

**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 3<sup>rd</sup> OCTOBER 2022**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.:CMP/210618/0008012**

**COMPLAINANT.....**

**MRS.V. SUMA  
NO.A 43, RANKA AQUA  
GREEN APARTMENTS  
HARSHA LAYOUT  
KENGARI  
BENGALURU-560060.**

**V/S**

**RESPONDENT.....**

**APPLE SPIRE INDIA LLP  
No.11/2, KR ROAD  
BASAVANAGUDI  
Bengaluru-560004.**

**(By Mr.E. Suhail Ahmed, Trial Base  
Advocates)**

**J U D G E M E N T**

This complaint is filed under section 31 of the RERA Act against the project "Birla Apple Spire" for the relief of refund with interest.

**Brief facts of the complaint are as under:-**

1. The complainant has initially booked a Flat No.1908 on the 19<sup>th</sup> Floor in the project "Birla Apple Spire" of the respondent and entered into an agreement of sale and construction agreement on 14/3/2018 and later changed to Flat No.102 by entering into another agreement of sale and construction agreement on 18/7/2018 and has paid an amount of Rs.1,04,00,000/-

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(Rupees One Crore Four Lakh only) (including loan from ICICI Bank) to the respondent till date. At the time of agreement, the respondent had informed that Flat No.102, 1<sup>st</sup> Floor has balconies, utilities and floor plans for all the floors are one and the same. But the above facts are inconsistent with the plan sanctioned by the BBMP. As per the sale and construction agreement dated 18/7/2018, the respondent was supposed to hand over the possession of the flat by the end of December 2018 with a grace period of three months. The project validity as per RERA registration is upto 30/9/2019 and has not been renewed further. So far no occupancy certificate has been obtained. The respondent has not provided balcony as promised in the sale of agreement. Hence, this complaint.

2. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and contested the matter by filing statement of objections as under:

It has denied entire allegation made against it by the complainant as false. The respondent submits that the complainant was allotted an apartment on the 19<sup>th</sup> floor and agreements were executed on 14/3/2018. For the reasons best known to the complainant, she chose to shift to Flat No.102 on the 1<sup>st</sup> Floor and executed agreements on 18/7/2018. As per the request of the complainant, the respondent at its own cost carried out certain modifications in the apartment as required by the complainant. The respondent sent demand notes to the complainant requesting her to make payment of outstanding dues to the Respondent. The complainant through an email dated 4/4/2021 sought for cancellation of booking and refund with interest. The respondent also submits that on 20/4/2021 a reply was sent through Registered Post to the complainant narrated the entire sequence of events and clarified all the allegations made by her against it

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and requested the complainant to come forward for a detailed discussion and also hand over a duly signed written letter for cancellation of the booking in order to deal with the same.

Further the respondent admits that there is a delay in completion of the development works in the project viz., economic slowdown, the contractor of the project abandoning the work, covid pandemic which were beyond the control of the Respondent. In spite of these obstacles, the project is completed and Occupancy Certificate as on 14/1/2022 has been obtained from the concerned Authority. When the apartment is ready to be delivered, the complainant claims to have already purchased another apartment and is seeking cancellation and refund of full amount with interest. The complainant has chosen to file the complaint with the sole intention of making an unlawful gain. As such, the respondent prays that complaint filed by the complainant deserves to be dismissed in the interest of justice and equity.

3. The complainant in her rejoinder to the objections filed by the respondent has stated that the respondent has not produced BBMP sanctioned plan copy and have not disclosed to the complainant that there is no balcony in the BBMP sanctioned plan. The respondent contention that the case is not maintainable and outside the jurisdiction of RERA is not acceptable as the project was granted registration by RERA and after the validity expired the respondent has not renewed or got extension from RERA. The complainant denies of any modifications being carried out in Flat No.1908 and Flat No.102 and that the change of flat was agreed on mutual basis. The complainant alleges that though all out efforts were made to resolve the issue with the respondent, every time the respondent instead of resolving the issue, was making false promises and resorted to using coercive and



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threatening methods and prays for refund, relief for mental harassment and cost of this complaint.

