

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 FULL BENCH

PRESENT

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

SMT. NEELMANI N RAJU, HON'BLE MEMBER

SHRI. GURIJALA RAVINDRANADHA REDDY, HON'BLE MEMBER

COMPLAINT NO.: CMP/220330/0009294

DATED THIS 26TH DAY OF JUNE, 2023

COMPLAINANTS.....

- 1. MR. SRINIVAS RAMASWAMY &**
- 2. MRS. KANCHANAMALA SRINIVAS,**
No.352/7, 10 C Main Road,
1st Block, Jayanagar,
Bengaluru - 560011.

(In person)

V/S

RESPONDENT.....

LGCL URBAN HOMES (INDIA) LLP,
No.12/1, Rest House Road,
Bengaluru - 560001.

(Ex-parte)

**PROJECT NAME &
REGISTRATION NO.**

LGCL HAPPY DAYS - PHASE 1
PRM/KA/RERA/1251/309/
PR/180313/002625

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "LGCL Happy Days- Phase 1" developed by "LGCL Urban Homes (India) LLP" situated at Sy. No.34/1, 32/2, Next to Alpbha Engineering College, off Hennur Road, Bengaluru - 560077 for the relief of refund with interest.

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.

2. This project has been registered under RERA bearing Registration No. PRM/KA/RERA/1251/309/PR/180313/002625 and was valid till 31/03/2021. The Authority, has given COVID extension for 9 months i.e., till 31/12/2021.

Brief facts of the complaint are as under:-

3. The complainant has booked a apartment bearing No.A-107 in the project of respondent and they had entered into an agreement for sale 13/04/2018 for a total sale consideration of Rs.52,43,751/- (Rupees Fifty Two Lakh Forty Three Thousand Seven Hundred and Fifty One only) with the respondent and paid Rs.23,59,689/-(Rupees Twenty Three Lakh Fifty Nine Thousand Six Hundred and Eighty Nine only) to the respondent on various dates. The respondent has agreed to handover possession of the said apartment on 31/03/2021. However, the respondent had failed to complete the project and to handover possession of the said apartment to the complainants as agreed. Hence, this complaint.
4. During proceedings, the complainant's wife Smt. Kanchanamala Srinivas has filed a letter dated 30/07/2022 requesting the Authority to change the name of the complainant in view of the death of the complainant Sri. Srinivas Ramaswamy.
5. After registration of the complaint, in pursuance of the notice, the respondent has never appeared before this Authority and not contested the matter by filing statement of objections, producing documents on their behalf etc.,
6. In support of their claim, the complainants have produced in all 7 documents such as copy of agreement of sale dated 13/04/2018, GPA dated 29/01/2022, death certificate dated 24/05/2021, family tree dated 27/05/2021, payment schedule, mail conversations and payment receipts.

168

168

168

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,

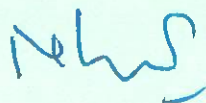
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027.

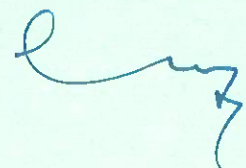
7. Respondent has not produced any documents on his behalf.
8. Hearings were conducted on 04/01/2023 and 25/01/2023.
9. Heard complainant.
10. **On the above averments, the following points would arise for our consideration:-**
 1. Whether the complaint is entitled for the relief claimed?
 2. What order?
11. **Our findings on the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following

REASONS

12. **Our findings on point No. 1:-** Contention of the complainants are that, so far they have paid sum of Rs.23,59,689/- (Rupees Twenty Three Lakh Fifty Nine Thousand Six Hundred and Eighty Nine Only) and entered into an agreement of sale with the respondent on 13/04/2018 for a total sale consideration of Rs.52,43,751/- (Rupees Fifty Two Lakh Forty Three Thousand Seven Hundred and Fifty One Only). The respondent was promised to handover the possession of the apartment on 31/03/2021. Hence, the respondent has failed to abide by the terms of the agreement of sale.
13. Despite of several notices served on the respondent, the respondent remained continuously absent and has not participated in the proceedings by filing statement of objections, furnishing documents in support of his defence etc., Hence, the respondent has not resisted the claim of the complainant. The complainant has established his claim by producing cogent documentary evidence.



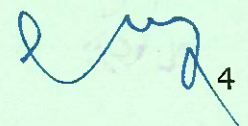
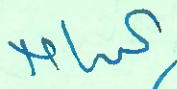
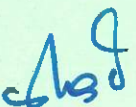




14. On perusal of documents filed and submissions made before the Authority, it is evident that the complainants have paid the substantial sale consideration. Having accepted the said amount and failure to keep up the promise certainly entitles the complainant to claim refund with interest.
15. In the judgement reported in Civil Appeal No. 3581-3590 of 2020 at para No. 23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

"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 case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

16. At this juncture, our attention is drawn towards the decision of the judgement 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 V/s. State of UP & others, it is held as under:



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.

"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 by the date specified therein or on account of discontinuance 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 of the amount with interest at such rate as may be prescribed in this behalf."

17. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only as the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
18. The complainants have a filed their memo of calculation as on 18/08/2022 claiming an amount of Rs.33,38,770/- (Rupees Thirty Three Lakh Thirty Eight Thousand Seven Hundred and Seventy only) as refund with interest. Despite of several opportunities were given, the respondents have not filed their memo of calculation. A thorough verification of documentary evidence submitted by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted vide their memo of calculation dated 08/08/2022.
19. Therefore, it is incumbent upon the respondents No.1 and 3 to refund the amount with interest which is determined as under:-

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	0	1925	08-08-2022	8.15	10.15 AS ON 01-05-2017	0
2	23-01-2018	525,444	1658	08-08-2022	8.1	10.1 AS ON 01-01-2018	241,067

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.

3	04-04-2018	785,495	1587	08-08-2022	8.35	10.35 AS ON 01-04-2018	353,482
4	14-05-2018	524,375	1547	08-08-2022	8.35	10.35 AS ON 01-05-2018	230,027
5	17-05-2019	262,218	1179	08-08-2022	8.65	10.65 AS ON 10-05-2019	90,205
6	09-03-2020	262,158	882	08-08-2022	8.15	10.15 AS ON 10-02-2020	64,299
7	TOTAL AMOUNT	2,359,690				TOTAL INTEREST (I2)	979,080

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 08-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
2,359,690	979,080	0	3,338,770

20. Accordingly, the point raised above is answered in the Affirmative.

21. **Our findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we 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/220330/0009294 is hereby allowed.

1. Respondent is hereby directed to pay the amount of Rs.33,38,770/- (Rupees Thirty Three Lakh Thirty Eight Thousand Seven Hundred and Seventy Only) towards refund along with interest to the complainant within 60 days from the date of this order, calculated at SBI MCLR+2% from 23/01/2018 till 08/08/2022.
2. The interest due from 09/08/2022 up to the date of final payment shall be calculated likewise and paid to the complainant.

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.

3. The complainants are at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.

(G.R. REDDY)

Member
K-RERA

(NEELMANI N RAJU)

Member
K-RERA

(H.C. KISHORE CHANDRA)

Chairman
K-RERA

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY