

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 3rd October 2022

Present

Shri. H.C. Kishore Chandra, Chairman

COMPLAINT No: CMP/220420/0009371

COMPLAINANT.....

**Chockkalingam
Karpagavinayagam
E-601, Pride Apartments,
Bilekahalli
Bengaluru-560 0076.
(represented by Mr. Muthu
Subramanian & Mr. Sunil
Shastry, Advocates)**

V/S

RESPONDENT.....

- 1. R. Narayanaswamy**
Mittal Tower, 109-B
First Floor, M.G. Road
Bengaluru-560 001
- 2. R. Basavaraju**
Mittal Tower, 109-B
First Floor, M.G. Road
Bengaluru-560 001.
- 3. R. Nagaraj**
Mittal Tower, 109-B
First Floor, M.G. Road
Bengaluru-560 001
- 4. M/s Trishul Developers**
Mittal Tower, 109-B
First Floor, M.G. Road
Bengaluru-560 001



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(represented by
Mr. M Umashankar
Kavitha & Poojith, Advocates)

JUDGEMENT

1. Mr. **Chokkalingam Karpagavinayagam** had filed a complaint against the respondent promoter of **M/s Trishul Developers**. The promoter has developed a project called "**Mittal Palms**" in the limits of Sy.No: 31,32, 33, Shivanahalli Village,Bengalure North, Bengaluru Urban. This complaint is registered in CMP/211022/0008466. The complainant sought relief of refund with interest.
2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/309/PR/180328/0000585.
3. The gist of the complaint filed by the complainant is as under:
4. It is submitted that the complainant represented by his mother and power of attorney, Lalitha Karpagavinayagam is one of the allottees in the township project "Mittal Palms" having been allotted Flat No. D-204 situated at No.3, 2/3, Shivanahalli, Yelahanka Hobi, Bengaluru North.
5. It is submitted that the complainant in the year 2011 came across the ~~advertisement placed in the media by the respondent about the "Mittal Palms"~~ project, booked the Flat no. 203 on the 2nd floor, "E" Block,(subsequently changed to Flat No.D-204 on 24/08/2015) in the "Mittal Palms".
6. It is submitted by the complainant that he has paid initial advance of Rs.3,00,000/- to the respondent towards the booking of flat. The complainant contends that subsequently the respondent has issued an allotment letter for Flat No. E-203 and has acknowledged the initial payment



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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made by him. The total sale consideration of the flat is said to be Rs.52,05,000/- along with covered car parking inclusive of VAT.

7. It is submitted that the complainant had entered into an agreement of sale on 28/08/2011 with the land owners, represented by their power of attorney, for the purchase of 0.502% undivided share out of the schedule property and also entered into a construction agreement with the 5th respondent for the construction of the Flat-E-203. The complainant obligated to deliver the possession of the flat 30 months from the date of construction agreement i.e. March 2014.
8. It is submitted that on 06/05/2013, the aforesaid agreement of sale was rectified by a deed of rectification wherein the undivided share of the complainant was reduced from 0.502% to 0.489% or 708.03 sq.ft of the schedule-B extent and a corresponding reduction in the cost of undivided share from Rs.27,53,400 to Rs.27,30,000/-.
9. It is submitted that in August 2015, the respondent indicated that there might be construction in the open space which might obstruct air and light to Flat E-203 and consequently the complainant changed the allotment of Flat E-203 to Flat-D-204 and a fresh agreement of sale and construction agreement was executed thereupon.
10. It is submitted that, as per revised agreements, the cost of land was fixed at Rs.27,30,000/- and the cost of construction was fixed at Rs.27,30,000/- in all total sale consideration of Rs.52,05,000/-. It is further stated that though the initial date of delivery as per first agreement (in April 2014 for Flat E-203) was to be in March 2014, fifth respondent did not deliver the possession of the flat. The complainant contends that, after a fresh agreement (in August 2015 for Flat D-204) was executed, in which payment of 95% of the cost was acknowledged by the respondent, the respondent miserably failed to deliver the flat till date.

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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11. It is submitted by the complainant that despite payment of the bulk of cost, the respondent has not completed the flat as per their commitment and hence having lost confidence with the respondent, prayed for refund of amount with interest. Hence this complaint.
12. After registration of the complaint, in pursuance of notice, the respondents have appeared before this Authority through their counsels Mr. M. Umashankar, Kavitha and Poojith and filed written submissions on 17/06/2022 and 30/07/2022 as under:
13. The respondents deny the entire allegations made against them by the complainants as false.
14. It is submitted that the complainant has alleged that the project is delayed and has sought for the refund of Rs.49,42,605/- with interest from 01.04.2014 to 31.01.2022 amounting to Rs.69,69,0783/- and further interest of 12% on the total amount from the date of filing the complaint upto the date of repayment.
15. It is submitted that the complainant initially booked a flat bearing No.203 in the second floor of E-block on 28.08.2011 and on the same day entered into a construction agreement. It is further submitted that under two separate deeds of rectification both dated 06.05.2013, the of UDS and the sale consideration under the sale agreement and construction was rectified.
16. It is submitted that as there was a possible obstruction of the light and air to the Flat bearing No.E-203, on the request of the complainant the respondent through not obligated, agreed to cancel the earlier sale agreement & construction agreement both dated 24.08.2015 for the Flat bearing No. D-204 and adjusted the consideration paid under the earlier agreement.

