

**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**

**Presided by Sri K. Palakshappa**

**Adjudicating Officer**

**Complaint No. CMP/181218/0001774**

**Date: 1<sup>st</sup> of August 2019**

Complainant: Venugopal Gella, Lavanya Gella,  
No. 28/58, 3<sup>rd</sup> floor, smiran Arcade, 2<sup>nd</sup> main,  
Banashankari, 1<sup>st</sup> stage,  
Bangaluru-560050

**AND**

Respondent: Parkwest-Emerald-Tower 2  
ETA Star Infopark, ETA Karnataka Estates  
Limited, ETA construction(India) Limited,  
Relationship Properties Pvt. Ltd., No. 1/1,  
Binnypet, Hosakere road, Bangaluru- 560023

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

1. Mr. Venugopal Gella and Mrs. Lavanya Gella, being the Complainants have filed this complaint under Section 31 of RERA Act against the project "Parkwest-Emerald-Tower 2" developed by ETA Star Infopark bearing no. CMP/181218/0001774. The facts of the complaint is as follows:

*"The Complainants are Allottees of Flat No. T2-0-02 known as 002 in the ground floor of Emerald Tower 2, Phase I in the project ?PARK WEST? registered with IRERA Karnataka being developed on the Property bearing No. 1/1 (Old No.31), Hosakere Road, Binnypet, Bengaluru - 560 023, by the 4th Respondent. The parties entered into two Agreements both dated 22/12/2014 under which the Respondents should have delivered the completed apartment by 23/04/2018. The Complainants have duly paid a sum of Rs.1,65,99,618/- (Rupees One Crore Sixty-Five Lakhs Ninety-Nine Thousand Six*

*Devi*  
*16/8/19*



Hundred Eighteen). However, the Respondents have been inconsistent with the work carried out by them which is in contradiction to the premium look as was promised by them. Actual view is awfully different from the premium look, quality and standard that was promised by the Respondents. The inconsistency in the work done by the Respondents is not limited to the interior portion of the apartment but also extends to the common areas. Respondents had promised 3 passenger lifts but only 2 have been delivered. Respondents have also failed to provide water and gas connections. Vitrified tiles in the living, dining, bedroom / other family areas are of sub-standard quality and in no way match the look that was assured by the Respondent in advertisements. Respondents also promised chrome plated sanitary fittings, entry water features which again they failed to deliver. The carpet area in the apartment being delivered is prima facie lesser than that which is promised. Regardless of repeated communications by the Complainants, the Respondents have failed to deliver the apartment with all promised specifications within time and have recently informed that the work schedule is extended to June 2019. Reliefs: Complete all the development work in the project including the 29 items as promised and handover the COMPLAINT B SCHEDULE APARTMENT to the Complainant at the earliest; Make available the certificate from the Project Architect certifying the actual carpet area of the apartment and confirming variances if any as compared to the agreements; Direct Respondent to pay the Complainant a delay compensation at Rs.5/- per sq. ft. per month of delay caused, calculated from 23/04/2018 upto the date of handing over of possession of the Apartment; Provide to the Complainant, the exact date of completion of construction and the exact date of handing over of the Complaint B Schedule Apartment or any other Apartment in the Project of the same type and valuation at the discretion of the Complainants; Upon failure of the Respondents in providing the exact date of completion of development and handing over of the Complaint B Schedule Apartment or any other completed Apartment in the Project of the same type and valuation to the Complainants, call upon the Respondent to refund an amount of Rs.1,65,99,618/- (Rupees One Crore Sixty-Five Lakhs Ninety-Nine Thousand Six Hundred Eighteen) to the Complainant along with interest and compensation; Take necessary action against the Respondent under the relevant provisions of the Real Estate (Regulation and Development) Act, 2016.

*[Handwritten signature]*  
20/08/19



*Relief Sought from RERA : Completion or return of amount & compensation "*

2. In pursuance of the notice issued by the authority, on 18/1/2019, when the case was called the complainant was present through his counsel, but respondent did not appeared. On 15/2/2019, the respondent has appeared. The respondent has filed his objection whereas the complainant filed his reply.
3. I heard the argument on both the side.
4. The point that arise for my consideration is:
  - a. Whether the complainant is entitled for relief as sought in the complaint or not.
  - b. If so, what is the order.
5. My answer is affirmative with respect to compensation for the following reasons.

