

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

**Complaint No. CMP/190311/0002424**

**Presided by Sri K Palakshappa**

**Adjudicating Officer**

**Date: 30<sup>th</sup> October 2019**

Complainant : HARSISH BABU M.L. ,  
13(28) 1<sup>st</sup> floor, 8<sup>th</sup> cross,  
9<sup>th</sup> Main, 2<sup>nd</sup> block, Jayanagar,  
Bengaluru-560011  
Rep. by Sri Kadappa, Advocate

AND

Opponent : M/S Antevorta Developers Pvt.Ltd.,  
100 feet road, HAL 2<sup>nd</sup> Stage,  
Indiranagar,  
Bengaluru-560038

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

1. Sri Harish Babu being the Complainant filed this complaint bearing No. CMP/190311/0002424 under Section 31 of RERA Act against the project "Glengate" developed by M/S Antevorta Developers Pvt. Ltd, as he is the consumer in the said project. The complaint is as follows:

*I have booked a 3 BHK flat in project named House of Hiranandani Hebbal, Glengate B block 204 along with my wife as co-applicant and paid an amount of 4,00,000/- on 20/06/2013 and 16,04,660/- on 18/07/2013 on assurance that the flat will be handed over in year July 2017 and subsequently we have paid 11,73,693/- {October 2014}*

+ 532602/- {Dec 2014} and for remaining we applied bank loan and got approval dated 9th February 2015. On payment of initial payment in 2013 we have been asking for agreement and the agreement format we have signed in 2013 itself and we got the agreement signed from builder in January 2015 and that too for bank payment which builder was suppose to get in February 2015. It was shocking to see emboss of stamp value in month of November 2014 and agreement date was 08th January 2015 and there was delivery date mentioned in agreement as 46 months + 6 months. When asked they told it is common format and for you from the date of initial amount payment of 20% this time will count and handover date will be July 2017. {even agreements made for new customers in 2017 by House of Hiranandani Hebbal for this project is with same 46 months + 6 months} and they are telling format is same. I want to come out of project since no promises has been kept and there is deliberate delay in providing amenities, no compound wall has been put for taking care of project, no entrance gate has been constructed because of some litigation and builder is in no way interested to complete project, as compound wall also has not been completed, rather trying to squeeze and get money from customer to maximum.

Relief Sought from RERA : My prayer RERA - Refund with interest compensation

2. In pursuance of the notice issued by this authority, Shri. Kadappa Advocate filed Vakalath on behalf of the complainant and the respondent is also present. Both side filed their objections and written arguments. The complainant has sought for refund of his amount paid to the developer towards purchase of flat.
3. I have heard the argument.
4. The point that arise for my consideration is  
Whether the complainant is entitled for the relief of refund his amount or for any other relief?
5. My answer is affirmative in part for the following

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## REASONS

The complainant has booked a Flat bearing No. B-204 in Glengate Project in Block B. Agreement of sale and Construction agreement executed on 08/01/2015. According to the developer the date of the completion was agreed in the agreement is 46 months plus 6 months grace period from the date of agreement of sale. It means the date of completion of project comes to 08/05/2019. Even before completion of the date he has filed this case for refund on some different grounds. The reason for filing this complaint with a prayer to refund is as under:

*It was shocking to see emboss of stamp value in month of November 2014 and agreement date was 08th January 2015 and there was delivery date mentioned in agreement as 46 months + 6 months. When asked they told it is common format and for you from the date of initial amount payment of 20% this time will count and handover date will be July 2017. {even agreements made for new customers in 2017 by House of Hiranandani Hebbal for this project is with same 46 months + 6 months} and they are telling format is same. I want to come out of project since no promises has been kept and there is deliberate delay in providing amenities, no compound wall has been put for taking care of project, no entrance gate has been constructed because of some litigation and builder is in noway interested to complete project, as compound wall also has not been completed, rather trying to squeeze and get money from customer to maximum.*

6. But however on behalf of the developer a memo is filed on 09/07/2019 giving some more grounds in support of his prayer. According to the complaint the developer has not disclosed about the pendency of writ petition. It is his submission that in clause No. 15.1 the property agreed to sell is free from attachment, encumbrances, Court or acquisition proceedings of any kind. As per clause 15.2 the developer has declared that the seller is the absolute owner of the selling land.

