

**BEFORE ADJUDICATING OFFICER, RERA**

**BENGALURU, KARNATAKA**

**Complaint No. CMP/180724/0001068**

**Date: 14<sup>th</sup> FEBRUARY 2019**

**Complainant : 1. CMP/180724/0001068**

**Sanjay Kumar Tayal**

**19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,**

**JTS Malani Marg Chrch Gate, Opposite KC  
college, Maharashtra- 400020 dea by LR's**

**1(a) Mrs. Jyotika Tayal,**

**Wife of late Sanjay Kumar Tayal**

**Aged about 45 years**

**Occu : Business**

**Residing at Raguvanshi Mills**

**Compound, Lower Parel (west),**

**Mumbai – 400013**

**1(b) Aditya Tayal,**

**Son of Late Sanjay Tayal,**

**Aged about 24 years.**

**Residing at Raguvanshi Mills**

**compound, lower Parel(west),**

**Mumbai- 400013**

**2. CMP/ 180726/0001083**

**Singh, 19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,**

**JTS Malani Marg Chrch Gate,**

**Opposite KC College, Maharashtra – 400020**



**3.CMP/180725/0001070**

**JYOTIKA TAYAL,**

**1<sup>st</sup> floor, No. 15, Sankey Main Road,**

**10<sup>th</sup> Main, 6<sup>th</sup> 'A' cross, Lower Palace Orchard,**

**SAD, Karanataka – 560080**

**4.CMP/180725/0001071**

**GAURAV TAYAL,**

**19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,**

**JTS Malani Marg Chruch Gate, Opposite**

**KC College, Maharashtra – 400020**

**5. CMP/180726/0001084**

**NINA RANI ANUJ AGARWAL**

**19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,**

**JTS Malani Marg Chruch Gate,**

**Opposite KC College, Maharashtra – 400020**

**6. CMP/180726/0001082**

**VANDANA TAYAL,**

**19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,**

**JTS Malani Marg Chruch Gate,**

**Opposite KC College, Maharashtra – 400020**

**7. CMP/180725/0001079**

**UPASANA TAYAL,**

**19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,**

**JTS Malani Marg Chruch Gate, Opposite KC**

**College, Maharashtra – 400020**

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*14/02/19*



**8. CMP/180725/0001078**

**SAURABH KUMAR TAYAL,  
19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,  
JTS Malani Marg Chruch Gate,  
Opposite KC College, Maharashtra – 400020**

**9. CMP/180725/0001077**

**KESHAV TAYAL  
19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,  
JTS Malani Marg Chruch Gate,  
Opposite KC College, Maharashtra – 400020**

**10. CMP/180725/0001076**

**BHAWANA TAYAL,  
19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,  
JTS Malani Marg Chruch Gate,  
Opposite KC College, Maharashtra – 400020**

**11. CMP/180725/0001075**

**AAKASH TAYAL,  
19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,  
JTS Malani Marg Chruch Gate,  
Opposite KC College, Maharashtra – 400020**

**12. CMP/180725/0001074**

**NAVIN KUMAR TAYAL  
19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,  
JTS Malani Marg Chruch Gate, Opposite  
KC College, Maharashtra – 400020**

*Dehu*  
*14/02/19*



**13. CMP/180725/0001072**

**PRAVIN KUMAR TAYAL**

**19<sup>th</sup>, 6<sup>th</sup> floor Pankaj Mahal,**

**JTS Malani Marg Church Gate,**

**Opposite KC College, Maharashtra – 400020**

**All the above complainants are  
represented by their Authorised signatory  
Sri Pushpendra Prathap Singh**

**AND**

**Opponent : UNICCA EMPORIS PVT. LTD.,  
1<sup>st</sup> floor, No. 15, Sankey Main Road,  
10<sup>th</sup> main, 6<sup>th</sup> 'A' Cross,  
Lower Palace Ground, SADASHIVANAGAR  
Bengaluru - 560080**

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**J U D G E M E N T**

1. Sanjay Kumar Tayal and other 12 members, have filed these complaints under Section 31 of RERA Act against the project "Unicca Emporis" developed by Unicca Emporis Pvt. Ltd., The fact of one complaint is as follow:

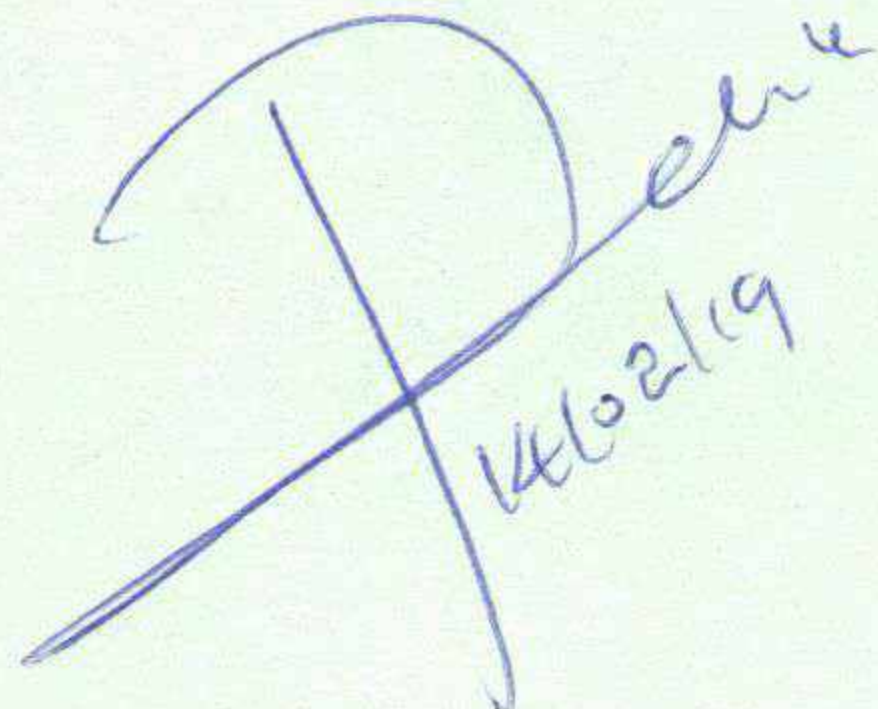
*"The Complainant, along with other family members, had collectively paid a consideration of Rs.3,94,42,500/- (Rupees Three Crores Ninety Four Lakhs Forty Two Thousand Five Hundred only), for purchase of 40 flats in an Apartment Complex known as Unicca Emporis to be constructed at No. 204, Sy No. 11/1, Whitefield Sub-Division, Varthur Hobli, Mahadevapura Zone, Ward No. 149, Bengaluru from M/s. Unicca Emporis Private Limited*

*[Handwritten signature and date 24/02/19]*



(the Respondent). The Respondent is a company incorporated and registered under the Companies Act, 1956 and is engaged in the business of building construction and Real Estate development. The Respondent has taken up construction of an Apartment Complex known as Unicca Emporis at the aforesaid address. In 2013, the Respondent had approached the Complainant and other family members with a Pre-Launch Offer to sell 20 Two-Bedroom Flats and 20 Three-Bedroom Flats in 20:80 Scheme, wherein the Complainant was required to pay 20% of the total cost of the Flats, and 80% was to be arranged by Respondent as a Loan on which interest till date of possession was to be paid by the Respondent. The Respondent had also assured the Complainant that the construction of the apartments would be completed in two years time and the physical possession of the apartments would be handed over to the Complainant by the end of 2015. Being persuaded by the assurances of the Respondent, the Complainant had accepted the Pre-Launch offer of the Respondent for the sale of flats at the aforesaid Unicca Emporis. Accordingly, the Complainant, along with the family members, had paid the 20% of the total amount i.e. Rs.3,94,42,500/- (Rupees Three Crores Ninety Four Lakhs Forty Two Thousand Five Hundred only) and the same was received and accepted by the Respondent. The Respondent had also allotted 40 Flats to the Complainant and his family members. It is pertinent to note that the Complainant had purchased the aforesaid Flats with the intention of shifting and relocating to Bangalore City along with the entire family. However, the Respondent failed to handover the physical possession of the Flats to the Complainant by the end of 2015. The Respondent also has failed to facilitate to secure the necessary loans from banks in accordance with the 20:80 Scheme. Even after an inordinate delay of three years, the Complainant has not been put in physical possession of the aforesaid Flats even as of today. Hence this complaint.

Relief Sought from RERA : Reimbursement of amount paid, with interest, damages”

A handwritten signature in blue ink, followed by the date '14/02/19' written below it.



2. One Mr. Sanjay Kumar Tayal has filed his complaint under Section 31 of RERA praying for the relief of reimbursement of amount paid by him along with interest and damages. During the course of trial, he died. Therefore his Legal Representatives have filed necessary application to bring them on record. In this regard the other side said they have no objection. Therefore it is treated as legal representatives of Tayal are on record. There is no provision in the portal to make the amendment and as such it is treated legal Representatives have been brought on record.
3. At this stage I would like to say that there are 13 complainants including this complaint. All the complaints are seeking same kind of relief and represented through power of attorney holder. So both the parties are agreed to pass a common order.

