



## **FINAL ORDER**

The Complainant has submitted in the Complaint that he was looking forward with a desire to purchase a flat in a township project and had identified a 2.5 BHK Apartment bearing No.AF 906 in the Tower-AZ Annexe (Apartment) in the Project "Metro Zone" at Koyambedu developed by the Respondent Promoter. The Complainant has also stated that the total cost of the Apartment is Rs.1,66,03,767/- and the Respondent offered subvention agreement for a period of 3 years to the Complainant. Thereafter a Tripartite Agreement dated 30.09.2015 was executed between the Complainant, the Respondent and the Banking Company Axis Bank.

2. The Complainant has also submitted that as per terms of the Tripartite agreement the Builder has agreed to pay the interest on behalf of the borrower/s i.e. the Complainant, for a period till May, 2018 to the Bank and this period is defined as subvention period and the Builder has also agreed to handover the possession of the unit to the borrower/s within 33 months from the Sale and Construction Agreement date. The Complainant has further submitted that the Respondent even after more than 2 years as stipulated under the tripartite agreement has failed to handover the possession of the said property/flat. The Complainant without enjoying the possession is till date paying EMIs for the said flat.

3. The Complainant has prayed for the following reliefs:

- a) Complete the construction of the tower and to handover the possession of the said flat AF 906.

- b) Direct the Respondent to construct and provide the common amenities and facilities as provided in the brochure attached to this Complaint (including in particular, the temple, clinic, swimming pool and on-campus kitchen) on non-OSR land as per Section 12 of the Act, failing which to punish the Respondent along with the persons responsible for commission of the offenses under Section 59 to 61 of the Act read with Section 69 of the Act besides directing the Respondent to compensate the Complainant for the loss, damages and costs of the said amenities and facilities besides the liquidated damages for false promise.
- c) Declare that the Respondent is liable to refund to the Complainant a substantial amount of Rs.89,35,639/- for the EMIs paid by the Complainant without enjoying the fruits of possession of the said flat within the time frame as promised by the Respondent.
- d) Direct the Respondent to refund the Complainant an amount Rs.6,20,855/- along with interest which were transferred as an additional charges paid by the Complainant into his primary loan on the expiry of substantive period mentioned in the tripartite agreement entered between the Complainant, the Respondent and the Bank.
- e) Pay the liquidated damages of Rs.1.25 crores to the Complainant faced due to the non-completion of sale of the said flat.

4. In the Counter Affidavit, the Respondent has submitted that it is true that the Complainant had paid Rs.65,43,085/- as advance sale construction towards Unit AF 906 forming part of phase V of the development during December, 2015. In view of the delay, the Complainant has opted to withdraw from the project and the Respondent is liable to refund the amount. The Respondent has also submitted that the booking was done under subvention scheme and till July, 2019 the Respondent was servicing the loan availed by the Complainant with Axis Bank and post July 2019, because of the restrictions imposed by RBI, the Respondent could not make payment to Axis Bank. This fact has been admitted by the Complainant at para g and para 1 of the Complaint.

5. The Respondent has further stated that because of the pandemic crisis, the entire world is affected and particularly, the Real Estate Sector is adversely affected. Considering the pandemic crisis, the cash flow of the Respondent is crippled and the Respondent craves leave of this Authority to grant 6 months time to refund Rs.65,43,085/- paid by the Complainant.

6. In the Rejoinder filed by the Complainant, it has been stated that the Respondent was liable to pay a total sum of Rs.89,35,639 (including the amount paid by Complainant to Builder together with interest, outstanding Bank Loan and EMIs paid by Complainant to Bank and not reimbursed by Builder together with interest) but in the Counter filed on behalf of the Respondent, the Respondent has agreed to pay only a total sum of Rs.65,43,085/- which was given by the Complainant to the Respondent as advance sale Consideration.

7. The Complainant has further submitted that as on date the Respondent is liable to pay a total sum of Rs.96,91,371/-, particulars of the said amount is more specifically mentioned in the table below:

<b>Sl.No</b>	<b>PARTICULARS</b>	<b>Amount (Rs.)</b>
1.	Total Amount paid by Complainant to Builder (Annexure 1)	24,38,417
2.	Interest @ 12% on above amount (Till 30.06.21) (Annexure I)	22,36,781
3.	Total Bank Loan O/s as on 30.06.21	40,61,383
4.	EMI paid by Complainant to Bank and not reimbursed by Builder (Till 30.06.21) (Annexure II)	8,32,411
5.	Interest @ 12% on above EMIs (Till 30.06.21) (Annexure II)	1,22,379
	<b>TOTAL</b>	<b>96,91,371</b>

8. In the Affidavit filed by the Complainant, the Complainant has stated that this Authority on the previous date i.e., on 25-08-2021, the Authority directed the Complainant to file an Affidavit clarifying their position regarding possession or apartment or refund before 08-09-2021 with the copy served on the Respondent. The Complainant has submitted that he wants possession of the Apartment completed in all respects as stated in the Agreement and with all the amenities as promised by the Respondent.

