

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 5

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 10th July 2024

COMPLAINT NO: CMP/001093/2023

COMPLAINANTS....

1. Dhimosh Mangadan

2. Jipsy Simon

**Assured Justice LLP,
G-7 & G-8 Swiss Complex,
33 Race Course Road,
Bengaluru-560001.**

STATE: Karnataka.

(Ms. Priya, Advocate)

Vs

RESPONDENT.....

**GVG Infrastructure Pvt. Ltd.,
No. 589, 3rd Floor,
Above SBI AECS Layout Main Raod,
Brookfield,
Bangalore-560037.**

(Ex-parte)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Malberry Mist" developed by GVG Infrastructure Pvt. Ltd., for the relief of refund along with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/446/PR/171125/000597 valid till 30-09-2021.
3. This project is situated at, Sy. No. 55/56, Sorhaunse Road, Varthur, Bengaluru East, Bengaluru Urban.

Brief facts of the complaint are as under:-

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4. The complainants have booked a flat bearing no.C-001 on ground floor consisting with two car parking space, in the project "Malberry Mist" of the respondent. They have entered into construction agreement and agreement of sale both dated 25-08-2018 and paid advance of amount Rs.23,21,526/-(Rupees Twenty Three Lakhs Twenty One Thousand Five Hundred and Twenty Six only) towards total sale consideration of Rs.84,39,760/-(Rupees Eighty Four Lakhs Thirty Nine Thousand Seven Hundred and Sixty only) to the respondent. The respondent was supposed to complete the project and to handover possession of said flat to the complainants within 12 months from the date of sale agreement. However, the respondent had failed to complete the project and to handover the said flat to the complainants till date. It seems to be no positive progress towards completion of the project. The reasons for the delay are best known to the respondent. The complainants have availed home loan from bank. Hence, this complaint
5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notice, the complainant had appeared before the Authority. The respondent has not appeared before this Authority either in person or through his counsel, representatives etc.,. Hence, he was placed as ex-parte.
6. In support of their claim, the complainants have produced documents such as copy of payment receipts, Statement of Bank

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loan, an agreement of sale and construction agreement, and tripartite agreement, copies of email conversation between both the parties etc. and memo of calculation as on 18-04-2024.

7. This matter is heard on 29-11-2023 and 27-02-2024.

8. **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?

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

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

REASONS

10. **My answer to Point No.1:-** The complainants have approached this forum seeking relief of refund of entire amount paid to the respondent along with interest and to close the bank loan.

11. The grounds urged on that they had entered into agreement of sale and construction agreement both dated 25-08-2018 with the respondent towards purchase of flat bearing no.C-0001 in the project 'Mulberry Mist'. They have entered into tripartite agreement. The respondent was supposed to complete and handover possession of said flat to the complainants within 12 months from the date of aforesaid agreements. However, the respondent had failed to complete the project and to handover possession of said flat to the complainants as agreed.

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12. In response to the notice, the respondent had not appeared before the Authority and not taken interest to participate in the proceedings by submitting statement of objections, producing documents etc.,. Hence, the claim of the complainants remained unchallenged and undisputed and same is corroborated with the cogent evident. Therefore, no option left to this Authority except to accept the claim of complainants.

13. Having received substantial sale consideration, failing to comply with the terms of agreements entered into between the parties certainly entitles the complainants to claim for refund of amount along with interest.

14. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters v/s The State Of Uttar Pradesh 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 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.

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15. Further, 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 letter 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.”

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16. 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.

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 if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

18. From the averments of the complaint and documents of the complainants, it is obvious that the complainants have paid Rs.23,21,526/- (Rupees Twenty Three Lakhs Twenty One Thousand Five Hundred and Twenty Six only) to the respondent towards the said flat. Having accepted the same the respondent has to pay entire refund amount along with interest.

19. The complainants have filed their memo of calculation as on 18-04-2024 claiming a refund of Rs.34,77,086/- (Rupees Thirty Four Lakhs Seventy Seven Thousand and Eighty Six only) including interest. The complainants have submitted all the relevant documents to this office and same was send to the respondent on 25-04-2024. The respondent has not submitted his Memo of calculation inspite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainants reveals that their claim is genuine.

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20. Having regard to all these aspects as mentioned above, this Authority concludes that the complainants are entitled for refund along with interest as claimed vide their memo of calculation 18-04-2024.