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7. According to complainant it is false since a writ petition is pending touching the title of the land owner and as such it is the case of the complainant that there is a violation of S.18(2) and thereby he is entitled for the relief as per S.18(3).
8. The representative of the developer submits that though the developer has agreed to complete the project as per the date mentioned in the agreement as 08/05/2019, however it is submitted that the developer has made all his efforts to complete the project even earlier to this date. In this connection the developer has drawn my attention that he has obtained O.C. on 15/11/2018 which is much ahead of completion date as mentioned in the agreement. I find some force in his submission but it is the submission of the complainant that the completion date given by the developer to the RERA Authority as 31/12/2018 but in the agreement it is shown as 52 months means it is a clear violation of Section 18. I would say that the complainant has denied the validity of the agreement as of now after it was executed in the year 2015 stating that the developer has wrongly mentioned the completion date as May 2019. I say that the complainant cannot now raise any such issue since the agreement was signed by him in the year 2015 and at any time before this time he has raised the same.
9. Shri. Chethan representing the developer submits that when the project is completed by obtaining the occupancy certificate it is the responsibility of the consumer to take possession without showing any excuse. He further submits that since he has obtained the OC earlier to the date mentioned in the Agreement and as such he has issued final notice but the same was not honored by the complainant.



10. Further it is said that according to the agreement of sale the date of completion is not yet come and as such the complaint filed by the complainant on 11/03/2019 itself is pre mature and liable to be dismissed. I find some force in his submission since the Maha Rera has decided one case on this point.

**BETORE THE MAHARASHTRA REAL ESTATE  
REGUTATORY AUTHORITY, MUMBAI**

COMPLAINT NO: CC006000000001 71 2

Mr. Nikhil Shinde Versus ..... Complainant

Versus

M/s. Nirmal Lifestyle (Kalyan) Pvt. Ltd., .... Respondent

MahaRERA Registration No. P51700006746

Date: 12<sup>th</sup> December 2017

**Order**

1. The complainant has filed this complaint seeking directions of this Authority to the respondent to refund the amount paid by him to the respondent in MahaRERA registered project bearing No' P51700006745'
2. This matter was heard today. During the hearing the complainant has stated that the respondent has revised the agreed possession date while registering the project with Maha RERA. Hence he requested for refund of the amount paid to the respondent. However, the respondent has stated that the present complaint is not maintainable before this Authority as the same is filed at premature stage since the since of possession mentioned in the registered agreement is yet to come.
3. Considering the rival submissions mode by both the parties this Authority has perused the registered agreement for sale executed on 10-09-2015 between the complainant and the respondent. It is observed that in Para 16 of the said agreement the date of possession is mentioned as December, 2017 with 6 months' grace

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period. Therefore, this Authority is of the view that the present complaint was made well before agreed date of possession and hence it is premature. Therefore, the complainant cannot seek only relief under section 18 of the RERA Act as there is no violation of any provision of RERA Act 2016. Rules and Regulations made hereunder for which this Authority has jurisdiction to decide the same.

4. In view of these facts, the complaint stands dismissed being premature.

11. But the learned counsel for the complainant Shri. Kadappa submits that the award may be passed for refund for the following reasons:

1. The Respondent has delayed inordinately to keep up their own time line for possession.
2. Now they are compelled the complainant to follow the terms and conditions of their agreement to sell.
3. The Respondent is not transparent about writ appeals 16566 to 16570 of 2011 and others wherein litigations are pending before Hon'ble Supreme Court. On these litigations, the Respondent expresses their innocence. But Respondent informed that they were not made party in the above litigations, this point of information is misleading one. Because it was the responsibility of the Respondent to get it scrutinized before trading the flats.
4. The Respondent hidden these litigated facts while taking advance amount and at the time of entering into Agreement.
5. The consideration value declared by the Respondent is based on their larger property as if it is not under any litigation so as to cheat by way of fraud.
6. Now litigation is pending with compound wall, gate etc., are not built up till date to claim the Occupancy Certificate obtained is clear one.
7. In Occupancy Certificate is issued subject to shall deemed to be cancelled on misrepresentation of facts, false information or pending court cases.



8. Now the Respondent has filed impleading application about these litigations in the Hon'ble High Court of Karnataka. So the Respondent is not trust worthy and unfair trade developer.

12. Based on the same it is submitted that the complainant is entitled for the refund because the developer has violated Section 12 of the Act by giving false advertisement. Further the counsel for the complainant gone to the extent by saying that the developer has committed fraud on the complainant.
13. So, now it is clear that the reasons for withdrawing from the project get so many reasons but Shri. Chetan representative of the developer submits as under:

It is submitted that the complainants have sought relief under Rule 16 and 17 and further asked to cancel the Agreements executed between them under Section 18 (2)&(3) of the Act which is completely baseless. To prove the delay the Complainant has not produced any document. Actually there is no delay in completion of the apartment. The Agreement for Sale and Construction Agreement was executed with the said Complainant on 08/01/2015. As per Clause 7.1 of the Construction Agreement the possession of the apartment will be delivered by the Respondent within 46 months from the date of the Agreement with 6 months of grace period. As per his Agreement the possession date would be 08/05/2019. The said building has got the Occupancy Certificate from the concerned Authorities on 15/11/2018. Hence, there is no delay from the Respondent in completion of the construction and calling him to take possession. As this Respondent has proved beyond any doubt with the documents produced by them that there is

