

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

DATED 3rd DAY OF MAY 2024

COMPLAINT No: CMP/UR /221017/0010108

COMPLAINANT:

UMA MAHESWARI
HANCHANAHAL
FLAT NO.B1, KRISHNA
APARTMENT, 4TH CROSS
GUNDAPPA REDD LAYOUT
CHOLA NAGAR
R.T. NAGAR POST
BENGALURU URBAN-560032

(REP BY GIRISHKUMAR R
ADVOCATE)

V/S

RESPONDENTS:

1. SREE KRISHNA DEVELOPER
& PROMOTERS
#189, 3RD FLOOR, 1ST MAIN
WEST OF CHORD ROAD
MAHALAKSHMI LAYOUT
BENGALURU URBAN-560086

2. M/s KARNATAKA STATE
EXCISE MULTIPURPOSE
COOPERATIVE SOCIETY
LIMITED
2721, 14TH MAIN
ATTIGUPPE, VIJAYANAGAR
BENGALURU-560040.

(REP BY SRI. PRASHANTH
M.V. ADVOCATE FOR
RESPONDENTS 1 & 2)



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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "EXCISE LAYOUT" developed by " M/S SREE KRISHNA DEVELOPERS AND PROMOTERS " for the relief of direction to respondents to refund the amount with interest.

2. This project is not registered in RERA. This Authority has issued show cause notice dated 28/12/2022 directing the respondent-promoter to register the project under RERA immediately as required under section 3 of the Real Estate(Regulation and Development) Act, 2016. However, the respondent has failed to do so.

3. **The brief facts of the case are as under:**

The complainant had booked a site bearing No.59 measuring 31162.51 Sq.Ft. in the project "EXCISE LAYOUT" carved out of Sy.No: 207 situated at Doddachimmanahalli Village, Kundana Hobli, Devenahalli Taluk, Bengaluru Rural District which was proposed by M/s State Excise Multi-purpose Cooperative Society Limited and M/s Sree Krishna Developers and Promoters. He has got an allotment letter No.01/2019 dated 14/11/2019 signed by the President, State Excise Multi-purpose Cooperative Society Limited and the promoter Shree Krishna Developers & Promoters. The respondent had agreed to sell the site for a total sale consideration of Rs.9,17,220/- (Rs. Nine lakhs seventeen thousand two hundred twenty only). The complainant has paid an amount of Rs.2,09,700/- on 16/1/2013 Rs.2,09,700/- on 25/7/2018 and Rs.3,17,300/- on 19/1/2019, altogether Rs. 7,37,100/- (Rs. Seven lakhs thirty seven thousand one hundred only) which has been duly acknowledged by the

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respondent no.1. It is contended that the said society had advertised proposal to develop "Excise Layout" at IVC 320 feet road situated at 6 Kms away from NH7 and 7 Kms from Yelahanka-Doddaballapur Main Road. It is submitted that the said advertisement revealed the different dimensions of sites available for sale and rate per square feet and down payment and instalments details. The rate per square feet of the site was fixed as Rs.699/- square feet. Further, the respondents have sent a letter dated 3/11/2021 to the complainant thereby demanding them to pay Rs.950/- per Sq.ft. instead of the earlier agreed price. Despite several requests, the respondents did not heed to the lawful request of the complainant. Hence, the complainant along with other aggrieved persons filed a complaint before Registrar of Cooperative Society on 13/4/2022 and he was numbered in the petition at Sl.no.38. Despite collecting all the three instalments till 2019, the developer has not completed the layout till 2022. Therefore, the complainant has approached this Authority for the relief of direction to the respondent to refund the amount paid along with interest. Hence, this complaint.

4. After registration of the complaint, in pursuance of notice, respondents 1 and 2 have appeared before this Authority through their counsel. However, they have neither participated in the proceedings by filing statement of objections nor produced the documents etc.
5. In support of his claim, the complainant has produced documents such as (1) copy of the memo of calculation (2) payment receipts (3) allotment letter dated 14/11/2019 (5) Society registration ID (6) copy of the membership payment receipt dated 9/3/2013 (7) copy of the

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communication dated 3/11/2021 made by the respondents (8) copy
of memo of withdrawal

6. The respondents in support of their defence have not produced any documents.
7. Heard both the parties. The written arguments filed by the complainant is taken note of.
8. This matter was heard on 6/4/2023, 22/5/2023, 26/6/2023, 21/7/2023, 25/8/2023, 25/9/2023, 3/11/2023.