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

Interest Calculation From 01/05/2017 (After RERA)							
S.N O	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	2544	18-04-2024	8.15	10.15 as on 01-05-2017	0
2	10-08-2018	2,00,000	2078	18-04-2024	8.45	10.45 as on 01-08-2018	1,18,986
3	24-08-2018	2,00,000	2064	18-04-2024	8.45	10.45 as on 01-08-2018	1,18,185
4	28-08-2018	2,00,000	2060	18-04-2024	8.45	10.45 as on 01-08-2018	1,17,956
5	28-08-2018	2,00,000	2060	18-04-2024	8.45	10.45 as on 01-08-2018	1,17,956
6	29-08-2018	2,00,000	2059	18-04-2024	8.45	10.45 as on 01-08-2018	1,17,898
7	24-10-2018	35,336	2003	18-04-2024	8.7	10.7 as on 01-10-2018	20,748
8	07-01-2019	1,07,935	1928	18-04-2024	8.75	10.75 as on 10-12-2018	61,289
9	11-03-2019	1,08,078	1865	18-04-2024	8.75	10.75 as on 10-03-2019	59,365
10	12-03-2019	54,075	1864	18-04-2024	8.75	10.75 as on 10-03-2019	29,686
11	18-03-2019	1	1858	18-04-2024	8.75	10.75 as on 10-03-2019	0
12	10-04-2019	58,913	1835	18-04-2024	8.7	10.7 as on 10-04-2019	29,001
13	10-05-2019	48,250	1805	18-04-2024	8.65	10.65 as on 10-05-2019	25,411
14	11-06-2019	49,859	1773	18-04-2024	8.65	10.65 as on 10-06-2019	25,793
15	10-07-2019	48,250	1744	18-04-2024	8.6	10.6 as on 10-07-2019	24,437
16	13-08-2019	49,859	1710	18-04-2024	8.45	10.45 as on 10-08-2019	24,409
17	11-09-2019	49,859	1681	18-04-2024	8.35	10.35 as on 10-09-2019	23,766
18	10-10-2019	47,647	1652	18-04-2024	8.25	10.25 as on 10-10-2019	22,104
19	11-11-2019	49,009	1620	18-04-2024	8.2	10.2 as on 10-11-2019	22,186
20	10-12-2019	47,428	1591	18-04-2024	8.2	10.2 as on 10-12-2019	21,086
21	09-01-2020	49,009	1561	18-04-2024	8.2	10.2 as on 10-12-2019	21,378
22	10-02-2020	49,009	1529	18-04-2024	8.15	10.15 as on 10-02-2020	20,838
23	11-03-2020	45,847	1499	18-04-2024	8.05	10.05 as on 10-03-2020	18,922
24	13-10-2020	46,124	1283	18-04-2024	7.3	9.3 as on 10-10-2020	15,077
25	11-12-2020	53,912	1224	18-04-2024	7.3	9.3 as on 10-12-2020	16,813
26	10-02-2021	53,912	1163	18-04-2024	7.3	9.3 as on 10-02-2021	15,975

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27	10-03-2021	53,912	1135	18-04-2024	7.3	9.3 as on 10-03-2021	15,590
28	28-06-2021	4,654	1025	18-04-2024	7.3	9.3 as on 15-06-2021	1,215
29	18-08-2021	53,912	974	18-04-2024	7.3	9.3 as on 15-08-2021	13,379
30	27-10-2021	53,912	904	18-04-2024	7.3	9.3 as on 15-10-2021	12,417
31	15-11-2021	53,912	885	18-04-2024	7.3	9.3 as on 15-11-2021	12,156
32	30-12-2021	53,912	840	18-04-2024	7.3	9.3 as on 15-12-2021	11,538
33	TOTAL AMOUNT	23,21,526				TOTAL INTEREST (I2)	11,55,560

MEMO OF CALCULATION

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 25-04-2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
23,21,526	11,55,560	0	34,77,086

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

23. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I proceed to pass the following:

ORDER

22. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/01093/2023** is hereby allowed as under.

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/01093/2023** is hereby allowed. Respondent is directed to pay a sum of **Rs.34,77,086/- (Rupees Thirty Four Lakhs**

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Seventy Seven Thousand and Eighty Six only)

towards refund with interest calculated at MCLR + 2% from 10-08-2018 till 18-04-2024 to the complainant within 60 days from the date of this order.

2. The interest due from 19-04-2024 up to the date of final payment will be calculated as per MCLR + 2% and paid to the complainant.

3. The complainants are hereby directed to cooperate with the respondent for cancellation of agreement of sale and construction agreement dated 25-08-2018 on receipt of entire amount as directed to be refunded by the respondent.

4. The complainants are at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to the costs.


(G R REDDY)
Member, K-RERA

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[Signature]
JO R. KERRY
Member, R. KERRY