*"it is submitted that the complainants in complaint no. 1068/2018, 1070/2018, 1071/2018, 1072/2018, 1074/2018, 1075/2018, 1076/2018, 1077/2018, 1078/2018, 1079/2018, 1082/2018 & 1084/2018 are individuals who have collectively paid the part consideration for purchase of 40 flats in a property known as "Unicca Emporis" constructed by the respondent. The complainants in complaints no. 1068/2018, 1070/2018, 1071/2018, 1072/2018, 1074/2018, 1075/2018, 1076/2018, 1077/2018, 1078/2018, 1079/2018, 1082/2018 & 1084/2018 are a part of a business conglomerate by the name of Tayal Group and the complainant in 1083/2018 is one of the group and some of the correspondence have been entered into by and between the complainant - Everlon Estate Pvt. Ltd., with the Respondent under the name and style "Unicca Emporis". Further, a Memorandum of Understanding was also executed between the complainant- Everlon Estate*

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*14/02/19*



*Pvt. Ltd., with the respondent on behalf of the complainants on 16.5.2013 with respect to the same. It is submitted that the original of the MOU is with the Respondent and the respondent has not provided any copies of the said MOU to the complainants despite asking several times and same has been mentioned by the complainants in legal notice date: 17.12.2018"*

4. This is the gist of the complaint of all the complainants. But the respondent developer has taken various defences. It is the submission that the complainants are not entitled for the delay compensation as per Sec. 18 because they are not the allottees. It is the submission of the developer that as per Sec. 2(b) the word Allottees has not been applicable to them because the members of the family have purchased a bunch of flats. Second one is that the complainants have not signed Agreement of Sale because Sec. 18 mandates that the delay compensation has to be awarded based upon the Agreement of Sale. But it is the submission of the complainants that the developer has failed to give the Agreement of Sale. In view of the above position, it is the submission of the developer that the complainants have to approach Civil Court for redressal. Third one is that the complainant in complaint no.1068 is the power of Attorney holder to other complainants has no authority to file the complaints since it should be through an advocate or chartered accountant.
5. When the case was called on 6/9/2018 the complainants are represented by their Advocate who has filed vakalath on behalf of one Pushpendre happens to be the Power of Attorney Holder for all the complainants. In this regard, on 4/12/2018, this Authority recorded as under..

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Peru  
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“ದಿನಾಂಕ: 04/12/2018 ರಂದು ಕೇಸನ್ನು ಕರೆಸಿದೆ.

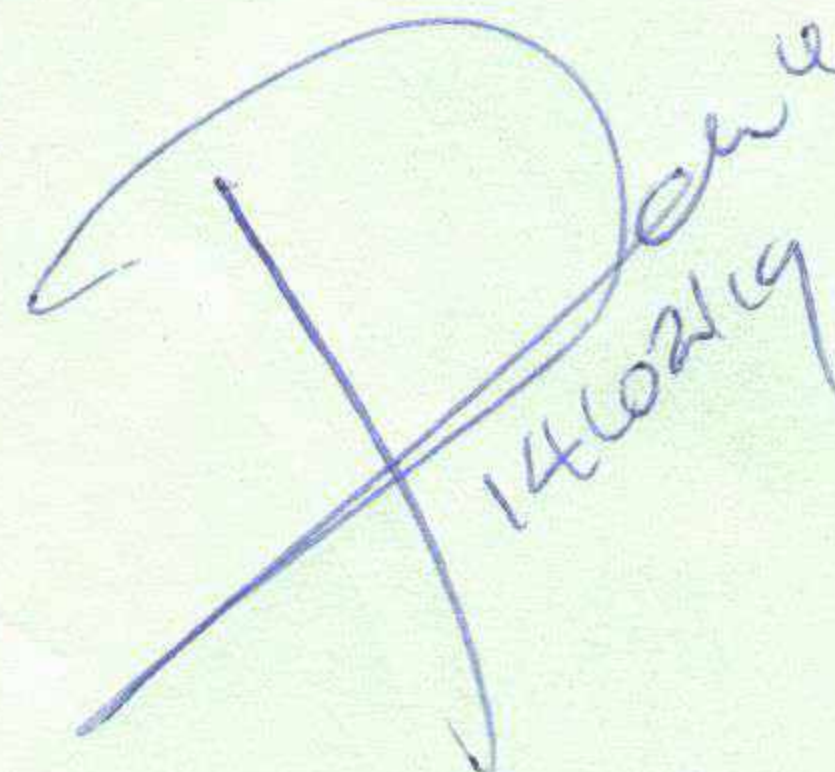
ಫಿರ್ಯಾದುದಾರರ ಪರ ವಕೀಲರು ಹಾಜರಿ, ಡೆವಲಪರ್ ಪರ ವಕೀಲರು ಹಾಜರಿ.

ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ:1068 ರಲ್ಲಿ ಉಳಿದ ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ:1070,1071, 1022, 1074, 1075, 1076, 1077, 1078, 1079, 1082, 1083, 1084 ಗಳನ್ನು Club ಮಾಡಲು ಒಂದು ಮೆಮೋ ಹಾಕಲಾಗಿದೆ. ಅದಕ್ಕೆ ಡೆವಲಪರ್ ಪರ ವಕೀಲರು ತಕರಾರು ಇಲ್ಲ ಎಂದು ಹೇಳಿದ್ದಾರೆ. ಅದಕ್ಕೂ ಮೊದಲು ಫಿರ್ಯಾದುದಾರರ ಪರ ವಕೀಲರು 13 ಜನ ಸೇರಿ ಡೆವಲಪರ್ ಗೆ ರೂ.3,94,42,500/- ರೂಗಳನ್ನು ಒಟ್ಟಿಗೆ ಕೊಟ್ಟಿದ್ದಾರೆ. ಈಗ ಹಣವನ್ನು ವಾಪಾಸ್ ಪಡೆಯುವಂತೆ ಎಲ್ಲಾ 13 ಜನರು ಬೇರೆ ಬೇರೆ ಫಿರ್ಯಾದುಗಳನ್ನು ಸಲ್ಲಿಸಿದ್ದರೂ ಸಹ ಅವರೆಲ್ಲರ Claim ಏನೆಂದರೆ ತಾವು ಈಗಾಗಲೇ ಡೆವಲಪರ್ ಗೆ ಕೊಟ್ಟಿರುವ ರೂ.3,94,42,500/- ಮತ್ತು ಅದರ ಮೇಲೆ ಬಡ್ಡಿಯನ್ನು ಕೊಡಿಸಿಕೊಡಬೇಕೆಂದು ಕೇಳುತ್ತಿದ್ದಾರೆ. ಆದ್ದರಿಂದ ಈ 13 ಕೇಸುಗಳನ್ನು ಒಂದೇ ಬಾರಿಗೆ ವಿಲೇವಾರಿ ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂದು ಕೇಳುತ್ತಾರೆ. ಈ ಕಾರಣದಿಂದ ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ:1068 ರಲ್ಲಿ ಉಳಿದ ಫಿರ್ಯಾದುಗಳನ್ನು Club ಮಾಡುವುದಾದರೆ ತನ್ನ ತಕರಾರು ಇಲ್ಲವೆಂದು ಡೆವಲಪರ್ ಪರ ವಕೀಲರು ಹೇಳುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ: 1070,1071, 1022, 1074, 1075, 1076, 1077, 1078, 1079, 1082, 1083, 1084 ಇವುಗಳನ್ನು ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ:1068 ರಲ್ಲಿ Club ಮಾಡಲಾಗಿದೆ.

ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ:1068 ರಲ್ಲಿರುವ ಫಿರ್ಯಾದುದಾರರು ಮೃತರಾಗಿರುವುದರಿಂದ ಅವರ ವಾರಸುದಾರರನ್ನು ಕಡತದ ಮೇಲೆ ತರಬೇಕಾಗಿದೆ. ಅದಕ್ಕೆ ಕಾಲಾವಕಾಶ ಬೇಕು ಎಂದು ಫಿರ್ಯಾದುದಾರರ ಪರ ವಕೀಲರೇ ಕೇಳುತ್ತಾರೆ. ಆದರೆ ನಂತರ ಫಿರ್ಯಾದು ಸಂಖ್ಯೆ:1068 ರಲ್ಲಿನ ಮೃತ ಫಿರ್ಯಾದುದಾರರ ವಾರಸುದಾರರ ಪಟ್ಟಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಅರ್ಜಿಯನ್ನು ಕೂಡ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಶ್ರೀ ಪುಷ್ಪೇಂದ್ರ ಪ್ರತಾಪ್ ಸಿಂಗ್ ಇವರು ವಾರಸುದಾರರ ಅಧಿಕಾರ ಪತ್ರವನ್ನು ಪಡೆದವರಾಗಿ ಪ್ರಮಾಣ ಪತ್ರ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಅಂದರೆ ಶ್ರೀ ಪುಷ್ಪೇಂದ್ರ ಪ್ರತಾಪ್ ಸಿಂಗ್ ಇವರು ಮೂಲ ಫಿರ್ಯಾದುದಾರರ ಸಂಜಯ್ ತಯಾಲ್ ಇವರಿಂದಲೂ ಕೂಡ Power of Attorney ಅನ್ನು ಪಡೆದುಕೊಂಡಿದ್ದರು.

ಮೃತ ಸಂಜಯ್ ತಯಾಲ್ ಮತ್ತು ಅವರ ಹೆಂಡತಿ ಜ್ಯೋತಿಕಾ ತಯಾಲ್ ಇವರು ಸದರಿ ಪುಷ್ಪೇಂದ್ರ ಪ್ರತಾಪ್ ಸಿಂಗ್ ಇವರಿಗೆ ದಿನಾಂಕ:05/07/2018 ರಂದು ಅಧಿಕಾರ ಪತ್ರ ಬರೆದುಕೊಟ್ಟಿರುತ್ತಾರೆ. ಸಂಜಯ್ ಕುಮಾರ್ ತಯಾಲ್ ಇವರು ದಿನಾಂಕ:14/10/2018 ರಂದು ಮೃತ ಪಟ್ಟಿರುತ್ತಾರೆ.





