

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 2ND NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/210221/0007301

COMPLAINANT.....

**MRS.K.S. SHASHIKALA
18, PANCHAMUKHI NILAYA
6TH CROSS, ECC ROAD
PRITHVI LAYOUT
WHITEFIELD
BANGALORE-560066.**

(Attended through Skype)

Vs

RESPONDENTS.....

**MR. DINESH S GOWDA
74, 2ND FLOOR, 12TH MAIN
3RD BLOCK, RAJAJINAGAR
BANGALORE-560010.**

*** * * * ***

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the residential project "BRINDAVAN PROPERTIES" for the relief of refund with interest.

Brief facts of the complaint are as under:-

2. The complainant had booked for two plots in the project of respondent and entered into an agreement of sale on 27/03/2019 and has paid an amount of Rs.10,50,000/- (Rupees Ten Lakh Fifty Thousand only) to the respondent. The respondent had assured to allot plots within three months

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

i.e. by 27/9/2019. Though more than three years has lapsed, the respondent has neither allotted plot nor refunded money. The complainant submits that he has come to know that the plots are under litigation and the project is also not registered under RERA. The complainant asked the respondent to return the amount, the respondent offered that another plot will be given instead of the one which had been booked. The respondent has also failed to provide copies of the documents for verification. The complainant is paying interest to the amount borrowed. The complainant has also served legal notice dated 25/1/2021 on the respondent. According to the complainant, the respondent is also missing and police cases have been on against the respondent. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has not appeared before the Authority either through his representative or counsel and has also not contested the matter either by filing statement of objections or producing documents on his behalf.
4. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, Payment Receipts, Legal Notice dated 25/1/2021 sent by the complainant to the respondent, Reply dated Nil from Respondent-1 and memo of calculation as on 28/8/2022.
5. Heard arguments of both sides.
6. 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?

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

Relief

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

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

REASONS

3. **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 allot two plots and complete the sale transaction within 180 days from the date of agreement of sale i.e. 27/3/2019, the respondent has failed to handover the plots and execute sale deed and registration in favour of the complainant. Hence, the developer has failed to abide by the terms of the agreement for sale and to refund the amount to the complainant.
4. 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.
5. 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.
6. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has paid the sale consideration amount for purchase of plots. Having accepted the said amount and failure to keep up promise to handover possession of plots and execution of sale deed and registration, certainly entitles the complainant herein for refund with interest. The complainant vide her

Handwritten signature/initials

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

memo of calculation as on 28/8/2022 has claimed an amount of Rs.14,36,558/- as refund with interest. The respondent has not filed his memo of calculation till date. The respondent is directed to get the project registered under RERA immediately. Having regard to all these aspects, the Authority concludes that the complainant is entitled for refund with interest as claimed by her vide her memo of calculation.

7. 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	0	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	1945	28/08/2022	8.15	10.15 as on 01-05-2017	0
2	27/03/2019	10,50,000	1250	28/08/2022	8.75	10.75 as on 10-03-2019	3,86,558
3	TOTAL AMOUNT	10,50,000				TOTAL INTEREST (I2)	3,86,558

relu

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


Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 28-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
10,50,000	3,86,558	0	14,36,558

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

9. **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/UR/201221/0007301** is hereby allowed. Respondent is directed to pay a sum of **Rs.14,36,558/- (Rupees Fourteen Lakh Thirty Six Thousand Five Hundred and Fifty Eight only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 27/03/2019 till 28/08/2022. The interest due from 29/08/2022 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
K-RERA

NOT AN OFFICIAL COPY