

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 BEFORE THE AUTHORITY

Dated 08th June 2023

Present

Hon'ble Chairman Shri. H.C. Kishore Chandra

Hon'ble Member Smt. Neelamani N Raju

CMP/200307/0005447

COMPLAINANTS.....

SANJITH KUTTAN and MRIDULA MANU

A 702 Epitome Crowne,

Bilekahalli, Bannerghatta Road,

Bengaluru - 560076

(Rep. by Sri. Suraj Sampath, Advocate)

V/S

RESPONDENT.....

LGCL Properties Pvt. Ltd

No. 12/1, Rest House Road,

Bengaluru - 560001.

(Rep. by Sri. Kiran Kumar R, Authorized
signatory of the respondent)

RECTIFIED J U D G E M E N T UNDER SECTION 39 OF RERA ACT

1. This complaint is filed under section 31 of the RERA Act against the project "LGCL PUEBLO" developed by "LGCL Properties Pvt. Ltd" for the relief of refund of amount with interest.
2. This project has been registered under RERA vide registration No. PRM/KA/RERA/1251/310/PR/171014/000286.

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3. The said project is situated at Sy.Nos.36/2, 36/3, 40/2 and 36/4 Naganathapura Village, Bengaluru south Taluk.
4. The complainants have sought for the relief of refund of entire amount with interest and complaint came to be allowed vide judgement dated 05/10/2021. But through over sight instead of granting the relief for refund of amount along with interest they were granted the relief of interest on delay period and possession. Hence, the complainants have preferred an appeal before the Hon'ble Appellate Tribunal in appeal No.59/2021 and this matter has been remanded to Authority to rectify the mistake. However, once again through over sight instead of granting the relief sought by the complainants, they were granted the relief of interest on delay period and possession vide judgement dated 28/09/2022. Therefore, the complainants have filed an application for rectification u/s.39 of RERA Act which came to be allowed on 31/05/2023. Accordingly, the following judgement.
5. **Brief facts of the complaint are as under:-**
The complainant along with his wife Mrs. Mridula Manu has booked a row house No.12 in the project known as 'LGCL PUEBLO' by entering into an agreement of sale and construction agreement dated 18/11/2017. In pursuance of the aforesaid agreement of sale, construction agreement, the applicant has paid a total amount of Rs.1,84,70,322/- out of the total sale consideration of Rs.2,06,71,402/- towards the aforesaid row house No.12 thereof. The date of completion of the row house in question as per construction agreement was 30.06.2019 along with 6 months grace period.

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However, the respondent has not handed over the constructed schedule row house as agreed upon for one or the other pretext. The complainant claimed that as there is inordinate delay on the part of respondent in handing over the constructed booked schedule row house, he has lost confidence with the respondent and decided to withdraw from the said project and has sought relief of refund with interest. Hence, this complaint.

6. After registration of the complaint, in pursuance to notice, the respondent has appeared before this Authority through his Authorized signatory and has filed statement of objections as under:
7. The respondent denies the entire allegations made against them by the complainants as false. It contends that the complainants had entered into two separate agreement (a) agreement for sale dated 18/11/2017 with the vendor for sale of undivided share in the project schedule property and (b) construction agreement dated 18/11/2017 with the developer i.e. the respondent herein for construction of row house on the undivided share of land purchased by the complainants from the vendor. The respondent contends that the complainants in the instant case are seeking compensation for delay in completion of the project.
8. The respondent further contends that the work of the project was going in full swing without any stoppage. As per the terms of agreement, timeline for the completion of the construction was 30/06/2019 subject to periodical receipt of payment without any default on the part of the complainant or any other amount payable by the complainant under the agreement.

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9. The respondent contends that the complainants are regular defaulter in making the payment to the respondent though they are obliged to pay before taking possession of the row house. The complainants owe dues to the respondent.
10. The respondent contends that the complainants have opted for modification in the year 2018 and was pending till the customer's approval i.e. till 2019. The delay was because of the modification undertaken by the complainant and not otherwise.
11. It contends that the respondent is not held liable or responsible for any delay in completion and handing over of the possession within the stipulated timeline to the complainants due to any of the force majeure events.
12. It is further contended that the complainants are wilful defaulters in making the periodical payments for the construction and are not liable for interest on delay period and hence prayed for dismissal of the complaint.
13. In support of their claim, the complainants have produced the following documents such as the copy of
 1. Memo of calculation.
 2. Citations of SCC No.783 and 241.
 3. Brochure.
 4. Agreement of sale and construction agreement dated 18/11/2017.
 5. Payment schedule.
 6. Statement of the loan account bearing No.PHR056102916548.