9. In the written submission of arguments, the Complainant has submitted that the Respondent has not started construction despite withdrawing money from the Bank during the subvention period and the

Complainant wants possession of the Apartment completed in all respects as stated in the Agreement and with all the amenities as promised by the Respondent. The Complainant has also stated that the Respondent will not be able to honour the agreement for sale and the tripartite agreement. Therefore, the Complainant has prayed for the following:

- a) To direct the Respondent to handover the possession of flat bearing No.AF 906 in the Tower-AZ in the said project.
- b) To direct the Respondent to handover the possession of flat in any other tower which is ready to occupy as the Respondent will neither be able to handover the possession of the said flat nor refund the amount paid to the Respondent along with its interest and the interest paid to Bank on EMI's.
- c) And pass any other order or orders which the Authority may deem fit and thus render justice.

10. In the written submissions, the Respondent has submitted that the Complainant has already withdrawn from the project and can only seek refund before the Adjudicating Authority. The e-mail dated 10.02.2020 sent by the Complainant categorically stated that he wants a complete exit from the project. The Complainant having withdrawn from the project already cannot now seek for possession of the unit before this Authority but can only seek for refund by filing Form-N before the Adjudicating Authority. The Respondent has further submitted that considering the pandemic crisis, the cash flow of the Respondent is crippled and Respondent craves leave of this Authority to grant 6 months time to refund Rs.65,43,085/-

11. This Authority has examined the Complaint, the Counter Affidavit filed by the Respondent Promoter, the Rejoinder filed by the Complainant, the Affidavit filed by the Complainant with reference to the directions of this Authority during the hearing on 25.08.2021, the written submission of arguments filed by both sides carefully.

12. During the hearing on 25.08.2021, the Authority directed the Complainant to file Affidavit clarifying their position regarding possession of apartment or refund before 08.09.2021 with copy served on the Respondent Promoter. Accordingly the Complainant has filed an Affidavit submitting that he wanted possession of apartment completed in all respects as per the Construction Agreement with all amenities as promised by the Respondent Promoter.

13. The Complainant Allottee has also paid so far Rs.65,43,085/- to the Respondent Promoter towards the sale consideration of the apartment allotted to the Complainant Allottee. This has also been admitted by the Respondent Promoter in their Counter Affidavit.

14. In view of the categorical Affidavit filed by the Complainant before this Authority, this Authority does not accept the contention of the Respondent Promoter that the Complainant has withdrawn from the project and opted for refund in the e-mail dated 10.02.2020.

15. As the Affidavit filed by the Complainant dated 08.09.2021 is the later than the alleged e-mail, the Authority would go by the Affidavit filed by the Complainant Allottee and holds that the Complainant Allottee is

entitled to handover possession of the apartment booked by the Complainant Allottee by the Respondent Promoter completed in all respects as per the Construction Agreement.

16. Accordingly this Authority directs the Respondent Promoter to complete the Apartment allotted to the Complainant Allottee in all respects strictly as per the Construction Agreement and handover the same to the Complainant before 30.06.2023 on receipt of balance sale consideration strictly as per the Construction Agreement.

17. The Complainant Allottee as well as the Respondent Promoter are at liberty to make separate claims with documentary proof to the Single Member Bench of this Authority presided by Thiru Sunil Kumar, I.P.S., (Retired) towards interest on delayed construction as well as interest on delayed payments, if any.

18. The Complainant is also at liberty to move the Adjudicating Officer of this Authority for compensation, if any.

19. With the above directions, this Complaint is disposed of.

Sd/-...31.01.2022  
MEMBER (M), TNRERA

Sd/-...31.01.2022  
MEMBER (J), TNREA

Sd/-...31.01.2022  
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

*N. Pradeep Kumar*  
31/1/2022  
ADMINISTRATIVE OFFICER

*31/1/2022*