ಅವರ ವಾರಸುದಾರರಾಗಿ ಶ್ರೀಮತಿ ಜ್ಯೋತಿಕಾ ತಯಾಲ್ ಮತ್ತು ಆದಿತ್ಯ ತಯಾಲ್ ಇವರು ವಾರಸುದಾರರಾಗಿ ತರಬೇಕೆಂದು ಹೇಳಿದ್ದಾರೆ. ಅದಕ್ಕಾಗಿ ದಿನಾಂಕ:15/11/2018 ರಂದು ಅಧಿಕಾರ ಪತ್ರ ಬರೆದುಕೊಟ್ಟಿರುತ್ತಾರೆ.

ಡೆವಲಪರ್ ಪರ ವಕೀಲರು ಈ ಕಾಪಿಯನ್ನು ತೆಗೆದುಕೊಂಡಿರುತ್ತಾರೆ. ವಾರಸುದಾರರ ಬಗ್ಗೆ ಡೆವಲಪರ್ ಗೆ ನೇರವಾದ ಮಾಹಿತಿ ಇಲ್ಲವಾದ್ದರಿಂದ ತಾನು ಈ ಅರ್ಜಿಯ ಬಗ್ಗೆ ಏನು ಹೇಳುವುದಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ.

IA ದಲ್ಲಿರುವ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ಶ್ರೀಮತಿ ಜ್ಯೋತಿಕಾ ತಯಾಲ್ ಮತ್ತು ಆದಿತ್ಯ ತಯಾಲ್ ಇವರು ಮಾತ್ರ ಮೃತ ಸಂಜಯ್ ಕುಮಾರ್ ತಯಾಲ್ ಇವರ ವಾರಸುದಾರರು ಅಂತ ಪ್ರಮಾಣ ಪತ್ರದಲ್ಲಿ ಹೇಳಿರುತ್ತಾರೆ. ಶ್ರೀಮತಿ ಜ್ಯೋತಿಕಾ ತಯಾಲ್ ಮತ್ತು ಆದಿತ್ಯ ತಯಾಲ್ ಇವರುಗಳಿಂದ ಅವರ ಅಧಿಕಾರ ಪತ್ರ ಪಡೆದ ಪುಷ್ಪೇಂದ್ರ ಪ್ರತಾಪ್ ಸಿಂಗ್ ಇವರ ಮೂಲಕ ಹಾಜರಾಗಿರುತ್ತಾರೆಂದು ತೆಗೆದುಕೊಳ್ಳಲಾಗಿದೆ. ಅವರ ಫಿರ್ಯಾದಿಗೆ ತೆಗೆದುಕೊಳ್ಳಲಾಗಿದೆ. ವಾದಕ್ಕಾಗಿ ಕೇಸನ್ನು ದಿನಾಂಕ:20/12/2018 ಕ್ಕೆ ಕರೆಯಿರಿ”

6. Hence, the formality of bringing the legal representatives on record to the complaint No. 1068 and the power of attorney of L.Rs. of complaint No. 1068 is the power of attorney of other complainants.
7. Now coming to the merits of the case. The complainants have paid totally a sum of Rs.3,94,42,500/-According to complainants this amount may be ordered to be refunded along with interest. As per Sec. 18 it is the wish of the consumer to be with the project or to go out of the project. The wordings used in Section 18 are as under:

*“ in case the allottee wishes to withdraw from the project, 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”*

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14/12/19



8. But in order to invoke Section 18, the complainants have to prove that they are allottees. The word allottee has been defined in Sec. 2(b). According to the developer all the complainants belong to one family and they have purchased 40 flats for their family. The developer has submitted that the complainants are not entitled for the relief for two important reasons. Firstly they have not taken the Agreement of Sale and as such they cannot take shelter under S.18 of the Act. Secondly as they are not the allottees as defined in the Act and as such they have to approach the Civil Court. At this stage I would like to say that the complainants have already approached the civil court by filing a suit in O.S. No. 408/16 but the same was dismissed as withdrawn. Now regarding another legal aspect that as to the allottees. The developer says that they are not the allottees means they might be investors. In this connection I would take the rulings on the word investor.

