

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

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**PROCEEDINGS OF THE AUTHORITY**

**DATED 7<sup>th</sup> November 2022**

**COMPLAINANT NO. CMP/190702/0003376**

**COMPLAINANT.....**

**A. Nirmal Raj**  
301, Cheroy Manor  
15<sup>th</sup> Cross, "C" Street  
Hutchins Road  
St. Thomas Town  
**Bengaluru-560 084.**

(represented by Sri.M.  
Mohan Kumar, Advocate)

V/s

**RESPONDENT.....**

1. **M/s Chowriappa  
Construction Private  
Limited**  
No.41, 6<sup>th</sup> Floor, Chirstu  
Complex, Lavelle Road  
**Bengaluru-560 001.**
2. **Ashok Chowriappa**  
No.41, 6<sup>th</sup> Floor, Chirstu  
Complex, Lavelle Road  
**Bengaluru-560 001.**
3. **Preethi Chowriappa**  
No.41, 6<sup>th</sup> Floor, Chirstu  
Complex, Lavelle Road  
**Bengaluru-560 001.**

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6/9/22

10/11/22

11/11/22

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4. **Cherian A Paul**

Villa #90, 10 Downing,  
Sai Baba Ashram Road  
Kannamangala  
Whitefield  
**Bengaluru-560 067**

5. **Saramma Cherian Paul**

Villa #90, 10 Downing,  
Sai Baba Ashram Road  
Kannamangala  
Whitefield  
**Bengaluru-560 067**

(represented by Mr. Noor  
Mohammed, Advocate for R1  
R2-R3, Mr. Anand Murthy  
Advocate for R4- R5)

**JUDGEMENT**

1. This complaint is filed under section-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project “ **Chowriappa Constellation**” developed by “ **M/s Chowriappa Constructions Private Limited**” in the limits of BBMP Khatha bearing No.5, converted survey no. 34/1, Geddalhalli Village, Horamavu Ward, Bengaluru East Taluk, Bangalore for relief of refund with interest.

3. This project has been registered under RERA bearing registration no. PRM/KA/RERA/1250/303/PR/170803/001022.

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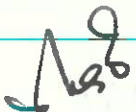
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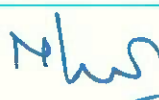
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4. Earlier, this matter was heard by the Adjudicating Officer who has passed an order. As against these orders, the complainant has preferred appeal before the K-REAT which has remanded back all the appeals setting aside the orders of the Adjudicating Officer for fresh consideration by the Authority in view of judgement of Hon'ble Supreme Court in M/s. Newtech Promoters and Developers Pvt. Ltd., v/s. State of UP and others (2021).

5. **The brief facts of the case are as under:** The complainant has entered into an agreement of sale and construction both dated 04.04.2013 towards the purchase of the flat no. 704 in the 7<sup>th</sup> floor, in the project "**Chowriappa Constellation**" of the respondent. The complainant has paid an amount of Rs.60,00,00/- (Rupees Sixty lakhs only) to the respondent till date. As per the agreement, the project was required to be completed and handed over within 26 months from the date of agreement by 04.06.2015. However, the project could not be completed and possession of the flat was not handed over to the allottee within the specified timeline. The complainant, alleging that the promoter has failed to keep up his promise in handing over possession of the apartment within the specified timeline and there is deliberate delay on the part of the promoter, filed a complaint with the RERA under section 31 of the Act praying for refund of the amount paid together with interest.





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6. Respondent-1 is the company whereas R2 & R3 are its directors. R-4 and R-5 are the land owners who have entered into joint development agreement.

7. After registration of the complaint, in pursuance of notice served, the respondents 1 to 3 have appeared before the Authority through their counsel Mr. Noor Mohammed and respondents no. 4 & 5 through their counsel Mr. Anand Kumar, Advocate and have filed their respective objections as under:

8. **Objections filed by respondents 1 to 3:** The respondents have denied all the allegations made against it by the complainant as false. It is submitted that the complainant has entered into an agreement of sale and construction with respondent no.1 to purchase a residential apartment unit no.704 constructed on the 7<sup>th</sup> floor of the said project. Further, the complainant never contacted the respondent no.1 regarding the status of the project.

