

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-4

PRESENT

SHRI. H.C. KISHORE CHANDRA, CHAIRMAN

Dated 8th December 2022

Complaint No. CMP/210401/0007855

COMPLAINANT....

Vinod M

No.17, Mahalakshmi Nilaya
4th Cross, MD Block
Malleshwaram
Bengaluru-560 003

V/S

RESPONDENT.....

**M/s Karsten Home Private
Limited**

No: 4, 80 feet Road
8th Block Opp: Indoor
Stadium, Koramangala
Bengaluru-560 095.

(Exparte)

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JUDGEMENT

1. The complainant Mr. **Vinod M** had filed a complaint against the project "**Palm Groves**" developed by respondent promoter of "**M/s Karsten Homes Private Limited**". The promoter has developed a project in the limits of Chandapura-Anekal Main Road, Marasuru Village, Anekal, Bengaluru South, Bengaluru Urban for relief of refund with interest.
2. This project has been registered in RERA bearing registration no. PRM/KA/RERA/1251/310/PR/171201/001362.
3. **Brief facts of the case:** The complainant had booked unit no. **A-225** in Aryan Palm Grove apartment in Chandapura, Bengaluru under the interest of subvention scheme by availing of loan from DHFL. He has paid an amount of **Rs.25,14,178** to the respondent. It is contended that the complainant had approached the Company in the year 2019 to sell the said unit. Further, in response to the same, a buyer was identified and he was asked to send a mail for cancellation of his unit. Thereafter, it was promised that once the sale consideration is received from the buyer, the amount due would be duly settled to the complainant. Due to various reasons, the respondent did not settle the amount to him. Despite repeated following up with the company, his request was not conceded and further time was sought to settle the same. Having lost confidence with the respondent, the complainant sought relief of refund along with interest. Hence, this complaint.
4. After registration of the complaint, in pursuance of notice, the respondent remained absent but whereas his advocate Prabhu N. Savanur has filed objections on 28/10/2022. The written objections are as under:

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5. The respondent has denied all the allegations made against it by the complainant as false. It is contended that the complainant had booked an apartment bearing No.**A-225** and submitted booking application on his own. Subsequently, the complainant also entered into an agreement by acknowledging to abide by the terms and conditions of the agreements. Further, the complainant has paid an amount of **Rs.24,87,376/-** out of the total sale consideration of **Rs.28,00,000/-** towards the said flat. It is further contended that the complainant through his e-mail dated 13/07/2018 informed the respondent that he is willing to sell his flat to third party and requested the respondent to look for buyers for the same. The complainant has sent an e-mail communication dated 13/07/2018 agreeing for payment of 14% to total cost towards transfer of sale of his flat to any other person.
6. It is further contended that based on the assurance and confirmation by the complainant, the respondent has sold the said flat and has requested the complainant several times to come and collect the refundable amount i.e. **Rs.22,08,000/-** (after deduction made towards transfer and legal expenses).
7. It is contended that the respondent has already completed the construction. The apartment was ready for occupation. Despite repeated requests the complainant has not paid the balance amount and get the sale deed registered.
8. It is contended that the complainant has no right to seek refund of the amount or the interest as there is no such agreement to pay interest by the respondent. Further, the respondent has for right to cancel the agreement

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in the event of default of payment of instalments or breach of any of the conditions of the agreement and the purchasers are only entitled for the refund of the advance amount after adjusting the loss or damage caused to the vendor. Hence, the respondent prays this Hon'ble Authority to dismiss the complaint.

8. In support of his claim, the complainant has produced documents such as
(1) Statement of account (2) Memo of calculation .

9. In support of his defence, the respondent has not produced any documents.

10. Heard both the parties. This matter was heard on 08/08/2022, 29/08/2022, 12/09/2022, 19/09/2022, and on 14/10/2022.

11. On the above averments, the following points would arise for the consideration of the Authority.

1. Whether the complainant is entitled to the relief claimed?

2. What order?

12. Our findings on the above points are as under:

13. 1. In the Affirmative

2. As per final order for the following:

FINDINGS

14. **My findings on point no.1:** The grievance of the complainant is that the respondent has defaulted and not handed over the possession of his flat as per terms of agreement of sale and construction. The project was required to be

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to be completed by the respondent within **31.03.2018** as envisaged in the terms and conditions of the agreement of sale and construction.

The judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)..... ... The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

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.

From the averments of the complaint and copy of the agreement between the parties, it is obvious that the complainant has already paid the substantial sale consideration. Having accepted the said amount and failure to keep up promise to hand over possession of apartment certainly entitles complainant herein for refund along with interest.

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Having regard to all these aspects, I conclude that the complainant is entitled for refund along with interest. Accordingly, the point raised above is answered in the Affirmative.

14. My findings on point no.2: In view of the above discussion, I conclude that the complaint deserves to be allowed. Hence, I proceed to pass the following order:

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/210401/0007855** is hereby allowed and the following order is passed.

1. The respondent is hereby directed to refund the entire amount of **Rs.25,14,178/-** (Twenty five lakhs fourteen thousand one hundred seventy eight only) along with interest calculated at the rate of **9%** per annum from **23.1.2015** till **30.4.2017**. Further, at the rate of SBI MCLR + 2 per cent per annum from **01.5.2017** till the date of entire realization within 60 days from the date of this order.
2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fail to comply with the order.

No order as to costs.


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