

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 28th NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220111/0008776

COMPLAINANT.....

**MR. PRONOB KUMAR MANDAL
B1, KMB CLASSIC
9TH CROSS
CELEBRITY PARADISE LAYOUT
DODDATHOGHUR
ELECTRONIC CITY-1
BANGALORE-560 100.**

(In Person & through Skype)

V/S

RESPONDENT.....

**M/S. AZEEM INFINITE DWELLING
(INDIA) PVT LTD
NO.6, GM PEARL
1ST STAGE, 1ST PHASE
BTM LAYOUT
BANGALORE-560068.**

(By Sri.Akshay S Vasist, Advocate)

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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "GM ELEGANCE TOWER-1 (E-12)" developed by M/s. AZEEM INFINITE DWELLING (INDIA) PVT LTD within the limits of Hulimangala Village, Jigani Hobli, Anekal Taluk, Electronic City Phase-I, Anekal, Bengaluru Urban for the relief of refund with interest.



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2. This project is registered under RERA bearing registration No.PRM/KA/RERA/1251/308/PR/170928/001476 valid till 18/2/2021. Due to Covid-19, the Authority extended its registration till 18/11/2021.

Brief facts of the complaint are as under:

3. The complainant had booked an apartment A-07-08 Block-E-12 (A) in the project of the respondent on 19/9/2016 and the above unit was allotted through the respondent's allotment letter dated 19/9/2016. The sale and construction agreement was entered into on 27/3/2017. The complainant has paid an amount of Rs.14,60,500/- (Rupees Fourteen Lakh Sixty Thousand Five Hundred only) on various dates to the respondent. The respondent was supposed to handover the possession of the apartment to the complainant by 18/2/2020 (i.e. from the date of sanctioned plan 18/2/2017) with a grace period of six months i.e. latest by 18/8/2020. Despite the substantial total sale consideration has been paid to the respondent, the respondent failed to handover the possession of the apartment even after two years and thus failed to abide by the terms and conditions of the sale and construction agreement. The complainant submits that all his efforts to getting update or progress in construction went in vain as the respondent was not reachable through all modes of communication. The complainant also submits that the construction has been stalled at the basement for past several years. The complainant prays this Authority for refund of entire amount paid to the respondent along with interest. Due to the enormous delay caused by the respondent, the complainant has suffered monetary losses. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice and summons, the respondent has appeared before the Authority through its counsel and has filed statement of objections as under:
5. The respondent contends that the complaint is not maintainable and is liable to be dismissed and denied the allegations made by the complainant

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as false. The respondent submits that the delay in completion of the project was due to the Covid-19 pandemic during which time the labourers went back to their home towns and villages. The respondent contends that the complainant has not paid the entire sale consideration and increase in the cost of the raw materials used for construction has further delayed the completion of the project. The respondent further contends that the complainant has realized that the market value of the property has increased and is seeking compensation in accordance with the market value. The respondent submits that they are ready and willing to complete the said project and handover the possession of the apartment to the complainant, only if the complainant is ready and willing to pay the sale consideration as agreed by both the parties. The respondent prays this Authority to dismiss the complaint in the interest of justice and equity.

6. In support of his claim, the complainant has produced documents such as agreement of sale, construction agreement, allotment letter, payment receipts, Statement of account issued by CITI Bank, email correspondence with the respondent, and memo of calculation as on 08/09/2022.
7. The respondent has not filed any documents on its behalf.
8. Heard arguments of both sides.
9. On the above averments, the following points would arise for my consideration:
 - a. Whether the complainant is entitled for the relief claimed?
 - b. What order?
10. My answer to the above points are as under:-
 1. In the Affirmative.
 2. As per final order for the following

11. My answer to Point No.1:- From the materials placed on record, it is apparent that inspite of entering into an agreement of sale and construction to handover the possession of an apartment, the builder has not completed the



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project as per agreement and has delayed the project, and has failed to handover the unit in favour of the complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 27/3/2017. There seems to be no possibility of completing the project or handing over the possession of the apartment in the near future.

12. 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.

13. 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.

14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid substantial sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the complainant herein for refund with interest. The complainant has filed his memo of calculation as on 08/09/2022 claiming an amount of Rs.22,27,866/- as refund with interest. Despite opportunities given, the respondent has not filed its memo of calculation.

15. During the process of the hearing on 20/10/2022, the Authority directed the respondent to submit copy of valid RERA registration certificates and an affidavit regarding expected date of completion of the project, but the respondent refused to abide by the direction of the court regarding expected date of completion. The respondent counsel also said that they want to settle the matter before Lok Adalat. The Authority referred this matter to Registrar, KRERA with directions to both respondent and complainant to meet the Registrar for further

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needful. The Registrar, K-RERA reported that both the parties were present, settlement negotiations took place, but matter was not settled. Having regard to all these aspects and in view of the non-co-operation of the respondent, this Authority concludes that the complainant is entitled for refund with interest as per his memo of calculation as on 08/09/2022.

16. 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	20-09-2016	1,00,000	222	30-04-2017	5,473
2				TOTAL INTEREST (I1)	5,473

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	1,00,000	1956	08-09-2022	8.15	10.15 as on 01-05-2017	54,392
2	11-05-2017	3,17,300	1946	08-09-2022	8.15	10.15 as on 01-05-2017	1,71,706
3	13-06-2017	6,25,900	1913	08-09-2022	8.15	10.15 as on 01-06-2017	3,32,960
4	03-11-2017	2,17,300	1770	08-09-2022	8.1	10.1 as on 01-11-2017	1,06,429
5	01-12-2017	2,00,000	1742	08-09-2022	8.1	10.1 as on 01-12-2017	96,406
6	TOTAL AMOUNT	14,60,500				TOTAL INTEREST (I2)	7,61,893

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 08-09-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
14,60,500	7,67,366	0	22,27,866

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

18. 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/220111/0008776** is hereby allowed. Respondent is directed to pay the amount of **Rs.22,27,866/- (Rupees Twenty Two Lakh Twenty Seven Thousand Eight Hundred and Sixty Six only)** towards refund with interest calculated at 9% from 20/09/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 08/09/2022 to the complainant within 60 days from the date of this order. The interest due from 09/09/2022 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