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*no delay the entire complaint should be dismissed as premature.*

14. Further the developer contended that the complainant is seeking relief under section 18 of the act. The said clause speaks about the return of the amount and compensation. The said clause is applicable when the promoter fails to complete or is unable to give possession of the apartment in accordance with the terms of the agreement. In the present case the respondent has completed the construction of the flat before the agreed period and also sent the final demand to the complainant. The complainant has failed to honour the demand made by the respondent and filed this false case against the respondent to make the illegal gain. It is humbly prayed before the authority that the said clause will not apply to this case as the possession date as per the agreement is not yet come and the claim is premature. Further it is said that he has offered the complainant to make the remaining payment to take possession of the said flat, even then the complainant has not taken the possession. It is the duty of the complainant to take physical possession within 2 months from the date of receipt of OC but he failed to take the same is the argument on the side of the developer. Hence, it is requested to this Authority to direct the complainant to pay the balance amount along with delay interest and take the possession of the said flat immediately.
15. I would say that the consumer is entitled for relief only in case of violation or loss. Further it is necessary to note here that the developer has entered into agreement with the consumer which is an official document which says that the date of completion would be 08/05/2019 and the completion was done in the month of November 2018 itself and hence, question of violation of S.18 does not arise. In view of the same the present complaint filed by the complainant certainly would be a pre-mature one and there by the consumer is not entitled for relief.

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16. In view of the same the present complaint has to be dismissed holding that there is no cause of action. Now the complainant has sought for refund because the litigation is pending on the file of Hon'ble High Court of Karnataka. Though the developer has agreed in the agreement to complete the project on or before 08/05/2019 but he has obtained the OC in the month of November 2018. When the project is officially completed the consumer cannot be permitted to demand for refund of his amount. In this connection I would refer some of the decisions of different authorities who have held that it is not proper to order for refund when the project is officially ready for occupation.

**Haryana Real Estate Regulatory Authority in CMP No.326/2018 dated 27/11/2018 Mr. Ashok Jaipuria v. M/S Ireo private limited:**

Keeping in view the present status of the project and intervening circumstances, awarding of refund of the paid amount to the complainant with the termination of agreement dated 26.10.2012 at this belated stage would not serve the ends of justice and this will also hamper the very purpose of completion of project and interest of existing allottees who wishes to continue with the project.

As such complainant is entitled for delayed possession charges @ 10.75% p.a. as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project

**Complaint No. 743/2018 Puneet Dhar & Billa Dhar v. M/s Supertech Ltd.**

The complainants are demanding refund of the entire amount paid till date but keeping in view the current status of the project and the revised date as per the RERA registration certificate, giving refund at this time will hamper the interest of other allottees in the project. So, the complainants are not allowed to get refund and they will get interest for delay @ 10.75% p.a. from the due date of possession till the possession is actually delivered.



**Complaint No. 63/2018 Pramod Kumar Agarwal v. S.S. Group Pvt. Ltd.,**

However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint at this stage of the project, it will adversely affect the rights of other allottees who wish to continue with the project. However, the complainant will be entitled to a prescribed rate of interest till the date of handing over of possession.

**Complaint No. 145/2018 Smt. Pushpa Gupta v. M/s. VSR Infratech Pvt. Ltd.,**

Thus the authority, exercising powers vested in it under Section 37 of the Haryana Real (Regulation & Development) Act, 2016 hereby issue directions to the respondent to promoter is directed to pay interest at the prescribed rate of 10.75% per annum for every month of delay. Promoter is allowed to adjust amount if due against the allottee and shall be allowed to charge interest at the same rate of 10.75%. calculation sheet be shared with the allottee within 7 days. Allottee has alleged that necessary information was not shared by the respondent; accordingly promoter is directed to share necessary information with the allottee concerning the unit allotted to her so that she may not be kept in dark.

**Complaint No. PKL 451/2018, Manoj Suneja v. TDI Infrastructure Pvt. Ltd.,**

Keeping in view the conduct of the respondents, they will not be entitled to the benefit as ordered by the undersigned in Complaint No. 49 of 2018- Parkash Chand Arohi Vs Pivotal Infrastructure Pvt. Ltd.

The request of the complainant for refund of money cannot be accepted for the reason that the respondents have developed the colony and have obtained a part competition certificate and have offered the possession to the complaints. When the possession is offered, the complainant cannot be allowed refund but they shall be entitled to compensation for the period of delay.



**Maharashtra Real Estate Regulatory Authority Mumbai in CMP**  
**No. CC00600000004479 Bhuvneshwar Pathak v. Sanvo Resorts**  
**Pvt. Ltd.**

Simple present tense used in the starting line of section 18 clearly indicates that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given, as the case may be, the said provision ceases to operate.

