

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 30th JANUARY 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220323/0009241

COMPLAINANTS.....

**MR. DEBESH CHANDRA PAL &
MRS. MADHUMITA PAL
3/212, VIVEK KHAND
GOMATINAGAR-226010
STATE: UTTAR PRADESH
DISTRICT: LUCKNOW**

**PRESENT ADDRESS:
FLAT NO.45,
MAHAVEER GALAXY APARTMENTS
Kengeri Hobli
Kengeri
BANGALORE-560060.**

(IN PERSON)

V/S

RESPONDENT.....

**COMFORT BUILDERS & DEVELOPERS
NO.2, NORTH PARK ROAD
KUMARA PARK EAST
BENGALURU-560001.**

**(By Mr.Y.V. Prakash
Advocate)**

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J U D G E M E N T

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1. This complaint is filed under section 31 of the RERA Act against the project "Comfort Heights" developed by M/s Comfort Builders and Developers for the relief of refund with interest.

Brief facts of the complaint are as under:-

2. The complainants have purchased an apartment in the project of the respondent by entering into an agreement of sale and construction on 28/08/2017 and have paid the respondent an amount of Rs.64,00,000/- (Rupees Sixty Four Lakh only) on various dates. As per sale and construction agreement the respondent was under obligation to handover possession before end of 31/12/2017 with a grace period of six months i.e. latest by 30/06/2018. Though more than four years have been lapsed, the respondent has failed to complete the project as agreed and to handover the possession of the apartment to the complainants. The respondent was only sending emails and demand notes but was not responding to the mails sent by the complainants. The complainants submits that the respondent through an email dated 25/11/2021 assured that the delivery of the flat with all amenities will be made by December 2021 and will also share draft copies of the sale deed/registration fees/handing over details. The respondent did not keep up their promise and went on changing the dates. The complainants further submits that as there is no progress of work in the project, they have sent final notice to the respondent to refund entire amount with interest on 13/2/2022. Despite approaching the respondent for a commitment to handover the apartment, the respondent has continued to buy time after time on one or the other pretext. The complainants have thus approached this Authority with a prayer to direct the respondent to refund the entire amount with interest. Hence, this complaint.



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3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel but has not contested the matter by filing objections and producing documents on its behalf. The respondent has also not filed their memo of calculation despite opportunities were given to them.

4. After the Authority posted the case for orders on 17/01/2023, the respondent has filed their statement of objection and additional statement of objection in the office on 24/01/2023.

5. The respondent contends that the project "Comfort Heights" is registered under RERA and the construction work is completed and admits that the registration of Sale Deeds in respect of individual apartments are yet to be completed and the reasons were delay in payment of installments by the complainant and agreement holders, increase in cost of labour and material, Covid-19. The respondent further submits that occupancy certificate has been obtained from the competent authority BBMP dated 30/04/2022. Despite several requests to get the sale deed executed, the complainants have not paid the balance amount. The respondent also draws the attention of the Authority to Clause 3 of the Construction Agreement to which the complainants have agreed at the time of entering into agreement which is reproduced as under:-

"3. If the First party fails to pay the outstanding installments together with interest thereon as mentioned above, the Second party may on their option treat this agreement as cancelled and refund the amount paid till then by the First Party under this agreement by deducting 25% of the said installment amounts paid by the First party by way of liquidated damages for the breach of the agreement".



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6. The respondent submits that one Smt. Bhagyalakshmi d/o Sri. Krishnappa had filed a Suit in O.S.No.3894/2011 against Krishnappa, his son Narayan and others before City Civil Court (CCH-3), Bangalore seeking partition and separate possession of her alleged share in the properties. In this case, the respondent was made Defendant No.3 and Item No.1 in the said suit is the property on which the respondent has constructed "Comfort Heights". The said suit was dismissed by the Hon'ble XV Addl.City Civil and Sessions Judge, CCH3 and Decree was ordered on 7/1/2023.

7. The respondent submits that the complainants without paying the outstanding installments have approached the Authority with this complaint claiming refund with interest is not maintainable either in law or on facts of the case and prays the Authority to dismiss the complaint in the interest of justice and equity.

8. The complainants in the rejoinder to the statement of objection and additional objections from the respondent submit that though the respondent has completed the project now, it was still unfinished at the time of filing of complaint at RERA. The complainants submit that the respondent during the process of hearing on 16/11/2022 and 11/01/2023 repeatedly admitted that the occupancy certificate is yet to be obtained. The complainants stopped making further payments as there was no progress of construction work and by this time the complainants had paid more than 75% of the total sale consideration amount. The complainants further submit that the actual date of completion as per agreement was 31/12/2017 and COVID-19 started in March 2020, i.e. more than two years after scheduled date of completion.