9. 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?

10. **Findings on the above points are as under:-**

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

FINDINGS

11. **Findings on point No.1:-** The complainant has approached this forum claiming for the relief of directions to the respondents to refund the amount paid along with interest.

12. Here, in this case the claim of the complainant is based on the allotment letter dated 14/11/2019 in respect of plot no.59. Looking to the entire averments of said allotment letter issued by the respondents, it is significant to note that it is nowhere mentioned with regard to description of the property as well as location of the property. The complainant is setting up his claim only on the basis of allotment letter. But description of the property is not

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forthcoming so as to identify the property unmistakably and to grant the relief of execution of sale deed as prayed for by the complainant. While entering into any such documents, buyer has to make sure that such description shall be incorporated in the allotment letter so as to lay foundation for the claim in the event of any dispute. When the complainant is claiming for the relief based on such documents which binds the parties in in a contractual relation so as to be properly enforced in accordance with law. It is quite necessary that it shall be free from ambiguity and vagueness. Otherwise, it is quite possible that the buyer may not be able to maintain his claim over the property which he is intending to purchase on account of want of proper description of the property.

13. The relief claimed by the complainant is akin to the one claimed in suit for specific performance before the Civil Court. There also for grant of main relief, it is quite essential to prove the description of the property in the first place. On the same analogy here also it is mandatory for the complainant to prove the description of the property in respect of which he is seeking execution of sale deed from the respondents.

14. The respondents though appeared before this Authority through their counsel, subsequently, they have failed to file statement of objections and furnishing documents 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

15. Earlier, the complainant had sought for the relief of direction to the respondents for execution of sale deed in his favour with regard to plot no. 59 and hand over possession. However, during the proceedings, the complainant has filed an application requesting for the relief of refund of amount with interest. The complainant had filed a petition before the Registrar of Co-operative Societies against the respondent herein in respect of said site requesting for execution of sale deed and possession of the same. Subsequently, the complainant has filed a withdrawal application before Registrar of Co-operative Society on 19/8/2023 requesting to permit him to withdraw the said petition.

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16. On going through the allotment letter dated 14/11/2019, it is pertinent to note that the complainant has paid a sum of Rs.7,37,100/- (Rs. Seven lakhs thirty seven thousand one hundred only) to the respondent no. 1 towards purchase of the said site. It is an undisputed fact. When the respondent no.1 has received the part sale consideration from the complainant assuring that they are going to provide a site, subsequently failing to perform their part of duty certainly entitles the complainant to get back his amount paid to the respondent no.1. Admittedly, the respondent no.1 has received an amount of Rs. 7,37,100/- for the said site from the complainant. Hence, the respondent no.1 is liable to refund the amount along with interest to the complainant.

17. Considering the facts and circumstances of the case, I am of the view that it is just and appropriate to direct the respondent no.1 to refund the amount along with interest to the complainant.

18. The complainant has filed memo of calculation dated 4/12/2023 claiming an amount of Rs.12,42,494/- (Rs. Twelve lakhs forty two thousand four hundred ninety four only). The developer has not submitted any memo of calculation in spite of several opportunities given to him.

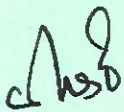
19. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Memo Calculation submitted by the complainant as on 4/12/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 4/12/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
7,37,100	5,05,394	0	12,42,494

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

20. **Findings on point no.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, I proceed to pass the following:



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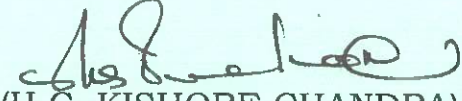
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ORDER

In exercise of the powers conferred under section 31 of the Real Estate Regulation and Development) Act, 2016, the complaint bearing No.CMP/UR/221017/0010108 is hereby allowed as under:

1. The respondent no.1 is hereby directed to pay a sum of Rs.12,42,494/- (Rs. Twelve lakhs forty two thousand four hundred ninety four only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 17/1/2013 to 30/4/2017. Further, he is directed to pay interest at the rate of SBI MCLR +2% from 1/5/2017 till 4/12/2023.
2. The interest due from 5/12/2023 shall be calculated likewise and paid to the complainants till the date of entire realization.
3. The Secretary, KRERA to initiate proceedings u/s 59 of the Act against the developer for violation of Section 3 of the Act to register the project.
4. The complainant is 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.


(H.C. KISHORE CHANDRA)
Chairman
K-RERA

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