

KARNATAKA REAL ESTATE REGULATORY AUTHORITY, BENGALURU

FIFTH ADDITIONAL BENCH

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**SHRI.D.VISHNUVARDHANA REDDY
HON'BLE MEMBER-1**

COMPLAINT NO.CMP/200227/0005581

DATED THIS 15TH DAY OF OCTOBER, 2022

COMPLAINANTS : Ms.Sarika Basavaraj Sammatshetti
Gandhi Market
Chikkodi : 591 201

RESPONDENT / : M/s.Chinmay Developers
PROMOTER 1st Floor, Kagale Complex
N.M. Road, Indiranagar
Chikkodi : 591 201

PROJECT NAME & : GIRIJAPURI LAYOUT
REGISTRATION NO. PRM/KA/RERA/1249/367/PR/
200109/003140

J U D G E M E N T

This complaint is filed under Sec-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project GIRIJAPURI LAYOUT praying for a direction to Refund the amount paid with Interest.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. The complainants have entered into an agreement of sale on 28.09.2012 for purchase of a plot measuring 30 x 40 ft for a total sale consideration of Rs.4,22,999/- payable in instalments as per the agreement. The project completion date as per the agreement is 60 months with amenities such as providing Tar Road, Water Tank, Road Lamps, Underground drainage, open ground drainage, garden and play

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grounds. Since there was delay in handing over the plots, the complainant has filed the above complaint before the Authority praying for refund of the amount paid together with interest.

2. The Respondent has failed to appear before the Authority on three occasions 08.06.2022, 23.06.2022, 13.7.2022. During the hearing on 13.7.2022, the Authority has directed the complainant to take substituted service through news paper publication to serve the respondent to appear on the next date of hearing. Accordingly, the Complainant has taken the substituted service of publishing the notice through news paper, published in Kannada Prabha on 16.7.2022 directing the respondent to appear before the Authority for hearing on 23.8.2022. On 23.8.2022 the advocate for the Respondent entered appearance and has undertaken to file vakalat before next date of hearing i.e., on 14.9.2022. On 14.09.2022, the advocate for respondent sought time to file statement of objections. One week time was granted to respondent for filing the statement of objections. The Advocate for respondent has filed statement of objection on 29.09.2022.
3. The complainant has submitted before the Authority that even after almost 10 years, there is hardly any progress in the project and therefore complainant has exercised the option of exiting from the project and sought for refund of the amounts paid with interest payable as per the provisions of the Act and Rules.
4. On a perusal of the sale agreement, it is seen that the completion date agreed is 60 months. Accordingly the promoter-respondent was required to complete the project and hand over possession of the plot by 28-09-2017. Since the respondent-promoter has failed to complete or unable to handover the possession of the plot with all the amenities

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mentioned in the agreement to the allottee, this complaint is admissible for relief in accordance with Section 18 of the Act.

5. The respondent has filed its statement of objections dated 29.09.2022 before the Authority. In support of its contention, the respondent has stated that the copies of the sale deeds executed with the allottees are enclosed. It was also found that there was no sale deed copy enclosed along with statement of objections, which is contrary to the claim of the respondent. In addition, the sale agreement date is also wrongly mentioned as 30.04.2019 without enclosing any copy of the sale agreement. On the other hand the complainant has produced a copy of the sale agreement dated 28.09.2012 wherein it is stated that the completion period of the project is 60 months. The said period of 60 months is lapsed long back and hence the complainant has sought for refund of the amount paid together with interest. The complainant has also submitted memo of calculation for refund with interest.
6. As per Section 18 of PERA 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.
7. Therefore, as per Section 18 of the Act, the promoter is liable to return the amount received along with interest.
8. From the averments made in the complaint, it is obvious that complainant has paid the amounts towards the sale consideration and is entitled to get the refund amount together with interest as per the memo of calculation submitted by the Complainant. The Promoter-Respondent has not submitted any memo of calculation.

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

Memo of Calculation by the Complainant as on 05.09.2022

Principle amount (A) Rs.	Interest (B) As on 05.09.2022 Rs.	Refund from Promoter (C)	Total Balance Amount (A+B) Rs.
3,55,000	2,60,596	NIL	6,15,596

And accordingly the Authority passes the following:

ORDER

In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint Bearing **NO.CMP/200227/0005581** is hereby allowed. Respondent is directed to refund a sum of **Rs. 6,15,596/- (Rupees Six lakhs fifteen thousand five hundred ninety six only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated from 01/05/2017 till 05.09.2022.

The interest due from 06.09.2022 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are 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.


(D.VISHNUVARDHANA REDDY)
MEMBER-1
FIFTH ADDITIONAL BENCH
K-RERA