

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 25th SEPTEMBER 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00072/2024

COMPLAINANT.....

**ENNA MOORI BRAHMAIAH
#5, CHAKI CHERLA
PRAKASAM
ANDHRA PRADESH - 523292**

**DISTRICT: PRAKASAM
STATE: ANDHRA PRADESH**

**(BY MR.K.V. NAVEEN KUMAR,
ADVOCATE & OTHERS)**

Vs

RESPONDENTS.....

**1.GVR CONSTRUCTIONS
NO.3, VENKATESWARA LAYOUT
NEAR NESTER RAAGA APARTMENT
MAHADEVAPURA
BANGALORE-560048.**

**2.GADIRAJU VASU
NO.3, VENKATESWARA LAYOUT
NEAR NESTER RAAGA APARTMENT
MAHADEVAPURA
BANGALORE-560048.**

**(R-1 & R-2 BY MR. NACHIKET JOSHI,
ADVOCATE)**

**3.K. MAHENDRAN
NO.3, VENKATESWARA LAYOUT
NEAR NESTER RAAGA APARTMENT
MAHADEVAPURA
BANGALORE-560048.**

**(R-3 BY MR.V.B. SHIVAKUMAR,
ADVOCATE & OTHERS)**

**4.BADDELA RAMANJI
NO.44, SRI LAKSMI NARASIMHA
SWAMY NILAYAM**

rehs

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**TC PALYA MAIN ROAD
K.R. PURAM, MANJUNATHA LAYOUT
BANGALORE-560036.**

**(BY MR.K.M. JANARDHAN REDDY,
ADVOCATE & OTHERS)**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "SAI KESARI NANDAN ENCLAVE" developed by GVR CONSTRUCTIONS situated at S.Nos.51, 52, 63 & 64-12/1, SAI KESARI NANDAN ENCLAVE, HAPPY GARDENS LAYOUT, SEEGEHALLI, MEDAHALLI, KURUDU SONNENAHALLI, K.R. PURAM HOBLI, BANGALORE-560049 for the relief of interest on delay period and to handover possession of the flat with all amenities.

2. This project has not been registered under RERA.

3. During the process of the hearing, the complainant filed an application under Order VI Rule 17 r/w Section 151 of C.P.C. for amendment of relief sought to refund with interest instead of delay period interest and handover possession of the flat with all amenities. The Hon'ble Authority has allowed the complainant's application accordingly.

4. The complainant has also filed an application under order I Rule 10(2) of C.P.C. to implead Baddela Ramanji wife of Konda Reddy as Respondent No.4 in the proceedings of this complaint. The complainant has already made her Respondent No.4 in the present complaint.

Brief facts of the complaint are as under:-

4. The complainant had booked a flat bearing No.T-306, 3RD Floor in the project "SAI KESARI NANDAN ENCLAVE" developed by the respondents for a total sale consideration of Rs.33,00,000/- and entered into agreement of



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sale dated 13/03/2017 between the First Purchaser (Smt. Baddela Ramanji) and the respondents No.1 represented by respondent No.2. The assignment agreement was executed on 17/01/2019 between the complainant, first purchaser and the respondent No.1 represented by respondent No.2. As per the agreement the respondents 1&2 were supposed to handover possession of the above flat by 13/9/2018 with a grace period of three months i.e. latest by 13/12/2018. The complainant has paid entire sale consideration towards the above said flat to the respondents on various dates. Though the respondents have executed Sale Deed on 22/03/2019, they have not yet handed over the possession of the above said flat to the complainant. The complainant submits that the R-2 has acknowledged the receipt of the consideration amount of Rs.33,00,000/- in the agreement of sale and construction agreement. The complainant further submits that R-2 and R-4 have executed an agreement of assignment of transfer of rights dated 17/1/2019 in favour of the complainant. The complainant submits that the Home Loan sanctioned by LIC Housing Finance Limited is in the name of Ennamoori Brahmaiah in respect of the above said flat. The R-2 (GPA Holder) has executed the sale deed dated 22/3/2019 in favour of the complainant. The respondents have failed to handover possession of the above said flat to the complainant as agreed. The complainant submits that he has invested his hard earned money and paying housing loan taken from the LICHFL for the purchase of the above said flat and is staying in a rented house. After filing this complaint, he came to know that R-3 has cancelled the JDA executed with R-1 represented by R-2 vide Arbitral Tribunal Order dated 12/4/2023. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondents to refund the amount with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice/summons, the respondents No.1, 2, 3 & 4 have appeared before the Authority through