17. From the above discussion made by different authorities it is clear that when the project is completed then the question of refund does not arise.
18. The complainant has alleged that the developer has not disclosed the pendency of dispute. Further it is alleged that the land where the project is constructed itself is in dispute. The complainant has said that though the developer has obtained the OC is not legally acceptable since there is a clause saying that the same will be deemed to be cancelled in case there is false information. By highlighting this point it is said that the developer has suppressed before the competent authority while obtaining the occupancy certificate. But I would say that the developer is not directly involved in the said writ petition. Recently he has filed an application to implead himself in the same and got some favorable order. Now the complainant has alleged that the developer has misled him by not disclosing the pendency of the writ petition. In this regard Sri Chethan representing the developer has given his explanation by saying that Section 18 of the RERA Act speaks about the return of the amount and compensation. This clause will be applicable when the promoter fails to or is unable to give possession of an apartment. The said clause will not apply to this case as the possession date as per his agreement is not yet come and the claim is premature.

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19. Further the building is completed and OC has been received and Respondent has already sent final demand by asking the complainant to take possession after making the necessary due amount. There is no order restraining the developer from doing any kind of business with regard the present plant and hence the apprehension of the complainant has no force. Further the clause (2) of Section 18 states in case of any loss caused to him due to defective title of the land on which the project is being developed or has been developed, but except the apprehension absolutely no evidence of loss. The complainant has not produced any materials to prove that he has incurred loss due to the defective title. By just quoting some ongoing litigation where the present developer was not a party till last month and as such the claim made by the complainant for refund has no significance.

20. In this regard it is submitted by the developer that

*As per S.19(10) the allottee shall take the physical possession of the apartment, within a period of two months from the date of receipt of the occupancy certificate issued for the said apartment. The OC was received on 15/11/2018 and we have sent the final demand on 04/01/2019, the said complainant has not been taken the possession within 2 months and after 2 months he had filed the complaint before the authority on 11/03/2019.*

21. From the above explanation it is clear that there is no any intention to cheat the consumers but he has taken effort to complete the project. I find some force in his plea because the complainant has filed a memo on 09/07/2019 by saying that he is going out of the project just because there is a writ petition. But I would say that the complainant has not verified what the case which is pending and what is the role of this developer in the said case. Whether the developer has got any role in suppressing the same from the consumers or not has not been verified.



22. Under those circumstances this authority has to look into S.72 of the Act while deciding the issues. It reads as under:

*"while adjudging the quantum of compensation or interest, as the case may be, under Section 71, the Adjudicating Officer shall have due regard to the following factors, namely:*

- a. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- b. The amount of loss caused as a result of the default;*
- c. The repetitive nature of the default;*
- d. Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice."*

23. In view of the same as there is no any allegations regarding the misuse of money or diversion towards personal use and then the authority has to mould the relief of the complainant by balancing the interest of the parties. It is an admitted fact that the developer has already obtained the occupancy certificate and he had already issued a final demand notice claiming the last installment showing his readiness to deliver the physical possession. Moreover in this case there is a litigation and therefore the developer be directed to give the minimum basic amenities to the complainant. It was the duty of the complainant to take the possession by tendering the installment. But instead of it he has filed this complaint seeking the relief of refund of the amount. As per the discussion there is no any fault on the part of the developer. As per the discussion made by me it is not correct on the part of this authority to pass an order for refund since the different authorities have held that there is no wise in ordering for refund when the project is completed. The complainant is entitled for the relief as per S.18 only in case of violation or loss caused to him. Under the above circumstances I say that the complainant may be directed to obey S.19(10) of the Act. Further the complainant can take the separate action against the developer for any other cause in case the developer has failed to provide amenities as agreed by him. With this observation I would say that the present complaint is to be allowed in part.

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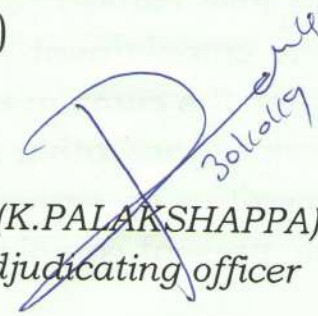
24. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 11/03/2019. In the present case the parties have appeared on 03/05/2019. But a case is pending before the Hon'ble High Court of Karnataka and the parties have submitted number of documents and made resubmission on the same. In view of the same the complaint is being disposed of with some delay. Hence, I proceed to pass the following

**ORDER**

- a. The complaint No. CMP/190311/0002424 is allowed in part.
- b. The complainant is hereby directed to make the installment towards the purchase of the flat as demanded by the developer.
- c. The developer is directed to execute the sale deed within a month from today with all amenities.
- d. The developer is also directed to pay Rs. 5000/- as cost.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 30/10/2019)

  
(K.PALAKSHAPPA)  
Adjudicating officer