### **REASONS**

6. As per the agreement the developer was expected to complete the project on or before 23/4/2018, but however the respondent developer has taken Partial Occupancy Certificate dated 18/12/2017 with respect to Tower No. 1. It is an admitted fact that the complainant has agreed to purchase Flat No. 002 which is in ground floor. After receipt of OC the developer has called upon the complainant to take possession of the unit. It is alleged by the complainant that the developer issued a demand notice dated 28/4/2018 demanding for the last instalment.
7. The said notice is shown by the developer as document 6. Earlier to this notice on 23/4/2018 the developer issued notice to the complainant with regard to obtaining the OC. This is the first intimation given to the complainant even though OC was received on 18/12/2017 because as per Sec. 19(10) of the Act, within 2 months from the receipt of OC, the physical possession has to be

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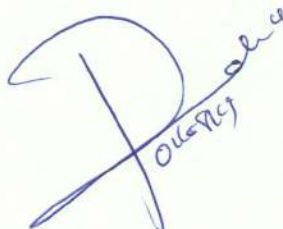


given. In the said letter the developer asked the complainant to be ready for inspection immediately after 5 days. The developer has got issued a letter demanding to pay amount. According to complainant the developer has not complied the provisions of RERA and also it is alleged that the project has not been completed, therefore it is the say of the complainant that he is not interested in continuing with the project. In this regard the complainant has drawn my attention to some of the photos showing that his unit is not fully equipped and also the work is still going on.

8. Further he has drawn my attention to the brochure given by developer where the list of amenities which are there under:

- |                            |                            |
|----------------------------|----------------------------|
| 1. Driveway                | 16. Pavilion               |
| 2. Typical Tower Drop off  | 17. Tot Lot                |
| 3. Ramp to Basement        | 18. Barbeque Area          |
| 4. Covered Pathway         | 19. Timber Deck            |
| 5. Premium Tower Drop off  | 20. Skating Rink           |
| 6. Entry Water Feature     | 21. Youth Activity Corner  |
| 7. Seating Plaza           | 22. Entry Portal           |
| 8. Senior citizen's corner | 23. Private Garden         |
| 9. Cycle Docking           | 24. Open Lawn              |
| 10. Reflexology Path       | 25. Raised Mounds          |
| 11. Pathway                | 26. Seating Steps          |
| 12. Kids Play Area         | 27. Open Square            |
| 13. Viewing Deck           | 28. Parking w/ Grass Paver |
| 14. Courtyard              | 29. Cycling Track          |
| 15. Multi Purpose Deck     |                            |

9. Further the Learned Counsel for the complainant submits that the lobby which was assured the premium view and now it is not in accordance with the same. It means the argument made on behalf of complainant that as the developer fails to provide amenities as agreed, he may be ordered to refund the amount paid by him. But at the time of argument the learned counsel for the developer that the project is ready in all sense and in order to prove the same, he has produced some photos. By going through the photo produced





by the complainant and the developer, it appears that both are making allegation with each other.

10. In addition to it, the complainant has alleged regarding the non supply of gas connection, drinking water and with regard other facilities. With respect to it the developer has given detailed explanation in his objection statement by making each of the allegations made by the complainant regarding lack of amenities. According to developer he has given all amenities, though not within time as agreed. The allegation made with respect to amenities, for which the developer has given explanation which is as under:

- A. With regard to Premium look of the Lobby:  
The lobby was constructed as specified, but due to concern raised by the purchaser, the respondent re designed and refurnished the lobby which is in line with the standards mentioned during the pre-sales and promised in the Agreement.
- B. Inconsistency in the work not limited to interior portion but also extends to the common area.  
The respondent denies the claim and asks for strict proof of the same with supporting documents.
- C. Passengers lift - in place of 3, only 2 provided.  
The respondent specifically denies the claim. The 3 lifts are completely functional as on the date and also within the knowledge of the complainant.
- D. Failed to provide Water and Gas connection:  
Denied by the respondent, water and gas connection has been provided through BWSSB as promised in the agreement. Further the respondent submits that he has obtained approval of BWSSB and copy of it has been attached. And with respect to gas connection, the respondent has entered into agreement with GAIL GAS Limited for implementation of city gas distribution project and it will be operational from March 2018



and also has arranged temporary gas cylinder supply from Akshay Gas Agency at their own cost although it is not in agreement. Supporting documents have been attached.

