

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

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT NO. CMP/UR/211111/0008537

DATED 10TH DAY OF APRIL 2023

COMPLAINANT:

**RAMYA D.R.
506, 50 Feet Road
KUMARASWAMY LAYOUT
2ND STAGE
BENGALURU-560 078.**

(IN PERSON)

V/s

RESPONDENT:

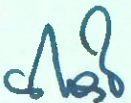
**UMESH
M/s C.V. DEVELOPERS AND
PROMOTERS
1/1A, JAKKUR MAIN ROAD
AMRUTHALLI
BENGALURU URBAN-560 092.**

(ABSENT)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "EAGLE RESIDENCY" developed by "M/s CV DEVELOPERS AND PROMOTERS" for the relief of refund of amount with interest.

2. This project is not registered in RERA. This Authority has passed an interim order dated 30.11.2022 directing the respondent/promoter "M/s CV Developers and Promoters" to register the project under RERA as required under section 3 of the RERA Act, 2016. Further, the promoter was also given an opportunity to submit his explanation within three weeks as to why



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proceedings u/s 59(1) of the Act should not be initiated for violation of Section 3 of the Act.

3. The promoter has developed this project in the limits of Sy.No. 135, Koluru Village, Tavarekere Hobli, Bengaluru South Taluk.

4. **Brief facts of the complaint are as under:** The complainant had entered into an agreement of sale on 22.2.2017 towards the purchase of site bearing No. 89 measuring 1200 sq.ft. in the project "Eagle Residency" developed by respondent-promoter "M/s CV Developers and Promoters" for a total sale consideration of Rs.5,38,000/- (Rs. Five lakhs thirty eight thousand only). The complainant has paid an amount of Rs.10,000/- on 1/2/2017 and Rs.2,40,000/- on 6.2.2017, altogether Rs.2,50,000/- to the respondent-promoter which has been duly acknowledged by him. The respondent was to hand over the possession of the said site within 30 months from the date of agreement of sale dated 22.2.2017 i.e by 2.8.2019. The developer has kept on changing the site from one area to another. Having lost confidence with the developer, the complainant has requested for the refund since 2018, but the respondent-promoter has not responded to refund the amount so far. The complainant has approached this forum seeking for the relief of refund with interest. Hence, this complaint.

5. After registration of the complaint, notices have been sent to the respondent. The respondent has neither appeared before this Authority during the hearings held on 26/9/2022, 19/10/2022, 7/10/2022, and on 19/12/2022 nor contested the matter by filing objections or producing documents on its behalf but remained absent on the aforesaid dates.

6. Heard the complainant.

7. The complainant in support of her claim has produced documents such as (a) copy of agreement of sale deed dated 22.2.2017 (2) copy of developers

Ans

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site map(Eagle Residency), (3) copy of CV developer's pamphlet (4) details of M/s CV Developers property number (4) copy of record of rights (5) copy of application form of the project (6) copy of receipts and payments made to the developer (7) memo of calculation for refund with interest.

8. On the above averments, the following points would arise for consideration.

1. Whether the complainant is entitled for the relief claimed?
2. What order?

9. **Findings on the above points are as under:**

1. In the Affirmative
2. As per final order

FINDINGS

10. **Findings on point no.1:** It is the case of the complainant that she has entered into an agreement of sale on 22.2.2017 in respect of site bearing No. 89 in the project "**Eagle Residency**" of the respondent. The agreement entered into between the respondent and the complainant stipulates that, the respondent was required to hand over the possession of the said site by 2.8.2019. It is her case that the developer has not completed the project despite the complainant having paid substantial sale consideration to the respondent. Hence, the builder has failed to abide by the terms of the agreement of sale dated 22.2.2017. Hence, she has filed this complaint seeking refund of the amount.

11. At this juncture, it is necessary to reproduce the extract of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359



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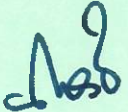
2022,Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others:

"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.

12. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an site in accordance with sale agreement.

13. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant on 10.10.2022. The Promoter-respondent has failed to file any objections on the memo of calculation.

14. Though the notice is served on the respondent, he has neither appeared before this Authority during the hearings nor contested the



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matter by filing statement of objections and furnishing documents in support of its defence. Therefore, the claim of the complainant remained unchallenged. The complainant has established his claim by producing cogent documentary evidence. Considering all these aspects, the point raised above is answered in the Affirmative.

15. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Memo Calculation submitted by the complainant as on 10.10.2022


PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 10.10.2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
2,50,000	1,38,206	0	3,88,206

16. Findings on point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, 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/UR/211111/0008537** is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of **Rs.3,88,206/-** (Rupees Three lakhs eighty eight thousand two hundred six only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of SBI MCLR +2% from 01.5.2017 till the date of payment.



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2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.
3. The Secretary to initiate the process of issuing show cause notice for violation of Section-4 of the RERA read with Section-59 of RERA.

No order as to costs.



(H.C. Kishore Chandra)

Chairman

K-RERA

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