4. In support of her claim, the complainant has produced in all 8 documents such as copies of Sale Agreement, Construction Agreement, Ledger statement and Receipts issued by Apple Spire India LLP, Payment receipts, email correspondences with the Respondent, copy of original sanction plan by BBMP, copy of plan furnished by the Respondent and memo of calculation for refund with interest as on 10/07/2022.
5. In support of their defence, the respondent has produced in all 5 documents such as copies of email correspondences with the complainant, Letter dated 11/8/2020 demanding outstanding payment, email dated 4/4/2021 of the complainant seeking refund with interest and to exit the project, Letter dated 20/4/2021 sent to complainant in response to her email dated 4/4/2021, email dated 4/4/2018 from the complainant seeking modifications in the apartment.
6. Heard arguments of both sides.

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

1. Whether the complainant is entitled for the relief claimed?
2. What order?

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

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

## REASONS

9. **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



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possession of the apartment to the complainant, the builder has not handed over the possession of the flat even after a delay of more than three years. At the time of booking the apartment, the builder had informed the complainant that Flat No.102 on the First Floor has balcony and that the floor plans for all the floors are same. The complainant submits that the builder has failed to keep up his assurance and that without getting the RERA registration renewed the respondent cannot sell the apartments as its validity has expired on 30/9/2019. The respondent has obtained Partial Occupancy Certificate from BBMP on 14/01/2022. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 18/07/2018.

10. 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.
11. 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.
12. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid the sale consideration amount. Having accepted the said amount and failing to keep up promise to handover possession of apartment with specifications as agreed, certainly entitles the complainant herein for refund with interest. The complainant has filed her memo of calculation as on 10/07/2022



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claiming an amount of Rs.1,44,20,682/- as refund with interest. During the process of the hearing on 3/8/2022 the respondent Advocate suggested for mediation to resolve the issue with the complainant. On 25/8/2022 it was informed by both the complainant and the respondent that the mediation efforts to resolve the issue failed and the complainant requested for refund of the amount with interest. The respondent has not filed their memo of calculation but instead have made an appeal in their objections that the Authority may consider payment of delay period interest to the complainant. A thorough verification of the documentary proof submitted by the complainant reveals that her claim is genuine. The respondent has also accepted in their statement of objections that they have received Rs.1,04,00,000/- from the complainant. Having regard to all these aspects, the Authority concludes that the complainant is entitled for refund of an amount of Rs.1,44,20,682/- including interest as on 10/07/2022 as claimed by them in their memo of calculation.

13. 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	NO OF DAYS TILL	INTEREST @9%
1	30-04-2017	1	0	30-04-2017	0
2				TOTAL INTEREST ( I1 )	0

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	0	1896	10-07-2022	8.15	10.15 as on 01-05-2017	0

*Handwritten signature*

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,**

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2	09-03-2018	25,00,000	1584	10-07-2022	8.35	10.35 as on 01-03-2018	11,22,904
3	06-04-2018	10,00,000	1556	10-07-2022	8.35	10.35 as on 01-04-2018	4,41,221
4	19-09-2018	5,00,000	1390	10-07-2022	8.65	10.65 as on 01-09-2018	2,02,787
5	05-10-2018	30,00,000	1374	10-07-2022	8.7	10.7 as on 01-10-2018	12,08,367
6	08-02-2019	4,00,000	1248	10-07-2022	8.75	10.75 as on 10-01-2019	1,47,024
7	15-06-2019	2,50,000	1121	10-07-2022	8.65	10.65 as on 10-06-2019	81,771
8	17-06-2019	3,50,000	1119	10-07-2022	8.65	10.65 as on 10-06-2019	1,14,275
9	03-07-2019	4,00,000	1103	10-07-2022	8.65	10.65 as on 10-06-2019	1,28,733
10	08-07-2019	10,00,000	1098	10-07-2022	8.65	10.65 as on 10-06-2019	3,20,375
11	01-12-2019	3,00,000	952	10-07-2022	8.2	10.2 as on 10-11-2019	79,811
12	01-01-2020	2,00,000	921	10-07-2022	8.2	10.2 as on 10-12-2019	51,475
13	14-02-2020	5,00,000	877	10-07-2022	8.15	10.15 as on 10-02-2020	1,21,939
14	TOTAL AMOUNT	1,04,00,000				TOTAL INTEREST ( I2 )	40,20,682

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 10-07-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
1,04,00,000	40,20,682	0	1,44,20,682

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

*(Signature)*

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15. **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/210618/0008012** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,44,20,682/- (Rupees One Crore Forty Four Lakh Twenty Thousand Six Hundred and Eighty Two only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 01/05/2017 till 10/07/2022 to the complainant within 60 days from the date of this order. The interest due from 11/07/2022 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, KRERA