

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
 ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
 ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI K. PALAKSHAPPA
DATED 25th AUGUST 2020

Complaint No.	CMP/190728/0003748
Complainant	Adarsh Nahata 4033,Sobha Iris Condominium, Bellandur(Near Sakra Hospital) Bengaluru-560103 In person
Opponent	Purvankara limited 130/1, Ulsoor Rd, Yellappa Chetty Layout,Yellappa garden, Bengaluru Urban-560042.

JUDGMENT

1. Adarsh Nahata, the complainant has filed this complaint no. CMP/190728/0003748 under Section 31 of RERA Act against the project "Purva Westend" developed by 'Purva Star Properties Limited., seeking for the compensation.
2. After registering the complaint notice has been issued to the parties, the complainant has appeared in person where as the respondent has appeared through his representative and filed his reply. Before going to discuss on merits I would like to narrate some facts. This complaint was filed and during the course of trial the engineer attached to this authority has been appointed to inspect the spot and to give report. He has given report but the original file sent to him is not traced out. Hence, with the consent of parties new file has been created and the parties have been heard.

Devi
25/08/2020

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3. The point that arise for my consideration is
- Whether the complainant proves that he is entitled for the relief as sought in the complaint?
 - If so, what is the order?
4. My answer is affirmative in part for the following

REASONS

5. It is the case of the complainant that the developer has not given the correct measurement as agreed by him. According to complainant the carpet area is lesser than the agreed terms as mentioned in the agreement of sale. Of course the complainant has said that the developer has failed to provide amenities to the complainant also which are as under:
- Not allowing 3rd party inspection
 - Delivery of facilities different from what was advertised
 - Construction of defects
 - Drianage defects in the society basement.
6. So far as carpet area is concerned it is not possible to determine the same because it requires opinion of the expert. Accordingly the engineer attached to the Authority has been appointed for the said purpose. After visiting the spot the learned engineer has visited the flat and measured the same in presence of the parties and gave a report which reads as under:

Inspection of flat no. 1103, 'PURVA WEST END' purva west end, hosur road, Bangalore. Carried out on 13/2/2020. By the Executive engineer, RERA, Bangalore.

Complainant side members present @site.

- 1) Chaluk khanna.
 - 2) Santosh Kamal Khanna.
- Measurement carried out in their presence.*

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Varanda : 4*9"x 8*3"
Living room: 13*10 ½ x 27'1"
Kitchen : 13'5"x 7'5"
Offset : 5"x 7*10"
Utility : 7 '7"x 4 '3"
Bed room 1 : 13 '7"x 12'10"
Toilet : 7 '10"x 4'10"
Bed room 2 : 12'10"x 11 '6"
Offset : 4 x 7 '0"
Bedroom 3 : 11 '10"x 14 '11"
Toilet : 6 x 8 '1"
Passage : 5 '3" x 3 '2"
Toilet : 5 '4" x 8 '4"
Balcony : 8 '11"x 4 '6"
Ladder : 11" x '6"

Cilt to kitchen : 5 x 3 '8"
To utility : 4"x 2 '11"
Cilt to bed room : 4" x 2'7 ½ x 3
Maindoor : 9' x 3' '3"
Cilt to balcony : 3" x 7 '10"

7. The learned engineer has given his opinion stating that the net carpet area was 1216.92 sq feet. But the developer including the land owner have executed the sale deed on 27/08/2019 where they have said that the flat sold under the sale deed was measuring carpet area of **1280.16 square feet** (which is inclusive of balconies and utility space) or a plinth/built up area of **1429 square feet** (which is inclusive of balconies and utility space and walls of the apartment) and proportionate common area of **337 square feet** along with one **covered** car parking space. As per the report of the engineer the carpet area was 1216.92 square feet.
8. It means there is shortage of 63.24 sq feet. For which the developer has to return the amount because it is clear that whenever the carpet area given by the developer is lesser then he has to return the amount to the buyer which was collected.

Deenu
25/8/2019

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9. In support of the same I would like to refer to some comments made in a book called TAXMAN'S GUIDE TO RERA where it is said that it is the duty of the developer to return the amount collected in excess of carpet area. I would like to reproduce the same here:-

8.1-3- ADDITIONAL PAYMENT/REFUND FOR CHANGES IN CARPET AREA .

** the promoter shall confirm the final carpet area that has been allotted to the Allottee after the construction of the building is complete and the occupancy certificate is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area.*

The total price payable for the carpet area shall be recalculated upon confirmation by the promoter.

If there is reduction in the carpet area then the promoter shall refund the excess money paid by the allottee within forty-five days with annual interest at the rate prescribed in the rules, from the date when such an excess amount was paid by the Allottee.

If there is any increase in the carpet area, which is not more than three percent area of the apartment, allotted to Allottee, the promoter may demand that from the Allottee as per the next milestone of the Payment Plan as provided in the AFS.

All these monetary adjustments shall be made at the same rate per square feet as agreed in para 1.2 of model AFS.

10. In view of the same the developer has to return the amount which was collected from the complainant.

11. Further the developer is also under obligation to provide all the amenities. In this regard I would say that the complainant also has not given details of the amenities to be provided by the developer. He has to make proper and definite allegation with regard non-providing the amenities. He shall say what amenity is not provided and as such the complaint is allowed in part so for as carpet area is concerned. Hence I allow this complainant in part.

*Peru
25/08/2020*

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12. Before passing the final order I would like to say that as per Section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 28/07/2019. During the course of trial it is necessary to appoint the Engineer for inspection. The file has been sent to Engineer to get the report but unfortunately the original file was misplaced but however he has given the report. It was brought to the notice of the parties and hence created the new file and heard the parties.
13. In the meanwhile on account of natural calamity COVID 19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2010 and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190728/0003748 is hereby allowed in part.
- b. The developer shall return the excess amount collected on the excess carpet area within 30 days from today. (i.e., the price fixed for per Sq.ft., to the extent of 63.24 Sq.ft.) If not, it will carry the interest @ 2% above the MCLR of SBI from 31st day till the amount is paid.
- c. Intimate the parties regarding the order.
- (Typed as per dictated, corrected, verified and pronounced on 25/08 /2020).

K. PALAKSHAPPA
Adjudicating Officer