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14. In support of their defense, respondent has produced documents such as copy of consumer case No.31/2021, agreement of sale dated 18/11/2017.

15. Heard arguments.

16. Both parties have filed written arguments.

17. **Based on the above averments, the following points would arise for our consideration:-**

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

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

- 1) In the Affirmative
- 2) As per the final order

REASONS

19. **Our findings on point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale and construction 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 complainants till date. The builder has also failed to pay Pre EMI's as agreed. Hence, the builder has failed to abide by the terms of the agreement for sale and construction dated 18/11/2017. There seems to be no possibility of completing the project or handing over the possession in near future.

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20. The complainants are seeking for the relief of refund of entire amount paid to the respondent and to Axis bank along with interest.

21. 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 latter 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."

22. 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,

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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.

23. 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.
24. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to complete and handover possession to the complainants, not paying Pre EMI's as agreed certainly entitles the complainants herein for refund with interest. The complainants have filed their memo of calculation as on 28/02/2023 claiming an amount of Rs. 1,27,08,640/- as refund with interest. There is no dispute over the principle amount between both the parties. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest.
25. This Authority in Cmp.Nos. 5798, 6155, 6156, 6157, 6160, 6162, 6163, 6165, 6170, 6171, 6172, 6173 and 6174 passed an order dated 26/08/2022 for carrying out the forensic audit by exercising its powers under sec.35 of the Act. In the said complaints the developer had not completed the project even after more than 7 years after issue of commencement certificates by BBMP. Hence, the promoter was directed to complete the project by 30/06/2019. But the promoter has failed to complete the project within the said period. Further, during the proceedings of those complaints, the complainants have impleaded the landowners as respondents and they have submitted their consent to cooperate and collaborate with the allottees for achieving the completion of the

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project. The promoter had not come up with any resolution plan backed by the financial resources committed for completion of the project in all respect. On the other hand, the association of allottees has submitted a resolution plan wherein it is committed by the allottees along with landowners that the project completion work shall be undertaken by the co operative society which is a legal entity representing the allottees and the landowners. Accordingly, the requirement of funds to complete the project is indicated as Rs.22.5 crores in the application submitted for handing over the project under sec.8 of the Act and the time required for completion of the project is indicated as 9 months. Hence, the Authority has issued directions to the promoter of the project to handover the project to the co operative society i.e. "The Pueblo Villa Owners Co-operative society (Registered formed by the AOA of the project) and to handover the originals documents of plan approval, NOCs, statutory clearances, accounts statements and other relevant documents for implementation and completion of the project. Since the promoter had failed to complete the project even after more than agreed time, this Authority has handed over the said project to the allottees and landowners for completion of the project.

26. Considering all these facts and circumstances of the case, it is just and appropriate to direct the respondent/promoter to refund the said amount along with interest to the complainants.

27. Further , the memo of calculation furnished by the complainants is as under

Statement of amount paid to the builder by the complainant as on 28.02.2023

Margin Money paid to builder	Principal Amount	Starting date	Ending date	No. of days	Interest @ SBI MCLR + 2%	Interest amount	Principal amount outstanding
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BOOKING	1,00,000	30-Oct-17	31/10/17	1	10.15%	28	100000.00
		31-Oct-17	20/11/17	20	10.10%	553	1,00,000.00
LAND DEVELOPMENT CHARGES	20,00,000	20-Nov-17	23/11/17	3	10.10%	1,743	21,00,000.00
	1,81,160	23-Nov-17	28/02/18	97	10.10%	61,229	22,81,160.00
		28-Feb-18	31/05/18	92	10.35%	59,510	22,81,160.00
		31-May-18	31/08/18	92	10.45%	60,085	22,81,160.00
		31-Aug-18	30/09/18	30	10.65%	19,968	22,81,160.00
		30-Sep-18	09/12/18	70	10.70%	46,811	22,81,160.00
		09-Dec-18	09/04/19	121	10.75%	81,294	22,81,160.00
		09-Apr-19	09/05/19	30	10.70%	20,062	22,81,160.00
		09-May-19	12/06/19	34	10.65%	22,630	22,81,160.00
DOWN PAYMENT	11,15,517	12-Jun-19	12/06/19	0	10.65%	-	33,96,677.00
	3,84,483	12-Jun-19	14/06/19	2	10.65%	2,207	37,81,160.00
	7,80,110	14-Jun-19	09/07/19	25	10.65%	33,272	45,61,270.00
		09-Jul-19	09/08/19	31	10.60%	41,064	45,61,270.00
		09-Aug-19	09/09/19	31	10.45%	40,483	45,61,270.00
		09-Sep-19	09/10/19	30	10.35%	38,802	45,61,270.00
		09-Oct-19	22/10/19	13	10.25%	16,652	45,61,270.00
MODIFICATION CHARGES	50,000	22-Oct-19	23/10/19	1	10.25%	1,295	46,11,270.00
	21,632	23-Oct-19	09/11/19	17	10.25%	22,117	46,32,902.00
		09-Nov-19	09/02/20	92	10.20%	1,19,110	46,32,902.00