E. Vitrified Tiles – sub-standard quality and no match with the look as assured

The respondent specifically denies the claim and submits that as agreed, provided premium polished vitrified tiles. Compared to other towers, Emerald is having high quality of facilities and amenities provided as it is a premium tower.

F. The carpet area is lesser than that which was promised.

Respondent submits that the claim of the complainant is false as the carpet area is 142.59 sq. mt. or 1535 sq as promised in the agreement. Further the respondent has consulted RERA Certified Architect and measured physically and has issued certificate confirming the area.

11. From the above discussion it is clear that there are some flaws on the part of both sides. Sec. 19(10) mandates the complainant to take physical possession of the unit within 2 months from the date of receipt of notice to take the possession after the developer had received the Occupancy Certificate, but in this case the developer defaulted by issuing notice on 23/4/2018 even though he has received OC on 18/12/2017. Now as per the explanation given by the developer as above, it appears that the project is ready for proper occupation. Now it is the duty of the complainant to take possession of the unit by tendering the amount payable to the developer because as per Sec. 19(6) he has to make the necessary payment in the manner and within the time as specified in the agreement. Whatever the lack of amenities shown by the complainant is not admitted by the developer but affirms that each and every amenity has been provided. The complainant is seeking refund of his amount on the ground that his unit is not furnished as agreed by the developer. Generally when the project is finished

  
01/08/19



officially, it is not fair on the part of the authority to order for refund since S.18 speaks that the question of refund does arise only in case of failure to deliver the flat as per the terms of the agreement. For the notice issued under S.19(10) of the Act, the complainant has not taken possession under the guise of non- completion of the project in terms of the agreement.

12. I would like to say that both the parties have taken their own defence to their stand. I have already said that in the present case the developer had obtained O.C. but the complainant did not take the possession since, the developer had not developed the project with all amenities. I have already discussed the reply given by the developer to the allegation regarding amenities. A suggestion has been made to the parties to get the expert report on the complaint regarding the amenities but it is not materialised. When I read the allegation and reply given by the developer it appears that the developer has provided almost all amenities. It appears that the prayer made by the complainant to go out from the project is not reasonable one since the project is now completed. I would say that the authority can reject the prayer of the complainant for refund in such case to protect the interest of other consumers.
13. As of now I have no any proper evidence to say that the amenities have not been completely provided by the developer and also the amenities provided by the developer are in violation of S. 14(3) of the Act. In view of S.19(10) the complainant has to take the possession within 2 months from the date of O.C., is not complained by the complainant. I would say that the complainant can take separate action against the developer in case he has not provided the amenities as expected by him. Even though what he had stated in objection statement or else he can file the separate complaint with the report of expert regarding non- providing of amenities as well as poor quality.

*[Handwritten signature]*  
01/07/19



14. 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 18/12/2018. In this case the parties were present on 15/02/2019. But in this case parties have tried for compromise but went in vain and sufficient time was consumed towards appointment of commissioner but the same was not materialised. Hence, there is some delay in closing this complaint.

### **ORDER**

The Complaint filed by the complainant bearing No. **CMP/181218/0001774** is allowed.

1. The complainant is hereby directed to take physical possession of the unit bearing No. T2-0-02 Within a month from today by tendering the amount payable to the developer.
  2. The developer is directed to deliver the same by giving delay compensation @10.75 p.a on the amount received from the complainant for purchase of the flat commencing from 18/12/2017 till 23/04/2018.
  3. The complainant and developer may adjust the amount payable to each other.
  4. Further the developer shall also pay Rs. 5000/- as cost of the petition.
  5. The complainant is at liberty to take action against the developer for providing poor quality of amenities or non-providing the amenities as agreed by him.
- Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 01/08/2019).

K. PALAKSHAPPA  
Adjudicating Officer