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their counsel/representative and have submitted their statement of objections as under:

6. The R-1 & R-2 entered into a JDA and GPA with My Life Portfolio Management Services Private Limited represented by its Director K Mahendran (R-3) dated 29/1/2015, allocation agreement dated 15/10/2015 allocating themselves 23 and 17 units respectively in the scheduled property. The complainant has filed a complaint before the Hon'ble Authority seeking interest for delay period and possession of the flat.

7. The R-1 & R-2 submit that Baddela Ramanji (R-4) wife of Konda Reddy was the contractor to construct the building in the project for R-1 and had entered into agreement of sale dated 13/3/2017 with R-1 represented by R-2 with regard to purchase of the schedule property and the sale consideration of the same to be paid via construction of the project for R-1. The respondent submits that the complainant desirous of purchasing a flat approached R-4 and they entered into an Assignment Agreement dated 17/1/2019 and R-1 represented by R-2 was a consenting party to it.

8. The R-1 & R-2 submit that a sale deed was executed on 22/3/2019 in favour of the complainant by R-1 represented by R-2 for and as JDA & GPA Holder of My Life Portfolio Management Services Pvt Ltd represented by R-3 along with Baddela Ramanji (R-4) as confirming party.

9. The R-1 & R-2 submit that they have not received any amount under the said agreement of sale, assignment agreement and sale deed neither from R-4 nor was the construction activity was completed and neither the complainant had paid any amount to R-1 & R-2. As such, the R-1 & R-2 prays the Hon'ble Authority that Baddela Ramanji be made a party to this complaint and the refund may be sought from her and that there is no liability on their part in the instant case.



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10. The R-1 submits that R-3 being the land owner is jointly liable to answer to this complaint and pay delay period interest as he is covered under section 2(zk) of the RERA Act 2016.

11. The R-1 submits that though they had put diligent efforts for completion of the construction of the flat within stipulated time, the R-3 instituted an Arbitration Case No.70/2021 against R-1 for breach of promise in contention to the JDA dated 29/1/2015 and interfered with the construction of the project and trying to stop R-1 from accessing the site for continuing construction, thus delayed the completion of the project.

12. The R-1 submits that the delay was not intentional but due to institution of the above Arbitration case the situation was difficult. In addition, R-1 instituted Com.A.P/79/2023 in Hon'ble Commercial Court, Bengaluru pleading to set aside the Arbitral Award granted in the above Arbitration Case, which is yet to be decided. Further during 2020-2022, the R-1 was unable to proceed with the construction due to covid-19 pandemic, wherein the supply chain was disrupted. After this, the R-1 was able to revive the project again, whereby it has reached 85% completion and R-1 undertakes to provide possession of the flats to the complainant by the end of December 2024.

13. The R-1 submits that the complainant has sought for total amount of Rs.69,30,600/- in his MOC wherein the interest has been calculated at 24% per annum which is against KRERA Rules, 2017. The interest as per RERA should have been calculated at 9% before 30/4/2017 and SBI MCLR Rate + 2% per annum from 01/05/2017. The R-1 & R-2 submit that the delay period interest needs to be calculated on the entire amount paid from 22/3/2019, the date on which the sale deed has been executed. The R-1 prays the Hon'ble Authority to direct the complainant to file an amended MOC.



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14. The R-3 submits that M/s My Life Port Folio Management Services Pvt Ltd entrusted the property under a JDA and GPA to M/s GVR Constructions represented by Vasu Gadiraju, the proprietor. As R-1 committed breach of JDA, a notice was issued terminating the JDA and cancellation of GPA along with Allocation Agreement given to him. The R-3 submits that the JDA was accompanied by an Arbitration clause, therefore M/s My Life Port Folio Management Services Pvt Ltd sought appointment of an Arbitrator before the Hon'ble High Court of Karnataka in CMP No.27/2020 and the Hon'ble Judge Sri. Veeranna G Tigadi was appointed as Arbitrator. After adjudication an Award was passed on 12/4/2023. In pursuance of the Award, the JDA, GPA and Allocation Agreement and all transactions pursuant thereto have been cancelled. On such cancellations being effected on the property by a judicial authority, the R-3 contends that nothing survives for consideration before this Hon'ble Authority.

