

ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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**

**Dated 25<sup>th</sup> August 2022**

**COMPLAINT No: CMP/210628/0008067**

**COMPLAINANT....**

**L.S. MUKUND**

C209, Pioneer Paradise

24<sup>th</sup> Main Road

JP Nagar 6<sup>th</sup> Phase

Bangalore-560078.

**(Rep. by Sri. M.D. Rajkumar,  
Advocate)**

**V/S**

**RESPONDENT.....**

**COMMUNE PROPERTIES INDIA  
PRIVATE LIMITED**

No.36, 2<sup>nd</sup> Floor, Vikas Tower

Castle Street, Ashok Nagar

Bangalore-560 078.

**(Rep. by Sri. Venkatesh R. Bhagat,  
Advocate)**

\*\*\*\*\*

**J U D G E M E N T**

1. This complaint is filed under section 31 of the RERA Act, against the project 'Commune' for the relief of refund with interest.

**The brief facts of the complaint are as under:-**

2. The complainant has got allotted apartment bearing No: 10202 on 2<sup>nd</sup> Floor in Tower – A with a covered car parking in the project known and called as 'Commune' located at Chandapura, Anekal Main Road, Marasur Village,



## 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

Bangalore-5602106, vide allotment letter dated 29.9.2014. The complainant has opted for a home loan for a total amount of Rs.13,00,000/- (Rupees thirteen lakhs only) from LIC Housing Finance Limited in the year 2014. The complainant entered into agreement of sale dated 14.10.2014 to purchase the aforesaid apartment. The deemed date of handing over possession of the apartment was 31.5.2016 with the inclusion of 6 months grace period. The complainant has made payment to the developer on different dates and has altogether paid a sale consideration amount of Rs.15,30,189. The total sale consideration to be paid for the aforesaid apartment was Rs.24,11,125/- which was subsequently revised as a result of introduction of GST law. Complainant has paid an interest of Rs.3,56,120/- on loan disbursed amount of Rs.9,39,262 from 18.11.2014 till 23.05.2022. The complainant contended that the Developer has not only defaulted in handing over the apartment unit on the deemed date but has used sub-standard material during the construction which is not value for money paid and wherefore humbly prays the Hon'ble Authority and sought relief of (a) refund of sale consideration amount of Rs.15,30,189/- with interest (b) Rs.3,33,638 as interest paid on the loan availed, (c) Rs.3,30,163/- as outstanding principal-loan amount and legal fee.

3. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondents have appeared before this Authority through their advocate Sri. Venkatesh R. Bhagat and filed the objections as under:

5. **Objections of Respondent:-** The Respondent denied all the allegations made against them by the complainant as false and is not maintainable either in law or on true facts of the case and prayed for dismissal.

128

## 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

6. The complainant entered into an agreement of sale dated 14.10.2014 to purchase the apartment bearing No: 10202 on the 2<sup>nd</sup> Floor in Tower 'A' with a covered car parking in the project known and called as Commune Properties India Private Limited which is not located at Chandapura but Marsur Village, Kasaba Hobli, Anekal Taluk, Bangalore Rural South, Bangalore-562106.
7. The Respondent further submits that the total amount as per the agreement of sale is a sum of Rs.24,11,125/- upto registration. The complainant has paid only an amount of Rs.15,30,189/- upto 4<sup>th</sup> floor slab. Subsequent to that the respondent has not demanded any money from the complainant and that the respondent has not received 3 installments after the 4<sup>th</sup> floor slab.
8. It is further submitted that as per the agreement of sale dated 14.10.2014, there is mutual agreed terms between the parties regarding cancellation by the purchaser as enumerated in **Para-13** which is reproduced as under:

#### **9. CANCELLATION BY PURCHASER:**

#### **10. Acceptance and cancellation under special circumstance:**

- a) *The purchaser assures the Developer, that he shall complete the transaction in all respects and agrees not to withdraw from the transaction for any reasons or grounds including delay etc., as the entire project and the construction of the apartment taken up in view the commitment to purchase the apartments by the customers including Purchaser herein and that cancellation will affect the funding of the project resulting in delays and that interest of other purchasers of apartments will be affected.*
- b) *In case the Purchaser intends to cancel due to any extraordinary situation or compelling circumstances of reasons that are not within the control of the PURCHASER(s), he shall submit a cancellation request in writing to the Developer. The Developer at its sole discretion (depending on the market situation) –on a case-to-case basis may consider the request for cancellation. On acceptance of the cancellation request, the Developer shall alienate the apartment to a new purchaser. The Purchaser herein*

138



## 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

agrees for the refund of money till the new purchase pays the full consideration or the project is complete.

- c) **Cancellation Charges** – Cancellation charges shall be Rs.300/- per sq.ft which shall be deducted from the amounts returnable to the purchaser.
- d) **Time of Refund** – The Purchaser herein shall be refunded only after sale of the unit and receipt of monies from new Purchaser. Under no circumstances the Developer will pay the money to the PURCHASER on its own.
- e) **Where** payment is received in staggered manner from the new purchaser, the same will be paid in staggered manner mutatis mutandis to the Purchaser herein.
- f) **Till** the sale with the new purchaser is completed in all respects, the outgoing Purchaser herein cannot make any demand of whatsoever for refund of the money. However, the Purchaser is free to find a new customer on his own accord in his own interest and complete the transaction at the earliest.
- g) **The Purchaser** hereby accepts that he will adhere to the above procedure and under any circumstances shall not demand refund of advance paid deviating the above procedure.
- h) **Any claim(s)** of the purchaser, against the Developer company or its directors in violation or in contravention of the covenants of this clause shall not be maintainable against the company or its directors or its authorized representative.
- i) **The Purchaser has to** obtain NOC and Loan closer letter from the finance for cancellation in case of loan taken by purchaser for financing the schedule'B' property. All cancellations and refunds will be as per terms mentioned in tripartite agreement signed between Developer, Financier and Purchaser. Developer shall issue cheque only after obtaining NOC, loan closer letter and all originals of agreement of sale and other documents submitted to Financier for the purpose of loan.

*Handwritten signature*

**ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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

11. The Respondent further submits that none of the clauses contained in this agreement between the parties is complied by the complainant
12. The respondent further claimed that there is no cause of action for the complainant to approach this Hon'ble Authority seeking for refund of the amount in view of the cancellation policy as contained in the agreement of sale and mutually agreed terms between the parties.
13. The Respondent further contended that the apartment is ready for occupation and actual possession will be handed over within 45 days and only Final finishing work is in progress.
14. The Respondent further submits that even though the agreement is of the year 2014, the same rate is retained without escalation, despite cost of construction has increased by two folds, the respondent has not hiked the price. The respondent is ready to handover the possession as well is ready to register the sale deed in favour of the complainant, provided that he pays the balance sale consideration in tune with agreement of sale.
15. It is further submitted that the complainant seeking for refund without approaching the respondent in tune with clause 13 of the agreement of sale is not maintainable and same is liable to be dismissed with exemplary cost
16. The respondent submits that the delay is due to various facts including the demonetization on 8.11.2016, rolling out of the GST regime, implementation of the RERA Act and also subsequent event of COVID-19 PANDEMIC and consequent lockdowns, all together resulted in delay in completing the project, which is beyond the control of the respondent and not attributable to the default of the respondent.
17. In the light of the above averments, the respondent prays the Hon'ble Authority while adjudicating the matter may dismiss the complaint for non compliance of terms and conditions contained in the agreement sale.



**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

**18. In support of his claim, the complainant has produced the following documents.**

- a) RERA Authority, Karnataka, FORM-C Registration Certificate of Project
- b) Commune Brochure
- c) Allotment letter
- d) Agreement of Sale Deed 14.10.2014
- e) Payment Receipts
- f) Commune LSM Loan Agreement
- g) L.S. Mukund LIC HFL Loan Statement
- h) Aadhar Card of the Complainant
- i) True copy of the email dated 16.7.2021 indicating the Respondent has been served with the soft copy of all the documents
- j) Vakalat nama

**19. In support of his claim, the Respondent has produced the following documents:**

- a) Statement of Objection filed by the Respondent
- b) Authorisation Letter
- c) Vakalath

Heard both sides.