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		09-Feb-20	09/03/20	29	10.15%	37,361	46,32,902.00
		09-Mar-20	09/04/20	31	10.05%	39,545	46,32,902.00
		09-Apr-20	09/05/20	30	9.7000%	36,936	46,32,902.00
		09-May-20	09/06/20	31	9.5500%	37,577	46,32,902.00
		09-Jun-20	14/04/22	674	9.3000%	7,95,615	46,32,902.00
		14-Apr-22	14/05/22	30	9.4000%	35,794	46,32,902.00
		14-May-22	14/06/22	31	9.5000%	37,381	46,32,902.00
		14-Jun-22	14/07/22	30	9.7000%	36,936	46,32,902.00
		14-Jul-22	14/08/22	31	9.8000%	38,561	46,32,902.00
		14-Aug-22	14/10/22	61	10.0000%	77,427	46,32,902.00
		14-Oct-22	14/11/22	31	10.2500%	40,332	46,32,902.00
		14-Nov-22	14/12/22	30	10.3500%	39,411	46,32,902.00
		14-Dec-22	28/02/23	76	10.6000%	1,02,254	46,32,902.00
TOTAL	46,32,902			1947		20,44,045	

Statement of amount paid to the bank by the complainant as on 28.02.2023

Date of remittance to Bank	Amount	End date (MCLR Change)	Number of days	Interest @ SBI MCLR + 2%	Interest amount	Principal amount outstanding
12-Feb	53550	28/02/18	16	10.10%	237	53,550
28-Feb		10/03/18	10	10.35%	152	53,550
10-Mar		12/03/18	2	10.35%	30	53,550
12-Mar	93713	10/04/18	29	10.35%	1,211	1,47,263
10-Apr	103753	10/05/18	30	10.35%	2,135	

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						2,51,016
10-May	100406	01/06/18	22	10.35%	2,192	3,51,422
01-Jun		10/06/18	9	10.45%	906	3,51,422
10-Jun	103753	10/07/18	30	10.45%	3,910	4,55,175
10-Jul	100406	10/08/18	31	10.45%	4,931	5,55,581
10-Aug	106519	31/08/18	21	10.45%	3,981	6,62,100
31-Aug		10/09/18	10	10.65%	1,932	6,62,100
10-Sep	107481	01/10/18	21	10.65%	4,716	7,69,581
01-Oct		10/10/18	9	10.70%	2,030	7,69,581
10-Oct	104014	10/11/18	31	10.70%	7,939	8,73,595
10-Nov	107481	10/12/18	30	10.70%	8,628	9,81,076
10-Dec	104014	10/01/19	31	10.75%	9,907	10,85,090
10-Jan	107481	10/02/19	31	10.75%	10,888	11,92,571
10-Feb	110247	10/03/19	28	10.75%	10,744	13,02,818
10-Mar	100446	10/04/19	31	10.75%	12,812	14,03,264
10-Apr	111209	10/05/19	30	10.70%	13,319	15,14,473
10-May	107621	10/06/19	31	10.65%	14,672	16,22,094
10-Jun	111209	10/07/19	30	10.65%	15,172	17,33,303
10-Jul	107621	10/08/19	31	10.60%	16,573	18,40,924
10-Aug	109365	10/09/19	31	10.45%	17,309	19,50,289
10-Sep	108723	10/10/19	30	10.35%	17,516	20,59,012
10-Oct	105216	10/11/19	31	10.25%	18,841	21,64,228
10-Nov	108723	10/12/19	30	10.20%	19,055	