15. The R-3 submits that the builder/developer and the person who has lodged the complaint, purchased property in respect of which there is neither sanction plan nor license nor commencement/completion certificate, the entire construction is illegal, unlawful and therefore, the Hon'ble Authority cannot adjudicate this complaint as there is no contract at all. The Award includes that the Respondent No.1 is liable to pay an amount of Rs.10,31,00,000/- and the entire cost of the Arbitration proceedings to the claimant. The R-3 has initiated recovery proceedings in Execution Case No.133/2024 pending before the 11th Additional District and Sessions Judge, Bangalore Rural District. In view of the above, the R-3 prays the Hon'ble Authority to dismiss the complaint.

16. In support of their defence, the respondents No.1, 2 & 3 have filed copies of documents such as memorandum of association, articles of association, JDA, GPA, allocation agreement, legal notice, reply notice, orders dated 2/11/2020 passed by the Hon'ble High Court of Karnataka in CMP



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No.27/2020, claim petition No.AC 70/2021, Award dated 12/4/2023 passed by the Hon'ble Arbitrator, registered Award along with E.C.

17. In support of his claim, the complainant has produced documents such as copies of JDA, GPA, allocation agreement, agreement of sale, construction agreement, assignment agreement, arrangement letter, Home Loan sanction letter from LICHL, memorandum of deposit, statement of account issued by ICICI, Sale Deed, photographs of the building, E.C., Order dated 12/4/2023 in AC No.70/2021 before the Arbitral Tribunal of Shri Veeranna G Tigadi, Sole Arbitrator and Memo of calculation for refund with interest as on 06/06/2024.

18. This case was heard on 14/3/2024, 30/5/2024, 6/6/2024, 10/7/2024 and 7/8/2024. Heard arguments of both sides.

19. 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?

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

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

REASONS

21. My answer to Point No.1:- From the materials placed on record, it is apparent that in spite of receiving entire sale consideration amount and executing Sale Deed dated 22/3/2019 in respect of the Flat bearing No.T-306, 3rd Floor in the above said project, in favour of the complainant, the respondents No.1 & 2 have failed to handover the possession of the above said flat till today. Thus, the respondents have failed to abide by the terms of the agreement of sale, construction agreement, assignment agreement and Sale Deed.



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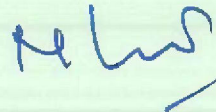
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22. From the averments of the complaint and the copies of the agreement of sale, construction agreement, assignment agreement and the Sale Deed executed, it is obvious that the complainant was supposed to get the possession of the flat at least immediately after the sale deed was executed by the respondent No.1 to 4. The failure on the part of the respondents to comply with the terms of the above said agreement of sale, construction agreement, assignment agreement and sale deed, certainly entitles the complainant herein for refund of entire amount with interest.

23. During the process of the hearing, the Hon'ble Authority has perused the statement of objections filed by the respondent and written submissions filed by the complainant. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, and hence, it is necessary that it shall be free from any ambiguity and vagueness. Here, in this case, the R-4 entered into agreement of sale and construction agreement with the respondents No.1 & 2 to the effect that the sale consideration of the above flat to be paid via construction of the project for R-1. The respondent submits that the complainant desirous of purchasing a flat approached R-4 and they entered into an Assignment Agreement dated 17/1/2019 and R-1 represented by R-2 was a consenting party to it. The responsibility to refund the amount with interest to the complainant also lies on R-1 & R-2 as they were the consenting party to the Assignment Agreement and execution of Sale Deed. Therefore, the Authority has not accepted the contentions of the respondents made in their statement of objections.