9. The complainants submit that the filing of case by Smt. Bhagyalakshmi is nowhere mentioned by respondent and that said case does not have any relevance on the request for relief of refund with interest. The complainants



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submit that the minor changes were requested by them and it was part of the construction by respondent without any charges and any extra time. The penalty clause stated by respondent is on record, but the agreement was one-sided, as they are beneficial to respondent. The complainants contend that the respondent is trying to delay the payment by buying time.

10. The complainants finally submit that the flat was booked in the project of the respondent as it was near to the work place and after retirement wanted to stay in the said flat. The complainants submit that the purpose of staying in their own flat is defeated due to enormous delay caused by the respondent and pray for grant of relief for refund with interest.

11. The respondent has filed occupancy certificate dated 30/4/2022 with his additional statement of objected filed at RERA Office on 24/1/2023.

12. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, Construction agreement, Copy of application for allotment of an apartment, Payment Receipts, email correspondence with the respondent and Memo of calculation for refund with interest as on 31/12/2022.

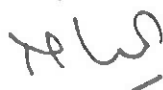
13. Heard arguments of both sides.

14. On the above averments, the following points would arise for my consideration:-

1. Whether the complainants are entitled for the relief claimed?
2. What order?

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

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



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REASONS

16. My answer to point No.1:- It is undisputed that the respondent has failed to handover possession of the apartment to the complainants herein within agreed time even after receiving substantial sale consideration amount. As per the terms of agreement of sale and construction between the parties, the possession of the apartment had to be handed over before the end of December 2017 with a grace period of six months i.e. latest by 30/06/2018. Due to the enormous delay caused by the respondent in completing the project, the complainants have approached this Authority for direction to the respondent for refund of the entire amount with interest.

17. 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.

18. 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.

19. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have already paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure of the promoter to keep up promise to handover possession of the apartment even after four years as agreed, certainly entitles the complainants herein for refund of entire amount with interest. The respondent's contention that they have obtained occupancy certificate from BBMP dated 30/4/2022

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and once the complainants pay the outstanding installment, the sale deed will be executed cannot be accepted. The respondent has submitted the copy of the Occupancy Certificate with the additional statement of objection on 24/01/2023 but he never produced it during the process of the hearing. When the respondent has failed to adhere to the actual date of possession as agreed by them, the question of deducting 25% out of the amount paid by the complainants does not arise at all. The complainants have submitted their memo of calculation as on 31/12/2022 claiming a refund of Rs.96,33,832/- including interest. Despite opportunities were given, the respondent have not submitted their memo of calculation. A thorough verification of the documentary proof produced by the complainants reveals that their claims are genuine.

20. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as per their memo of calculation as on 31/12/2022.

21. Therefore, it is incumbent upon the respondent to refund the full 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	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	2070	31-12-2022	8.15	10.15 as on 01-05-2017	0

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2	09-08-2017	1,00,000	1970	31-12-2022	8.15	10.15 as on 01-08-2017	54,782
3	05-09-2017	4,00,000	1943	31-12-2022	8.15	10.15 as on 01-09-2017	2,16,125
4	05-09-2017	11,00,000	1943	31-12-2022	8.15	10.15 as on 01-09-2017	5,94,345
5	30-10-2017	15,00,000	1888	31-12-2022	8.15	10.15 as on 01-10-2017	7,87,528
6	12-12-2017	15,00,000	1845	31-12-2022	8.1	10.1 as on 01-12-2017	7,65,801
7	06-03-2018	10,00,000	1761	31-12-2022	8.35	10.35 as on 01-03-2018	4,99,352
8	24-04-2019	8,00,000	1347	31-12-2022	8.7	10.7 as on 10-04-2019	3,15,899
9	TOTAL AMOUNT	64,00,000				TOTAL INTEREST (I2)	32,33,832

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 31-12-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
64,00,000	32,33,832	0	96,33,832

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

23. My answer to point No. 2:- In view of the above discussion, I proceed to pass the following order:-

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220323/0009241** is hereby allowed. Respondent is directed to pay the amount of **Rs.96,33,832/- (Rupees Ninety Six Lakh Thirty Three Thousand Eight Hundred and Thirty Two only)** towards **refund with interest** calculated at MCLR + 2% from

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9/8/2017 till 31/12/2022 to the complainants within 60 days from the date of this order. The interest due from 01/01/2023 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are 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, K-RERA

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