*"It is further and more specifically submits that the Term "Investor" is not defined either in Agreement or nowhere defined under RERA. Any purchasers of the apartment is an allottee as per Sec.2(d) of RERA Act. Thus the connection of respondent that complainant is an Investor will not holds good to the facts of the case and it is neither sustainable on facts or in the Eyes of the Law. The concept of Investor is applicable under Consumer Protection Act and Not under RERA Act. Under RERA Act any buyer is an allottee. Since the project is registered under RERA, only the provision of the RERA act will be applicable, the provision of other laws will be applicable in coordination and not is derogation to defend the main object of the Act.*

*Denue*  
*14/02/19*



9. Thus the concept of the Investor is not applicable under RERA and more specifically to the complainant. By keeping in mind and circumstances now I am going to discuss on merits of the case.
10. In this case 13 Complainants are there and according to them they are all belonging to one family and entered into agreement with the developer to purchase totally 40 flats.
11. As per the proposition of law it is very clear that the complainants being the members of the family have decided to purchase the flats from the developer attracted by the advertisement given by him. The scheme was introduced by the developer and accordingly the complainant being the members of a family have decided to purchase the flats. There is no any contra evidence on behalf of the developer to say that the complainants have purchased the flats from him only for investment purpose. The advocate for the complainants has read the terminology of ALLOTTEE and submits that there is no bar in purchasing more than one flat by each member of the family. I find some force in his submission. The word investor while defining the same the discussion made by the higher authority that if there was no intention to resell the flats purchased by them there is no question of saying that they are the investors. They have to be called as investors only it is proved that their intention was to purchase and sell to others.

*Devi*  
*14/02/19*



12. It is not the case of the developer that the complainants have purchased with the sole intention to sell the flats to other persons like him. It is no doubt that that developer has constructed the building and formed the flats only with an intention to sell them to public. Such a proposition of law cannot be attributed against complainants. In this regard the complainants have said in their compliant itself as under:

*The Respondent had also assured the Complainant that the construction of the apartments would be completed in two years time and the physical possession of the apartments would be handed over to the Complainant by the end of 2015. Being persuaded by the assurances of the Respondent, the Complainant had accepted the Pre-Launch offer of the Respondent for the sale of flats at the aforesaid Unicca Emporis. Accordingly, the Complainant, along with the family members, had paid the 20% of the total amount i.e. Rs.3,94,42,500/- (Rupees Three Crores Ninety Four Lakhs Forty Two Thousand Five Hundred only) and the same was received and accepted by the Respondent. The Respondent had also allotted 40 Flats to the Complainant and his family members. It is pertinent to note that the Complainant had purchased the aforesaid Flats with the intention of shifting and relocating to Bangalore City along with the entire family.*

If the same is read the intention of the complainants will be clear and as such I don't think that the developer is having positive grounds to dismiss the complaint.



13. According to developer he has raised a technical argument by saying that the complainants have failed to produce the agreement of sale to prove the transaction. It means the developer wanted to say that the purpose of purchasing 40 flats from the developer was only to do the real estate business and therefore it is his submission that they are not the allottees. But I am not going to accept his argument because it was the duty of the developer to execute the agreement of sale in favour of the complainants by acknowledging the transaction. As per section 19 there are some obligations and responsibility on the developer. Those obligations have not been complied by him. It is not his case that the complainants have failed to turn up when he called them to take agreement of sale. The circumstances reveal that the developer has not given satisfactory reasons for not executing the agreement of sale in favour of complainants. When that being the case it is not correct on the part of the developer to submit that the transaction cannot be accepted because there is no agreement of sale.
14. As per section 13 any developer who receives more than 10% of the total cost of the flat it should be under agreement of sale and it should be registered. Then such being the case the submission made on behalf of the developer that the Complainants have failed to produce the agreement of sale holds no water. There is no any proper explanation from the side of the developer as to why he has not handed over the agreement of sale paper in favour of the complainants.



15. In the written arguments submitted by the complainants it is said that they have repeatedly called the developer to execute the sale agreement. But it is alleged that developer has failed to execute the sale deed.
16. In para number 7 of their written argument that the complainants said that the developer himself has sent a mail accepting that this is subvention scheme wherein the consumer has to give only 20% from his pocket and 80% has to be remitted by bank by raising the loan in the name of the consumer. In this regard the learned counsel for the complainants has drawn my attention to the mail dated 2nd August 2013 with rates as under:
- I am also forwarding in email message separately from Indus IND Bank regarding list of heads that they will fund in 20:80 scheme.*
17. The learned Advocate for the complainants has drawn my attention to document No. 4 which is a letter addressed by the developer to the present complainants dated 15th May 2014. In page number 2 it is said that the total amount received from the complainants was Rs. 3,44,42,500/- as on that day.
18. Another document was also addressed to developer by the present complainants dated 20th of April 2015 where the developer has said that he has received a total amount on that day was Rs. 3,94,42,500/-., as on that day.
19. The learned Counsel for the complainants has drawn my attention to another letter addressed by the developer dated 24th of August 2015 where he said as under:

*This has reference to our final demand letter dated 13th August 2015 where in it was brought to your notice*



*that if we did not receive any communication or payments within next 7 days from that date the flats allotted to you will be cancelled and the refund the payment made by you within 90 days from the date of referred letter.*

20. This is very important letter on the side of the complainants because the developer has clearly mentioned in the letter that the flats have been allotted to them. It is not the case of the developer that flats have been purchased for the purpose of investment. In furtherance of the same it is also admitted by the developer that the amount received from the complainants will be refunded within 90 days from the date 24<sup>th</sup> of August 2015.

