

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 6TH DECEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/191219/0005023

COMPLAINANT.....

**LT.CDR. ARJUN SUBRAMANYAM
A-5/25, BDA MIG FLATS
DOMLUR
BANGALORE-560071.**

(Ms.N. Preethi, Advocate)

Vs

RESPONDENT.....

**DIRECTOR GENERAL
AIR FORCE NAVAL HOUSING BOARD
AIR FORCE STATION
RACE COURSE ROAD
DELHI - 110003.
CENTRAL DELHI**

(Mr. Govardhana Reddy, 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 "JAL VAYU TOWERS" for the relief of refund with interest.
2. This project is registered under RERA bearing registration number PRM/KA/RERA/1268/378/PR/171214/001637 valid till 31/8/2019, which was further extended by 12 months i.e. till 31/8/2020.

Brief facts of the complaint are as under:-

3. The complainant was allotted an apartment in the project of respondent at Mysore on 14/3/2013 vide respondent's allotment letter

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No.AFNHB/ADM/MYA0408. This scheme was launched in October 2012. The total sale consideration of the said unit was Rs.39.50 lakh, which was revised in August 2015 to Rs.58.10 lakh. The complainant had paid substantial sale consideration amount of Rs.27,00,000/- to the respondent on different dates. The respondent was supposed to handover possession of the apartment by early 2017 as stated in its allotment letter dated 14/3/2013. No agreement of sale has been executed by the respondent before or after receiving the money from the complainant. Subsequently, due to unforeseen issues, the complainant was forced to withdraw from the project and sent an email communication to the respondent to this effect on 16/4/2018. The respondent in its reply through an email dated 25/4/2018 conveyed that "Mysore scheme is under subscribed and refund cannot be processed as per policy of the Board. However, the complainant's application has been noted and is under consideration". Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice the respondent has appeared before the Authority through its counsel and filed written submission as under:
5. That the complainant has voluntarily applied for flat in the project of the respondent by accepting the terms and conditions of allotment. On 16/4/2018, the complainant due to unforeseen circumstances has applied for withdrawal from the project and refund of money. The respondent in its reply through an email dated 25/4/2018 conveyed that "Mysore scheme is under subscribed and refund cannot be processed as per policy of the Board. However, the complainant's application has been noted and is under consideration".

HL,

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6. The respondent further submits that "No withdrawal is generally permitted since the dwelling units are being constructed based on the demand of the allottees. Even if the withdrawal is permitted under special circumstances, the amount shall be refunded only when a new allottee who is waitlisted steps in the vacancy likely to be created by a withdrawal and pays the due instalment. No interest shall be paid on such refunds and cancellation charges as mentioned in the allotment letter dated 14/3/2013". The project is self funded and the amount contributed by the members has been used for the progress of the project. Hence, no funds are available with the respondent till a new member joins the scheme and contributes the amount. An email dated 5/9/2018 has been sent to the complainant regarding this aspect.
7. The respondent contends that the date of completion mentioned in the allotment letter dated 14/3/2013 was tentative which may be extended depending upon plan approvals and other force majeure situations which are beyond the control of the AFNHB, no interest or compensation will be paid to the allottees, as the scheme is self-financed and the Board is Welfare Organization on No Profit No Loss basis. The respondent prays this Authority to dismiss the complaint in the interest of justice and equity.
8. In support of his claim, the complainant has produced documents such as copies of Allotment Letter, Payment receipts, email dated 16/4/2018 requesting for withdrawal, email dated 25/4/2018 from the respondent and memo of calculation for refund with interest dated 29/08/2022.
9. In support of their defence, the respondent has produced Letter addressed to all Allottees regarding costing and instalment schedule, email dated 5/9/2018.
10. This case was heard on 14/9/2022, 19/10/2022 and 8/11/2022.