Asf

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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17. It is submitted that, under the construction agreement, the respondent would endeavour to construct and deliver the apartment bearing No: D-204 to the complainant within 30 months from the date of execution of the agreement.
18. The respondents contend that the agreement stipulates the date of delivery of the completed apartment is subjected to variation on account of Force Majeure i.e. due factors beyond control of the respondents.
19. It is submitted that for the purpose of the project, respondents applied for and obtained all the necessary consents and approvals including from the Airport Authority of India, BWSSB, State Environment Impact Assessment Authority, BESCOM, Police Department, Jakkur Flight Club, BSNL, KSPCB etc.
20. It is pertinent to note that, by an Order dated 10.05.2013, the BDA de-notified the lands adjacent to the property, in which the 16th main road had been formed by the BDA as a result of which the original land owners sought to block the road which was the access to the property. The respondents challenged the order of de-notification in W.P. No: 18300-304/2014 before the Hon'ble High Court of Karnataka, Bangalore, by an order dated 16.04.2014, the Hon'ble High Court of Karnataka granted an interim order of Status Quo.
21. It is submitted that without any notice to the respondents, the BBMP issued an Order dated 28.08.2014, cancelling the sanctioned plan on the alleged ground that the property has lost its road access. It is further submitted that the respondents have challenged the BBMP's action, before the Hon'ble High Court of Karnataka at Bangalore vide W.P. No: 53809-13/2015. It is further contended that in W.P. 18300-304 of 2014, the respondents entered into an agreement/compromise with the landowners and in lieu of the arrangement the landowners have released and relinquished the land pertaining to 12.2 meter-wide road through which the respondents shall have an access to the property.

Ans 8

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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22. It is submitted that the Hon'ble High Court of Karnataka vide its Order dated 08.04.2021 allowed the W.P. No:53809/2015 setting aside the order dated 28.08.2014, cancelling the sanctioned plan and has restored the sanctioned plan dated 26.04.2014 which was subsequently modified on 26.11.2011 and 21.02.2013.
23. It is submitted that after having secured the road access and the sanction plan being restored, they undertake to complete the structure and hand over the possession of the dispute flat to the complainant and prayed to dismiss the complaint.
24. In support of the claim, the complainant has produced documents such as (a) allotment letter dated 18.04.2011 (b) change of flat to D-204 at Mittal Palms dated 14.08.2015 (c) GPA in favour of Smt. Lalitha Karpagavinayagam (d) Details of receipts towards payment made to the respondent (e) agreement of sale dated 24.08.2015 (f) Memo for calculation.
25. In support of defence, the respondent has produced documents such as (1) Registration Certificate issued by RERA (b) Sale of agreement and construction both dated 28.08.2011, (c) Deed of rectification both dated 06.05.2013 (d) agreement of sale and construction for the flat 204 dated 24.08.2015 (e) Copy of Order dated 04.09.2018 and Relinquishment Deed dated 12.04.2018 (f) copy of the Order dated 08.04.2021 in WP No: 53809/2013 (g) Memo dated 29.7.2022 filed by respondent enclosing copy of order passed by the Hon'ble High Court of Karnataka in W.P.No: 53809/2013 (h) Memo dated 04.07.2022 with regard to BDA having de-notified the lands adjacent to the property.
26. Heard both the parties.
27. On the above averments, the following points would arise for my consideration.





ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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

29. My findings on the above points are as under:

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

31. **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".

108

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ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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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, plot, 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 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 complainant herein for refund with interest.

Having regard to all the aspects, I conclude that the complainant is entitled for refund with interest. Therefore it is incumbent upon the respondent to refund the amount with interest.

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

33. My findings on point no.2: In view of the above discussion, the complaint deserves to be allowed. Hence, I proceed to pass the following order.

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ORDER

In exercise of the powers conferred with the Authority u/s 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/220420/0009371** filed u/s 31 of the Act is hereby allowed.

1. The respondent is hereby directed to refund amount of Rs.**49,42,605** (Forty nine lakhs forty two thousand six hundred and five only) along with interest calculated at the rate of 9% per annum from 06.04.2011 to 30.4.2017. Further at the rate of SBI MCLR + 2% per annum commencing from 01.05.2017 till the date of realization.

2. 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.

No order as to costs.



(H.C. Kishore Chandra)

CHAIRMAN
K-RERA

18-10-19