**20. On the above averments, the following points would arise for my consideration:**

1. Whether the complainant is entitled for the relief of refund with interest as claimed?
2. What Order.

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

1. In the Affirmative
2. As per final order

**REASONS**

128



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

**21. My answer to point No. 1:-**

It is pertinent to note that the complainant entered into an agreement of sale on 14.10.2014 to purchase the apartment No: 10202 on the second floor in Tower-A with a covered car parking in the project known and called as Commune Properties India Private Limited which is not located at Chandapura but Marasur Village, Kasaba Hobli, Anekal Taluk, Bangalore Rural South, Bangalore-562106.

**22.** As per the Respondent, the total amount to be paid as per the agreement of sale is a sum of Rs.24,11,125/- whereas the plaintiff has paid only amount of Rs.15,30,189/- subsequent to that, the respondent has not received further 3 installments.

**23.** As per the agreement of sale dated 14.10.2014, there is mutually agreed terms between the parties for cancellation by the Purchaser. As per this mutual consent, the purchaser should assure the Developer that he shall complete the transaction in all respects and agrees not to withdraw from the transaction of any reasons/grounds including delay. In case the purchaser, if the Purchaser intends to cancel due to unforeseen situation, he shall submit a cancellation request in writing to the Developer.

**24.** The Developer at its sole discretion, may consider the request for cancellation and acceptance of the cancellation by the Developer, he shall alienate the apartment to a new purchaser and that Purchaser herein shall be refunded only after sale of unit and receipt of monies from new purchaser.

**25.** It is further noted that the Respondent herein is not disputing its liability to refund the amount paid by the complainant. His contention is only that prospective purchasers who want to walk out of the project have to wait until a new member steps in their place and they cannot



## 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

claim any interest on the amount to be refunded. Whatever the terms of the contract, the provisions of RERA gets primacy over the clause in the contract. In this connection, the Judgement of the Hon'ble Supreme Court of India, Civil Appellate Jurisdiction in Civil Appeal Nos. 6745, 6749 of 2021 (arising out of SLP(Civil) No(s) 37113715 of 2021, M/s Newtech Promoters and Developers Private Limited Vs. State of UP others' is stated as hereunder:

***“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 hold an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf.***

***Section 18(2) of the Act mandates that in case loss is caused to allottee due to defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and such claim for compensation under section 18(2) shall not be barred by limitation provided under any law for the time being in force.***

***Section 18(3) of the Act states that where the promoter fails to discharge any other obligation under the Act or the rules or regulations framed thereunder or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay "such compensation" to the allottees, in the manner as prescribed under the Act."***

168



ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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

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


27. **Our answer to Point No. 2:-** In view of the above discussion, 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/210628/0008067** is hereby allowed with directions to the Promoter:

- (1) To refund the amount paid by the complainant along with interest at the rate of 9% upto 31.04.2017.
- (2) Further the complainant is entitled to interest at the rate of SBI-MCLR + 2% from 1.5.2017 till the date of realization.

No order as to costs.

  
(H.C. Kishore Chandra)  
Chairman  
K-RERA

THE UNITED STATES OF AMERICA  
DO hereby certify that  
[Name] is a citizen of the United States of America  
and is entitled to the rights and privileges of citizenship.

DECLARATION

I, [Name], do hereby declare that I am a citizen of the United States of America  
and that I am entitled to the rights and privileges of citizenship.  
I do hereby declare that I am a citizen of the United States of America  
and that I am entitled to the rights and privileges of citizenship.  
I do hereby declare that I am a citizen of the United States of America  
and that I am entitled to the rights and privileges of citizenship.  
I do hereby declare that I am a citizen of the United States of America  
and that I am entitled to the rights and privileges of citizenship.

Witness my hand and seal this [Date] day of [Month], [Year].

Signature  
[Name]