Hlw

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11. Heard arguments of both sides.
12. **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?
13. **My answer to the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following

REASONS

14. **My answer to point No.1:-** From the materials placed on record, it is apparent that there are specific terms regarding what has to be done if a person intends to voluntarily go out of the project which are as under:
15. If a withdrawal is permitted under special circumstances the amount shall be refunded only when a new allottee joins in and pays the due amount. No interest shall be paid on such refunds and cancellation charges as mentioned in the allotment letter. Further, no interest compensation shall be payable to the allottee for delay in completion of project or change in handing over schedule of dwelling units. AFNHB renders its service to the allottees on a no profit no loss basis.
16. The respondent is not disputing its liability to refund the amount paid by the complainant. Their contention is only that prospective purchasers who intend to walk out of the project have to wait until a new member steps in their place and they cannot claim any interest on the amount to be refunded.

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17. The scheme of respondent is self financed and all the finance in the project has to be contributed by the purchasers. On that basis, the respondent has put up conditions that if withdrawal is permitted under special circumstances, the amount shall be refunded only when a new allottee joins and pays the due instalments and that no interest is paid on such refunds as the respondent is rendering its services to the allottees on a no profit no loss basis.
18. As per section 18(1) of RERA Act, if the promoter fails to complete or is unable to give possession of an apartment, plot or building –
19. (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
20. (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason;
21. He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, or 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.
22. Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.
23. It is obvious that the complainant had booked an apartment in the project of the respondent in March 2013 and paid Rs.27,00,000/- on different dates as on 01/03/2017. The complainant applied for withdrawal

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on 16/4/2018 and the respondent conveyed that the request is noted and is under consideration. The project was not completed before the RERA Act came into force. Hence, the provisions of the Act and Rules will apply as on date. In this case, the respondent has received the applications filed by the complainant for withdrawal of allotment on 16/4/2018. But till now the respondent has not refunded the amount to the complainant. It is noticed from the allotment letter dated 14/3/2013 that "once the withdrawal application is received in the Board, the allottee will forego all rights on the property as well as linked parking and other spaces". However, the respondent has failed to complete the project and register the sale deed and to deliver possession of the apartment to the complainant. The proviso of section 18 of the Act mandates that where an allottee does not intend to proceed with the project, he is entitled for refund by the promoter with interest.

24. The respondent has nowhere mentioned the exact period for completion of the project. The complainant has parted with substantial portion of sale consideration, but respondent has not executed AOS and hence, violated the condition of RERA Act.
25. With regard to conditions mentioned in the letter of allotment and agreed by both the parties that in case of refund the allottees are not entitled for interest on the said amount will not have over-riding effect over the provisions of Section 18 of the Act which provides for refund of the amount with interest in case the allottee withdraws from the project for the lapse on the part of the developer in not delivering possession or not completing the project.
26. The respondent has also failed to place any materials to establish that the amount received from the allottees towards sale consideration is invested in the project. Having regard to the above aspects, this Authority is opined that the complainant is entitled for refund with interest.



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27. 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	08/03/2011	10,000	2245	30/04/2017	5,535
2	03/04/2016	800,000	392	30/04/2017	77,326
3	06/10/2016	1,000,000	206	30/04/2017	50,794
4	09/01/2017	800,000	111	30/04/2017	21,895
5	01/03/2017	90,000	60	30/04/2017	1,331
6				TOTAL INTEREST (I1)	1,56,881

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	27,00,000	1946	29/08/2022	8.15	10.15 as on 01-05-2017	14,61,099
2	TOTAL AMOUNT	27,00,000				TOTAL INTEREST (I2)	14,61,099

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 29-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
27,00,000	16,17,980	0	43,17,980

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

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29. **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/191219/0005023** is hereby allowed. Respondent is directed to pay a sum of **Rs.43,17,980/- (Rupees Forty Three Lakh Seventeen Thousand Nine Hundred and Eighty only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 08/03/2011 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 29/08/2022. The interest due from 30/08/2022 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, KRERA