9. It is submitted that earlier complainant had filed RERA complaint before the Hon'ble Authority in complainant bearing No. CMP/180107/0000383 and that proceeding was ended with amicable settlement between the parties in view of settlement between the parties entered MOU dated 29/03/2018.

10. It is submitted that in terms of MOU dated 29/03/2018, respondent no.1 to 3 have paid a sum of Rs.15,00,000/- (Rs. Fifteen lakhs) as follows:



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- a) A sum of Rs.5,00,000/- by way of RTGS on 26/04/2018
- b) A sum of Rs.5,00,000/- by way of DD dated: 28/5/2018
- c) A sum of Rs.5,00,000/- by way of cheque dated 26/06/2018.

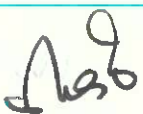
Further, the above said payments have been acknowledged by the complainant through letter dated 26/06/2018.


11. It is submitted that in terms of settlement between complainant and respondents in earlier complaint, complainant failed to execute the cancellation deed in spite of several request by the respondent. Hence it is evident that the complainant has given a go by seeking any form of compensation from the respondents. In view of the same, the complainant is estopped from presenting the present complaint and hence prays to dismiss the complaint with cost.

12. **Objections filed by the respondents 4 & 5:** The respondents have denied all the allegations made against it by the complainant as false. It is submitted that these respondents had entered into joint development agreement dated 29/11/2020 with the respondent no.1 company and they have handed over their property for the purpose of development. Further, from time to time these respondents were requesting the respondent no.1 and its directors to complete the project as they are facing untoward hardship because of the respondent no.1.

13. Further, as per the joint development agreement, commencement and execution of development work and amenities lies with the

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developer and hence the landowners, the respondents no. 4 and 5 are not responsible for the construction activity. Hence, these respondent do not come under the purview of the definition of "Promoter" as defined under section 2(zk) of the RERA Act.

14. It is submitted that the present complainant had earlier approached this Authority in complaint no. CMP/18017/0000383 against respondent-1 and in that proceeding both the complainant and respondent-1 settled this issue and reported settlement. Hence, this Hon'ble Authority vide order dated 06/04/2018 disposed of the complaint. Hence the complainant only has to have relief against the respondent-1 if there is any breach of the memorandum of settlement and should not file a fresh complaint on the same cause of action against these respondents, and prays to dismiss the complaint.

15. In support of his claim, the complainant has produced documents such as (1) copies of sale agreement & construction (2) booking confirmation letter (3) MOU in which the Developer agreed to have received Rs.60.00 lakhs and refund with additional 10 lakhs. Paid only 15 lakhs in instalments and failed to pay the balance till date (4) payment details of of Rs.10 lakhs paid by the developer (5) All receipts, acknowledgements and bank statement extracts for the payment made (6) copy of interest calculation.

16. In support of his defence, the respondents 1 to 3 have produced documents such as (1) MOU dated 29/032018 (2) copy of the RTGS







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application (3) Copy of the DD (4) copy of the payment letter dated 26/06/2018;

17. This matter was heard on 23/08/2022 and on 12/10/2022.

18. As per Section 18 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.

19. Therefore, as per Section 18 of the Act, the promoter is liable to refund the amount received along with interest.

20. From the averments made in the complaint, it is obvious that complainant has paid advance sale consideration amount and is entitled to get the refund of the amount paid along with interest as per the memo of calculation submitted by the complainant. The promoter/respondent has not submitted any memo of calculation.

21. Considering the facts and circumstances of the present case, it is just and necessary to direct the respondent to refund the entire amount paid by the complainant with interest. Accordingly, the Authority orders the following:

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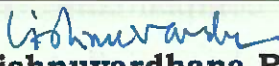
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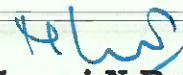
**ORDER**

In exercise of the powers conferred under section 18 of the Real Estate(Regulation and Development) Act, 2016, the complaint bearing no. CMP/190702/0003376 is hereby disposed of as under:

1. Respondent is directed to refund the entire principal amount of **Rs.59,59,854/- (Fifty nine lakhs, fifty nine thousand eight hundred fifty four only)** along with interest calculated at the rate of 9% per annum from 08/03/2013 till 30.04.2017. Further at the rate of SBI MCLR + 2 per annum 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.

  
(D. Vishnuvardhana Reddy)  
Member-1  
K-RERA

  
(Neelmani N Raju)  
Member-2  
K-RERA

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