

ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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, CHAIRMAN

DATED 31ST DAY OF MAY 2023

COMPLAINT No: CMP/UR /190804/0003819

COMPLAINANT....

Sanjeev Kumar
B1-506 SNN Raj Serenity
Begur Koppa Main Road
Yellanahalli
Bengaluru -560 068

(In person)

V/S

RESPONDENT.....

**Mr. Jairajan &
Ramesh Reddy**
M/s ALPHA DEVELOPERS
No: 5, Opp: East Primary School
Near HAL Convention Center
Marathahalli Post
Bengaluru-560 037.
(Ex-parte)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA against, project **"ALPHA RJ LAYOUT** developed by " M/s **ALPHA DEVELOPERS**" for the relief of direction to the respondent to register BMRDA land.
2. The builder has developed this project in the limits of Harohalli Village, Anugondanahalli Hobli, Hoskote Taluk, Bangalore Rural District.

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3. This project has not been registered under RERA. This Authority has passed an interim order dated 18th October 2022 directing the respondent-promoter to register the project as required under section 3 of the RERA within two weeks from the date of this order. But the respondent has failed to do so.
4. The gist of the complaint is that the complainant had booked a BMRDA site bearing No.511(E) and thereafter by entering into an Memorandum of Understanding dated 1.12.2010. Thereafter he has also entered into an agreement of sale dated 15.1.2013. Out of the total sale consideration of Rs.7,23,500/- the complainant has paid the entire sale consideration of Rs.7,23,000/- on various dates which has been duly acknowledged by the respondent. The respondent is required to hand over the possession of the site to the complainant by fifteen months from the date of this MOU dated 1.12.2010. The complainant suspect that there can be multiple registration/agreement for one land. He contend that the builder does not have money to repay to buyers and other BMRDA officials. The builder has taken loan by pledging land from locals at 3% rate per month. The builder does not have money to clear his dues. The complainant has approached this forum and sought for the relief to resolve issues of actual first land owner of land and registration of BMRDA land. Hence, this complaint.
5. After registration of the complaint, in pursuance of notice served, respondent had abstained from appearance before the Authority during the proceedings held on 26/06/2022, 01/08/2022, 23/09/2022, and on 17/10/2022, 23/09/2022 and on 14/10/2022 and has not contested the matter by filing statement of objections,

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6. In support of his claim, the complainant has produced documents such as Agreement of sale dated 15th January 2013.

7. 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?

8. Findings to the above points are as under:-

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

FINDINGS

9. Findings to point No.1:- It is the case of the complainant that he has entered into an Memorandum of Understanding dated 1/10/2010 and agreement of sale dated 25/2/2013 in respect of plot bearing No. 511(E) in the project "Alpha RJ Layout" of the respondent. It is his 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 MOU dated 1/12/2010. Hence, he has filed this complaint seeking refund of the amount.

10. In pursuance of notice, the respondents continuously remained absent on all the dates of hearings and subsequently, the respondents have failed to file statement of objections, furnishing documents if any on their behalf.

11. At this juncture, our attention is drawn towards the decision of 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:

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*"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 only if the promoter fails to complete or provide possession of an apartment /plot in accordance with sale agreement.

13. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021(arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, it is held as under:

"Section-18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund or the amount with interest at such rate as may be prescribed in this behalf"

14. 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



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by the complainant. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

15. Though several notices were served upon the respondents, the respondents remained continuously absent on all the dates of hearings. Subsequently, the respondents have failed to file statement of objections and furnishing documents if any, in support of their defence and hence not contested the matter. In the absence of any resistance by the respondents and considering the claim of the complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant. 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 27.11.2022

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 27.11.2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
7,23,500	7,03,825	0	14,27,325

16. Findings to 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/190804/0003819** is hereby allowed as under:

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1. The respondent is hereby directed to pay a sum of Rs. **14,27,325/-** (Rupees Fourteen lakhs twenty seven thousand three hundred twenty five only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 16/9/2010 to 30.4.2017. Further, at the rate SBI MCLR + 2% from 1.5.2017 till the date of realization.
2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.



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