21. Another important document is that the complainants have issued a legal notice on 1<sup>st</sup> September 2015 for which the developer has got issued reply notice on 16<sup>th</sup> November 2015 where in it is said as under in para number 4 and 5.

*The transaction was entered into between my client and they said Everlon estate Private Limited as per the express terms of understanding and agreement between the said parties in form of the aforesaid Memorandum of understanding dated 16 May 2013*

22. As per the terms of said MOU, it was expressly agreed that,

i) Everlon agreed to purchase 40 flats on the said property  
as more particularly described in the said MOU;

*Done*  
*14/6/2019*



ii) The total saleable area to be sold to Everlon was agreed

at 60 2700 square feet comprise of two bedrooms and 20

flats are three bed signatory described in the same m o u.

iii) My client agreed to sell and transfer the state flats to Avalon @ Rs 2750 per square feet total amount of rupees

1724 25000( rupees 17 crores 24 lacs 25.

iv) yevadu expressly agreed to pay the aforesaid price consideration by using the 2018 scheme offered by my client. The 20% of the price consideration was to be paid in accordance with the schedule provided in the provided in the MOU. Most permanently ever known agreed to pay the remaining 80% and their home loan scheme offered by a bank where in my client agreed to bear and pay the EMI interest i.e. The interest payable to the bank and till the handing over of the possession of the said flats to Avalon. It was expressly agreed that level and shall not pay any interest or EMI till the final position of the flats is handed over subject always tourbillon being eligible for bank loan approval.

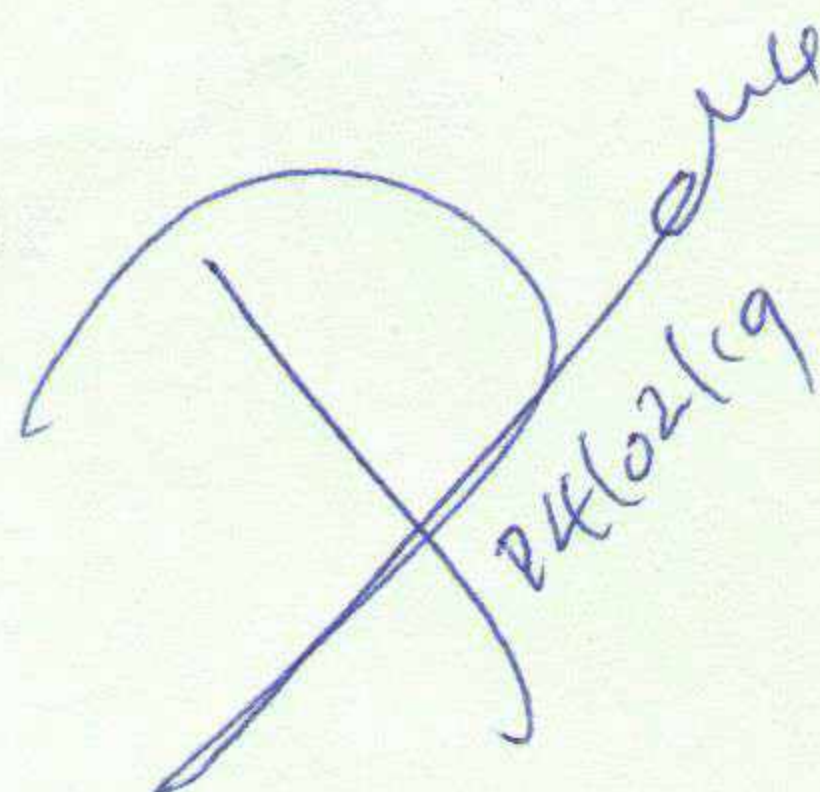
22. From the above reply given by the developer himself it proves the relationship of Developer and Consumer. He himself has addressed them as allottees and he never said that they are investors. Hence, the argument on technical point has no force.

23. According to the developer agreement of sale is a material document. Based upon the same it was submitted on behalf of the developer that the Complaints are not produced in the material document means they are not eligible for the relief as primary the complaint.

