

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

Dated 9^h September 2022

Present

Shri. H.C. Kishore Chandra, Chairman

COMPLAINT No: CMP/210418/0007907

COMPLAINANT....

1. V. Kasthuri Rangarajan

No: 2285, 9th Main Road
D-Block, Rajajinagar 2nd Stage
Bangalore-560 010.

(in person)

V/S

RESPONDENT.....

1. M/s Jain Heights and

Structures Private Limited

Bhairav Holdings INC

Floor No: 11, No.2, 1st Cross

J.C. Road

BANGALORE-560 027

(Rep. by Sri. Joyappa P.A.
authorized signatory)

JUDGEMENT

This complaint is registered in **CMP/210418/0007907** under Section 31 of RERA Act against the project "**Jain Heights Grand West Phase-I**" developed by "**Jain Heights and Structures Private Limited**" in the limits of No.10-1-71, Yeshwanthapura Industrial Sub-Urban, Ward No.10, Mahalakshmiapuram, Bangalore North, Bangalore Urban. This project is registered under RERA Act vide registration no.



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PRM/KA/RERA/1251/309/PR/170915/000219 for refund with interest and compensation.

2. The gist of the complaint is that the complainant intended to purchase residential apartment bearing No: E-10, Tower-II, 10th Floor, Grand West Project being constructed in schedule-B property measuring 1906 sq.ft of super built area along with proportionate share in common area such as passages lobbies, lift and staircases with one covered car parking in the project known as "Grand West" situated at Industrial Suburb situated at new no. 71, coming under the jurisdiction of BBMP Ward No.10, Mahalakshmi puram Industrial suburb, Bangalore-560 022.

3. It is further submitted that the complainant has entered into a sale/construction agreement dated 12.09.2017. As per the AOS, the sale consideration for land was fixed at Rs.65,35,100/- and cost of construction was fixed at Rs.65,35,100/-, and the sale consideration was fixed for Rs.1,30,70,200/-. Out of the total amount, the complainant has paid an advance of Rs.63,35,400/- and the remaining amount required to be paid only upon the progress of construction. It is further claimed by the complainant that he has raised loan from the bank towards purchase of this property.

4. It is further submitted that, as per AOS the respondent ought to have completed the construction of flat on or before 30th June 2019(inclusive of 6 months grace period whereas even today the construction is still pending after a delay of more than 22 months.

5. It is stated by the complainant that, the respondents did not fix a final date for handing over of the flat, causing undue delay despite the complainant has almost paid 50% of the entire cost of the flat amounting to a sum of

(Signature)

(Signature)

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Rs.63,35,400/- . It is further said that the complainant has lost confidence in the respondents and with no other alternative remedy, he has approached this Authority to seek the refund of the sum paid to the respondent.

6. The complainant has sought the following relief from the respondent:

- (a) Refund of the entire amount towards sale consideration of Rs.63,35,400/- with interest till the date of actual realization.
- (b) Calculated interest to be paid by the respondent for the paid amount
- (c) Payment of Rs.50.00 lakhs as compensation for the mental agony
- (d) Payment of Rs.5.00 lakh for legal expenses and incidental charges

7. Hence this complaint.

8. After registration of the complaint, in pursuance of the notice, the respondents have appeared before this Authority through Mr. Joyappa PA, authorized signatory to represent this case.

9. The objections filed by the respondent are as under:

10. It is submitted by the respondent that the residential project Jain Heights Grand West Phase-I, which is a multistoried residential apartment complex is developed on Plot No: 71 Yeshwanthpur Industrial suburb, Bangalore by Jain Heights and Structures Private Limited and Bhairav Holdings Inc being the land owner under the joint development agreement dated 15.10.2014.

11. It is submitted that due to reasons beyond the control of respondents, the project was not completed by 30.06.2020 i.e. the completion date approved by this Authority as recorded in their RERA project registration certificate.



