

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 6

Dated 7th SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/200604/0004066

COMPLAINANT.....

**Mrs. Chetana Mohan Jamakhandi &
Mr. Mohan Gururao Jamakhandi**
W 302, Purva Fairmont,
24th Main, 25th Cross, Sector 2,
HSR Layout,
Bengaluru-560102.

V/S

RESPONDENT.....

Sanchaya Land and Estate Pvt Ltd
No.84, Nost Apartment,
1st Floor, 13th Cross, Lakshmai Block,
Ganganagar,
Bengaluru-560024.

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "Sky View" for the relief of refund with interest.

Brief facts of the complaint are as under:-

2. The complainants have booked a flat in the project of respondent and entered into an agreement of sale and construction dated 29/10/2014 by paying an amount of Rs.31,80,654/- (Rupees Thirty One Lakh Eighty Thousand Six Hundred and Fifty Four only) on various dates to the



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respondent. The respondent had assured the complainants that the flat will be handed over by the end of September 2016. The completion date of the project was 31/12/2018 which was extended by one year i.e. till 31/12/2019. Despite which the respondent has failed to handover the possession of the said Unit and refund of the amount with interest till date. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and have filed statement of objections as under:

The respondent submits that the complainants seeks refund and compensation with retrospective effect from 2014 i.e. before RERA coming into force and if the provisions of the Act are held retrospective then the complaint has to be dismissed as the complainant is relying on an unregistered Agreement of Sale which should not be taken on record as evidence. The respondent contends that at no point of time he denied handing over possession by completing the construction. The respondent denies the allegations of the complainant as false, baseless and frivolous and has prayed to dismiss the complaint in the interest of justice and equity.

4. In support of their claim, the complainants have produced in all 10 documents such as copies of Agreement of Sale, Agreement of Construction, Tripartite Agreement, Cheque and Receipts, Penalty document and memo of calculation for refund with interest as on 01/08/2022.

5. Heard arguments of both sides.



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6. On the above averments, the following points would arise for my consideration:-

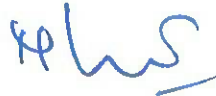
1. Whether the complainants are entitled for the relief claimed?
2. What order?

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

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

REASONS

8. **My answer to point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project, and has not handed over the unit in favour of complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 29/10/2014. There seems to be no possibility of completing the project or handing over the possession in near future.
9. 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.
10. 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.



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11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have paid the sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment, certainly entitles the complainant herein for refund with interest. The complainant vide his memo of calculation as on 1/8/2022 has claimed that the respondent has to refund with interest an amount of Rs.50,32,175/-. During the process of the hearing the representative of the respondent was directed to file a written affidavit regarding the completion plan of the project which was not complied with, instead some photographs were produced before the authority. There is no cooperation or response from the respondent. Further, the respondent's contention that the complainants plea for refund w.e.f. 2014 cannot be considered on the ground that the RERA Act came into force in 2017 is not acceptable, as this project was still ongoing and the respondent has registered this project under RERA vide RERA Registration Certificated dated 5/9/2017 valid from 27/7/2017 to 31/12/2018. The project has also been accorded extension for a period of 12 months i.e. till 31/12/2019 by RERA. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest.

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

Interest Calculation Till 30/04/2017 (Before RERA)				
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS TILL 30/04/2017	INTEREST @9%
1	09-08-2014	2,00,000	994	49,019
2	31-08-2014	6,33,802	973	1,52,060
3	27-10-2016	10,42,255	185	47,543
4			TOTAL INTEREST (I1)	2,48,622

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Interest Calculation From 01/05/2017 (After RERA)							
S.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	18,76,058	1918	01-08-2022	8.15	10.15 as on 01-05-2017	10,00,617
2	13-12-2017	9,31,855	1692	01-08-2022	8.1	10.1 as on 01-12-2017	4,36,291
3	26-02-2018	1,86,371	1617	01-08-2022	8.1	10.1 as on 01-02-2018	83,390
4	21-04-2018	1,86,371	1563	01-08-2022	8.35	10.35 as on 01-04-2018	82,600
5	TOTAL AMOUNT	31,80,655				TOTAL INTEREST (I2)	16,02,898

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 01-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
31,80,655	18,51,520	0	50,32,175

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

14. **My 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/200604/0004066** is hereby allowed. Respondent is directed to pay a sum of **Rs.50,32,175/- (Rupees Fifty Lakh Thirty Two Thousand**


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One Hundred and Seventy Five only) calculated at 9% from 9/8/2014 to 30/4/2017 and at MCLR + 2% from 01/05/2017 till 01/08/2022 towards refund with interest to the complainant, within 60 days from the date of this order. The interest due from 02/08/2022 up to the date of final payment will be calculated likewise and paid to the complainant. The complainant is 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.


(Neelmani N Raju)
Member-2, K-RERA

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