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						22,72,951
10-Dec	105216	10/01/20	31	10.20%	20,602	23,78,167
10-Jan	108723	10/02/20	31	10.20%	21,544	24,86,890
10-Feb	104114	10/03/20	29	10.15%	20,895	25,91,004
10-Mar	95897	10/04/20	31	10.05%	22,934	26,86,901
10-Apr	102511	10/05/20	30	9.70%	22,239	27,89,412
10-May	99204	10/06/20	31	9.55%	23,429	28,88,616
10/06/20	102511	10/07/20	30	9.30%	22,864	29,91,127
10/07/20	99204	10/08/20	31	9.30%	24,409	30,90,331
10/08/20	97901	10/09/20	31	9.30%	25,183	31,88,232
10/09/20	1,10,626	10/10/20	30	9.30%	25,216	32,98,858
10/10/20	1,10,626	10/11/20	31	9.30%	26,930	34,09,484
10/11/20	1,10,626	10/12/20	30	9.30%	26,907	35,20,110
10/12/20	1,10,626	10/01/21	31	9.30%	28,678	36,30,736
10/01/21	1,10,626	10/02/21	31	9.30%	29,552	37,41,362
10/02/21	1,10,626	10/03/21	28	9.30%	27,481	38,51,988
10/03/21	1,05,027	10/04/21	31	9.30%	31,255	39,57,015
10/04/21	1,05,027	10/05/21	30	9.30%	31,050	40,62,042
10/05/21	1,05,027	10/06/21	31	9.30%	32,914	41,67,069
10/06/21	1,05,027	10/07/21	30	9.30%	32,655	42,72,096
10/07/21	1,05,027	10/08/21	31	9.30%	34,573	43,77,123
10/08/21	1,05,027	10/09/21	31	9.30%	35,403	44,82,150
10/09/21	1,04,623	10/10/21	30	9.30%	35,061	

10/10/21

10/10/21

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						45,86,774
10/10/21		10/11/21	31	9.30%	36,229	45,86,774
10/11/21		15/12/21	35	9.30%	40,904	45,86,774
15/12/21		14/04/22	120	9.30%	1,40,242	45,86,774
14/04/22		14/05/22	30	9.40%	35,438	45,86,774
14/05/22		14/06/22	31	9.50%	37,008	45,86,774
14/06/22		14/07/22	30	9.70%	36,569	45,86,774
14/07/22		14/08/22	31	9.80%	38,177	45,86,774
14/08/22		14/10/22	61	10.00%	76,656	45,86,774
14/10/22		14/11/22	31	10.25%	39,930	45,86,774
14/11/22		14/12/22	30	10.35%	39,019	45,86,774
14/12/22		28/02/23	76	10.60%	1,01,236	
	45,86,774		1,842		14,44,920	

Abstract of total amount receivable from builder for amount paid to builder and bank.

	Amount	Interest	Total
Part I: Amount refundable by the builder			
	46,32,902	20,44,045	66,76,947
Part II: Amount paid to the Bank by the complainant to be refunded by builder			
	45,86,774	14,44,920	60,31,694
Total	92,19,676	34,88,965	1,27,08,640

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28. The respondent has not submitted any memo of calculation on his behalf inspite of providing sufficient opportunity.
29. The complainants have also sought for the relief of direction to the respondent to repay the balance outstanding loan amount availed from Axis bank by them through loan account No.PHR056102916548, including the principle and interest components, directly to the said bank.
30. **Our findings on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Accordingly, we 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/200307/0005447**, is hereby allowed as under.

1. The respondent/promoter is hereby directed to refund the amount of Rs. **92,19,676/-** with interest at the rate of SBI MCLR+2% from 30/10/2017 upto 28/02/2023 which comes to Rs. **1,27,08,640/-** to the complainants within 60 days from the date of this order.
2. Further, the interest due from 01/03/2023 till realization should be calculated likewise and paid to the complainants.

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

3. Further, the respondent is directed to clear the loan amount whatever is due from the complainants to Axis bank in loan account No.PHR056102916548.
4. Both the complainants are hereby directed to cooperate with the respondent for cancellation of agreement of sale and construction agreement dated 18/11/2017 on receipt of entire amount as directed to be refunded by the respondent.
5. The complainants are at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to costs.


(Neelamani N Raju)
Member
K-RERA


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

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