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12. It is said that, in lieu of the interest of the project, the prospective buyers who have invested their amount in purchase of apartments in Jain Heights Grand West, Bhairav Holdings Inc, the land owner came forward for the completion of the project. It is further said that the Bhairav Holdings have taken initiatives on themselves to complete the project with the consent of more than 90% home buyers and ensured the delivery of the project to buyers. Further, in the process, during 2021, Bhairav Holdings also offered all the existing buyers to refund the amount collected if the purchase desirous to discontinue with the booking.

13. It is further submitted that this Authority was pleased to pass an order dated 09.09.2021 in case no. TRO/ACK/KA/RERA/1251/309/PR/210306/004796 allowing the application filed by the respondent for change of developer and identifying and registering "Bhairav Holdings Inc" as the developer of the project.

14. It is contended by the respondent that Bhairav Holdings Inc has settled all liabilities of the incompleted project including project loan, vendor and suppliers payment, customers claim on cancellations by refund of principal amount received.

15. It is further submitted that the calculations submitted by the complainant is not in accordance with the provisions of RERA Act and Rules, and prayed this Authority to reject the same in toto.

16. It is further submitted by the respondent that he reviewed the statement of account submitted by the complainant, who want to forego with booking and seeking refund of the amount with interest and other costs the calculations submitted by the complainant is not acceptable as they are not in accordance with the provisions of RERA Act and Rules.



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17. In support of his claim the complainant has submitted 07 documents such as (a) copy of booking application and allotment letter (b) Copy of sale agreement (c) copy of RERA registration certificate (d) copy of booking receipt (e) Copies of payment receipts (f) Copy of statement of accounts and (g) Copy of statement of accounts.

18. In support of his claim, the respondent has submitted the Memo of calculation.

1. Heard both sides.

19. **On the above averments, the following points would arise for our consideration:**

1. Whether the complainants are entitled for the relief of refund with interest as claimed?

2. What Order?

20. **Our findings to the above points are as under:-**

1. In the affirmative

2. As per final order

FINDINGS

21. **My finding on point No. 1:-** It is undisputed that the respondent has failed to handover possession of the apartment to the complainant herein within agreed time. As per the terms of agreement of sale between the parties, the possession of the apartment had to be handed over on or before 30th June 2019. When the respondent has failed to handover possession as agreed by them, the complainant approached this forum for refund of amount with interest.



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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.

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.

From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has paid 50% of the sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to handover possession of apartment even after 2 year and 2 months, certainly entitles the complainant herein for delay period interest. The complainant has claimed Rs.49,55,383/- (Rupees Forty nine lakhs fifty five thousand three hundred eighty three only) as delay period interest in his memo of calculation as on 16.05.2022. The respondent has also filed their memo of calculation as on 11/07/2022 according to which it shall refund Rs.74,88,453/- (net off taxes) including the interest paid by the complainant to India Bulls Housing Finance Limited for which the complainant did not agree as there was a huge difference between the calculation of the complainant and respondent. The Authority directed the respondent to clarify the difference in the calculation submitted by both the parties. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund and interest.

Therefore, it is incumbent upon the respondent to pay interest for the principal amount for the refund which is determined as under:

Principal amount	Interest as on 12/7/2022	Refund from promoter	Total Balance Amount
63,35,000	30,47,355	0	93,82,755

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

23. **My finding on point No. 2:-** In view of the above discussion, I proceed to pass the following order.

ORDER

24. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **CMP/210418/0007907** is hereby allowed. Respondent is directed to pay the amount of **Rs.93,82,755/- (Rupees Ninety three lakhs eighty two thousand seven hundred fifty five only)** to the complainant within 60 days from the date of this order. The interest due from 12/07/2022 up to the date of final payment will be calculated likewise and paid to the complainant failing which the complainant is at liberty to enforce this order in accordance with law.

No order as to costs.


(H.C. KISHORE CHANDRA)
Chairman
K-RERA

Carroll