts and copies of email between both the parties, memo of calculation dated 02-10-2023, bank statement and details of home loan.
7. This matter is heard on 11-10-2023.
8. **On the above averments, the following points would arise for my consideration:-**
1. Whether the complainants are 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 complainants had paid substantial sale consideration of Rs. 32,61,00/- (Rupees Thirty Two Lakhs Sixty One Thousand only) After receiving the substantial sale consideration the respondent has not registered

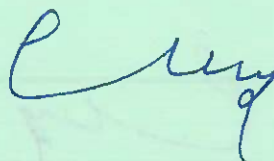


the said flat in the name of the complainants. The complainants had tried to check that whether construction work was completed or not then the complainants came to know that there is a delay in the construction work. The complainant requested to share the stage wise time schedule of the project and the progress report of the construction vide email dated 15-01-2023 and 17-01-2023, but there was no response from the respondent. The complainants had tried to get the information many times but the respondent had failed to give response to them.

11. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters v/s The State Of Uttar Pradesh it is held as under:

Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf.

12. In the judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,



“ In terms of section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himanshu Giri came under the letter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment.”

13. 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.



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 etc., in accordance with sale agreement.

1. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that the complainant have paid substantial sale consideration to the respondent towards the purchase of said flat. Having accepted the substantial sale consideration and having failed to abide by the terms and condition of agreement of sale to complete the project, certainly entitles the complainants for refund of entire amount with interest.

15. The complainants had filed their memo of calculation as on 02-10-2023 claiming a refund of Rs.41,19,635/- (Rupees Forty One Lakhs Ninteen Thousand and Six Hundred and Thirty Five only) including interest. The respondent has not resisted the said memo of calculation filed by the complainants and he has not submitted his Memo of calculation inspite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainants reveals that thier claim is genuine.

16. Having regard to all these aspects as mentioned above, this Authority concludes that the complainants are entitled for refund with interest as claimed vides his memo of calculation date 02-10-2023.

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

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 21-07-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)

2. The interest due from 03/10/2023 up to the date of final payment will be calculated likewise and paid to the complainant.

3. The complainants are hereby directed to cooperate with the respondent for cancellation of agreement of sale dated 30-09-2019 on receipt of entire amount as directed to be refunded by the respondent.

4. 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

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30,81,645	1,037,990	0	41,19,635
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18. Accordingly the point raised above is answered in the Affirmative.

19. The complainants had also sought for the relief of direction to the respondent to repay the balance outstanding loan amount, including the principle and interest components, directly to the said bank. Accordingly, the point raised above is answered in the Affirmative.

20. **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

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/00458/2023** is hereby allowed as under.

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/00458/2023** is hereby allowed.

Respondent is directed to pay a sum of **Rs.41,19,635/- (Rupees Forty One Lakhs Nineteen Thousand Six Hundred and Thirty Five only)** towards refund with interest to the complainant within 60 days from the date of this order, at MCLR + 2% from 01/09/2019 till 02/10/2023.