24. The complainant has sought for refund of amount that he had paid to R-1, R-2 and R-4 with interest. On looking to the chronology of events, the builder and landowner had entered into joint development agreement in the year 2015. The notice of termination of JDA, GPA and Allotment Agreement was issued in the year 2019. By way of Arbitration Award dated



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12/4/2023, this notice of termination was upheld. The transaction under consideration is of the year 2017/2019 in which the builder had executed agreement of sale, construction agreement, assignment agreement and sale deed in the year 2019 in favour of the complainant without handing over possession, without there being any occupancy certificate.

25. The complainant had entered into Assignment Agreement dated 17/1/2019 with R-4 and R-1 represented by R-2 and the R-1 & R-2 as consenting party had already received Rs.33,00,000/- from R-4 shall be deemed to be complete and absolutely assigned from the Assignor to the Assignee and that the possession of the flat will be handed over at the time of registration of sale deed.

26. The complainant has submitted proof of payments in the form of statement of account issued by ICICI Bank and loan status of sanction/disbursement of home loan from LICHL.

27. Being fed up of all these developments, the complainant who has approached this Authority is seeking relief of refund with interest. Now the question is whether the complainant is entitled for refund with interest. In this connection, the contention of R-3 seems to be worth of discussion. According to him, this Authority has no jurisdiction to entertain this complaint in view of the Arbitration Award wherein termination of JDA, GPA and Allotment Agreement have been upheld.

28. It is pertinent to note that the RERA Act came into force in the year 2017. The respondents have not produced a single iota of evidence before this Authority to establish that they have completed this project and obtained occupancy certificate from the competent authority prior to enactment of RERA Act. In view of the same, objections raised by R-3 deserves to be overruled.



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29. At this juncture, my attention is drawn towards decision of Hon'ble Supreme Court in Appeal No.6750-57/2021 M/s Newtech Promoters v/s The State of Uttar Pradesh which has held that:

"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or 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 or 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."

30. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at Para 23 between M/s Imperia Structures Limited v/s Anil Patni & 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 of 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

H/S

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under section 18(1) or under the provision of section 18(1). The case of Himanshu Giri came under the later 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."

31. 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.

32. 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 apartment etc., in accordance with the sale agreement.

33. The complainant has claimed Rs.49,74,864/- (Rupees Forty Nine Lakh Seventy Four Thousand Eight Hundred and Sixty Four only) vide his memo of calculation as on 06/06/2024 towards refund with interest.

34. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest calculated vide his memo of calculation as on 06/06/2024.

35. Therefore, it is incumbent upon the respondents No.1, 2 & 4 to pay refund 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		0		TOTAL INTEREST (11)	0

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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	2593	06/06/2024	8.15	10.15 as on 01-05-2017	0
2	17/01/2019	31,50,000	1967	06/06/2024	8.75	10.75 as on 10-01-2019	18,24,864
3	TOTAL AMOUNT	31,50,000				TOTAL INTEREST (I2)	18,24,864

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 06-06-2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
31,50,000	18,24,864	0	49,74,864

36. During the proceedings, as per the direction of the Authority dated 14/3/2024, show-cause notice was issued to R1 to R3 on 15/3/2024 and again on 12/8/2024 for not registering the said project under RERA.

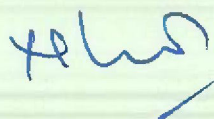
37. The R1 & R2 have replied to the show-cause notice on 6/6/2024 praying that the Authority may direct them to register the project with RERA as required under section 3 of the Act and permit them to comply with the registration process within the stipulated time.

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

39. **My answer to point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, 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.00072/2024** is hereby allowed.



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The Respondents No.1, 2 and 4 are directed to pay the amount of **Rs.49,74,864/- (Rupees Forty Nine Lakh Seventy Four Thousand Eight Hundred and Sixty Four only) towards refund with interest** calculated at MCLR + 2% from 17/01/2019 to 06/06/2024 to the complainant within 60 days from the date of this order.

The interest due from 07/06/2024 up to the date of final payment will be calculated likewise and paid to the complainant.

The complainant is at liberty to initiate action for recovery in accordance with law if the respondent No.1 & 2 fails to pay the amount as per the order of this Authority.

The R1, R2 & R3 are directed to get the project registered under RERA immediately.

No order as to the costs.


(NEELMANI N RAJU)
MEMBER, K-RERA

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