*Denik*  
14/02/19



24. In the written submission it is said that the Complaints ought to have approach the Civil Court. But I would say that as per the discussion made by me and with the help of own documents with evidence of the developer it is very clear that the Complainants have purchased for their purpose.
25. The letter dated 24th of August 2015 is very clear that they have agreed to refund the amount within 90 days from the date of cancellation. But the developer has failed to keep up the words and therefore the Complainants were forced to approach this authority to seek refund of the amount as per section 18 of RERA Act. It is needless to say that as per section 18 it is his wish either to continue with the project or to go away from the project. When he decides to go away from the project then it is the duty of the developer to refund the amount with interest as prescribed in the rule and I have no hesitation to say that the Complainants are entitled for refund of the amount paid by them.
26. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the parties were present on 25/07/2018. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 17/08/2018. The complainant in Complaint No. 1068 is reported to be dead and their legal representatives have been brought on record for which sufficient has been consumed. The talks dfor settlement later failed also consumed the time. Hence there is some delay in closing all these complaints. With this observation I proceed to pass following order.





## ORDER

The complaint no. CMP/180724/0001068 and other 12 complaints have been allowed by directing the developer to return Rs. 3,94,42,500/- along with interest @9%P.A on the respective amount received on respective date prior to 30/04/2017 as per KOFA and @10.75%P.A commencing from 1/5/2017 till the realization of full amount.

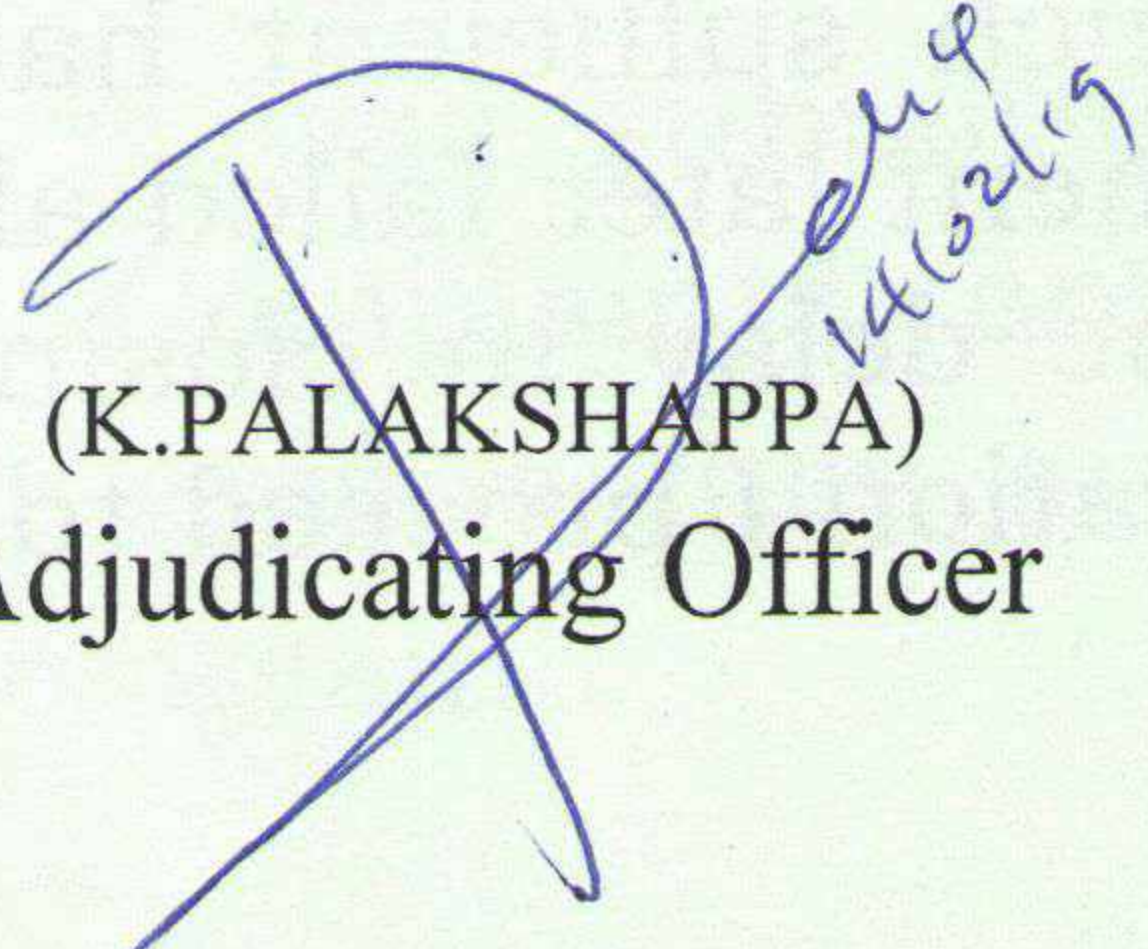
The developer is directed to deduct the GST amount in case the same is paid to the department and necessary documents shall be provided to the complainants to enable them to recover the same from the concerned department.

The developer is also directed to pay Rs. 5,000/-each as cost of each case.

The original copy be kept in CMP/180724/0001068 and copy of the same be kept in other complaints.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 14/02/2019)

  
(K.PALAKSHAPPA)  
Adjudicating Officer