

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

Dated 22nd September 2022

COMPLAINT No: CMP/210909/0008314

COMPLAINANT....

Chaitanya Rami Reddy Sidda

No: G003, Lotus Leaf Apartment

Owners Court Layout

Near Amritha Engineering College

Kasavanahalli, Sarjapur Road

Bengaluru-560 035.

**(Represented by Sri.Hegde Praksh
Advocate)**

V/S

RESPONDENT.....

1. M/s Lalith Gangadhar

Constructions Private Limited

No: 12/1, Rest House Road

Bengaluru-560 001

(Exparte)

2. Piramal Capital & Housing

Finance Limited

3rd Floor, 31 Old No. 17

Eleganza Museum Road

Bengaluru-560 052.

(Exparte)

3. R. Rafeeq

represented by M/s LGCL

Properties Private Limited

(Promoter-1)

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4. R. Safeeq

Represented by M/s LGCL
Properties Private Limited
(Promoter-1)

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act, against the project "**LGCL Stonescape**" developed by "**Lalith Gangadhar Constructions Private Limited**" in the limits of Sy.No: 41/1, Chikkagubbi village, Bidarahalli Hobli, Bengalure East, Bengaluru urban for the relief of refund with interest.
2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/446/PR/171014/000000327.
3. The gist of the complaint is as under:
4. The complainant has booked a Row House bearing No.10, in the project known as "**LGCL STONESCAPE**" by entering into an agreement for sale, as well as construction agreement both dated 26.09.2018 with respondent-1 and a tripartite agreement dated 26.09.2019 with respondent no.2. In pursuance of the aforesaid agreement for sale, construction agreement and tripartite agreement, the applicant has paid a total amount of Rs.35,00,000/- (Thirty five lakhs) towards the aforesaid Row House bearing No.10 thereof. Similarly the applicant has paid a total amount of Rs.28,36,782/- towards EMI repayment liability of the aforesaid loan stated to be disbursed by the respondent no.2 to the respondent no.1.
5. In terms of aforesaid construction agreement, the respondent was duty bound to handover the constructed schedule row house to the applicant on or before 31.12.2018. However, the respondent has not handed over

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the constructed schedule row house on one or the other pretext. The applicant claimed that there is inordinate delay on the part of respondent in handing over the constructed booked schedule row house. Having lost confidence with the respondent, the complainant has decided to withdraw from the said project and has sought relief of refund with interest. Hence the complaint.

6. After registration of the complaint, in pursuance to notice, the complainant has filed written submissions whereas the respondents have not filed statement of objections and remained absent on the date of hearings of this Authority dated 24.05.2022, 15/06/2022, 29/06/2022, 13/07/2022, 16/08/2022 and on 09/09/2022 despite several opportunities given to them. In this regard, the complainant has also produced paper publication, published in the "Hosa Digantha" Kannada daily issue, dated 22.07.2022, issuing notice to respondent-2 to appear before this Authority.
7. In support of her claim, the complainant has submitted documents such as (a) Agreement for sale dated 26.09.2018 , (b) Agreement of construction dated 26.09.2018 (c) Tripartite agreement (d) Details of payment made to the respondent (e) Paper publication published in "Hosa Digantha" Kannda daily dated 22.07.2022.
8. Heard the grievance of the complaint and perused the submissions filed by the complainant through her counsel Sri.Hegde Prakash R.
9. On the above averments, the following points would arise for our consideration.
10. 1.Whether the complainants are entitled to the relief claimed?
2. What order?

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11. Our findings on the above points are as under:

12. 1. In the Affirmative

2. As per final order for the following:

FINDINGS

13. Our findings on point no.1:

From the materials placed on record, it is apparent that in spite of entering into an agreement for sale to hand over possession of an apartments, the builder has not completed the project as per agreement and has delayed the project and has not handed over the apartment to the complainant till date. Hence the builder has failed to abide by the terms of agreement for sale. There seems to be no possibility of completing the project or handing over the possession in near future.

At this juncture, our attention is drawn towards the judgement of Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

“23. 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 RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment”.

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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, plat, building as the case may be with interest 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 complainants has already paid substantial sale consideration. Having accepted the said amount and failure to keep up promise to hand over possession of apartment certainly entitles the complainants herein for refund with interest.

Having regard to all the aspects, this Authority concludes that the complainants is entitled for refund with interest. Therefore it is incumbent upon the respondent to refund the amount with interest.

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

15. **Our findings on point no.2:** In view of the above discussion, the complaints deserves to be allowed. Hence, we proceed to pass the following:

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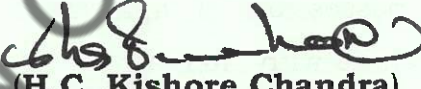
ORDER

In exercise of the powers conferred under Section 18 of the Real Estate(Regulation and Development) Act, 2016, the complaint bearing No: **CMP/210909/0008314** is hereby allowed.

1. The respondent is hereby directed to refund amount of Rs. **58,86,782** with interest at the rate of SBI MCLR + 2% per annum commencing from 13.09.2018 till the date of realization. The respondent shall refund the amount within 60 days from the date of this order, failing which, the complainant is at liberty to enforce this order in accordance with law.


(D. Vishnuvardhana Reddy)
Member-1
K-RERA


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


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