

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-560 027

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**BEFORE ADJUDICATING OFFICER**

**PRESIDED BY SRI I.F. BIDARI**

**DATED 23<sup>rd</sup> August 2021**

<b>Complaint No.</b>	<b>CMP/190912/0004118</b>
Complainant	Smt. Suman Rupanagudi Sobha Aster Apartments, No.1072, 6 <sup>th</sup> Cross, Vijaya Bank Colony, Bilekahalli, Bengaluru-560070. (By Sri Promod Nair and Associates Advocates)
Respondent	Adarsh Developers Adarsh Premia-Sales Lounge, #3, Outer Ring Road, Bengaluru- 560070. (By Sri V. B. Shiva Kumar, Advocate)

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

Smt. Suman Rupanagudi (here-in-after referred as complainant) has filed this complaint bearing No. CMP/190912/0004118, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent Adarsh Developers (here-in-after referred as respondent), for the relief of interest and compensation on amounts.

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**2. The brief facts of the case are as under:**

The respondent Adarsh Developers, is developing a Real Estate Project "Adarsh Premia", in converted immovable property, bearing Sy. No. 52/1A measuring 2 acres 18 guntas, Sy. No. 57 measuring 20 guntas, Sy. No. 53 measuring 4 guntas and Sy. No. 56/2 measuring 35 guntas, in all measuring 3 acres 37 guntas, situated at Kadhirenahalli Village Bengaluru Sought Taluk, presently bearing Bruhat Bengaluru Mahanagara Palike (here-in-after referred as BBMP), municipal No.3 (Old Nos. 52/1A, 56/2, 57/53) situated at 1<sup>st</sup> Main Road, Kadhirenahalli ward No.55, Padmanabha Nagar Bengaluru, described as schedule A property in Agreement to sell dated 03.09.2014. The complainant Suman Rupanagudi, has entered into an agreement to sell dated: 03.09.2014 with the respondent to purchase undivided share measuring 449sq.ft., described as Schedule B property, in the agreement to sell, out of schedule A property and to get construct an apartment (here-in-referred as flat) bearing No. 401, being constructed in schedule A property, on 4<sup>th</sup> floor, in Block - B in the project Adarsh Premia (here-in-after referred as project), of super built-up area measuring 2285sq.ft., with car parking area, described as schedule C in the agreement to sell dated 03.09.2014 for consideration amounts mentioned in the agreement to sell also subject to the terms and conditions enumerated therein. The complainant alleged in the complaint that the sale of the Schedule B and C properties are subject to clause No.15 (force majeure). As per the said clause the completely constructed flat was to be delivered to the complainant in the year 2017 i.e., within 36 months with grace period of 3 months from the agreement to sell, provided that complainant has paid the entire consideration amount as agreed.

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The respondent through letter dated 27.04.2017 informed the complainant that the completion time schedule of the project has been revised, consequently coerced the complainant to enter into a supplementary agreement dated 27.04.2017, as per which the delivery date of the flat would be December 2018. The complainant along with her husband visited the construction premises in May 2018 and noticed that construction of project was in progress but not as per revised schedule. They on enquiry to the personnel of the respondent who were supervising construction work, came to know that project might require another 3 – 4 years to be completed. Therefore sensing that there is an inordinate delay in handing over flat, complainant through letter dated 24.05.2018 cancelled the booking of the flat and sought for refund of the amounts paid along with interest and compensation. The respondent through letter dated 02.06.2018, agreed for cancellation of agreement to sell and refund the amounts paid by the complainant within 60 days forfeiting 10% of the sale consideration amounts. The forfeiture of 10% of sale consideration amount stated by the respondent was arbitrary and for no fault of the complaint, since complainant had adhered to the terms and conditions of the agreement to sell. The respondent failed to comply, the time line indicated by it in the previous communications mentioned in the complaint and to refund part sale consideration amount paid by the complainant. Under the circumstances the complainant got issued the legal notice dated 05.09.2018 calling upon the respondent to refund the entire amount paid by the complainant as per the RERA Act and Karnataka Real Estate(Regulation and Development) Rules 2017, (here-in-after referred as K-RERA rules) along with interest and compensation. In response to the said legal notice a

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representative of the respondent informed the complainant's counsel that cheque for the refund amount would be handed over to the complainant on or before the 23.10.2018 but in vain as respondent did not refund the amounts. Thereafter respondent sought further period of 3 months to process the refund. The complainant looking to the attitude of the respondent got issued another legal notice dated 31.10.2018 calling upon the respondent to refund the entire amount paid as per RERA Act and K-RERA Rules along with interest and compensation, within 7 days. Thereafter also respondent failed to refund the amount and not responded to the communications sent through email through her counsel in that regard. Under the circumstances complainant did file a complaint against the respondent before RERA in Complaint No. CMP/190212/0002077. It is alleged that on 24.04.2019 the respondent informed the complainant that the refund of the amount paid (without any interest and compensation) would be completed through 2 post dated cheque dated 30.05.2019 for Rs.50,00,000/- and Rs.99,20,268/- through cheque dated 30.06.2019. The complainant agreed to collect said post dated cheques under protest as the respondent had refused to pay interest and compensation. Subsequently respondent informed the complainant that the aforesaid post dated cheques would be handed over, if the complainant signs cancellation deed, drafted by the respondent. The terms of the cancellation deed were unfair and one sided, hence complainant suggested certain changes in the draft. The respondent rejected to incorporate changes suggested by the complainant in the cancellation deed draft. This-apart respondent told to the complainant to get refund of the amount paid by the complainant towards TDS

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directly from the taxing authorities. Thus respondent deducted the TDS amount of Rs. 1,37,206/- from the post dated cheque issued to the appellant for Rs.99,20,268/-. Under these circumstances the complainant constrained to sign the cancellation deed dated 24.05.2019 under protest, and under which the complainant did not waive her rights for the relief sought as per Section 18 RERA Act and K-RERA rules in respect of interest and compensation on the amount paid as sought in the legal notice. At the request of the respondent the complainant postponed the presentation of the aforesaid cheque dated 30.05.2019 till 10.06.2019. The aforesaid previous complaint was withdrawn on 30.08.2019 as the facts and circumstances that existed at the time of filing the initial complaint has changed, which affected the reliefs sought therein. The respondent failed to pay the interest and compensation on the amounts paid as aforesaid. These main grounds among others urged in the complaint, prayer to grant the reliefs as prayed in the instant complaint.

3. There-after receipt of the complaint from the complainant, notices were issued to the parties. Pursuant to services of notice the complainant and the respondent appeared through their respective counsel. The respondent has filed the statement objections admitting the fact that complainant has entered into an agreement to sell. It is contended that the previous complaint filed by the complainant in CMP/190212/0002077 was withdrawn and subsequently the instant complaint has been filed which is not maintainable in law. The complainant having received the amount paid after executing cancellation agreement dated 24.05.2019 without challenging the same has filed this

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second complaint same is not maintainable. The complainant to harass the respondent filed this complaint. The complainant has executed supplementary agreement dated 24.07.2017, under the circumstances complainant grievance cannot be now put forward in the present proceedings in the manner which is purported to put forward her claim. The completion period of the project as mentioned in the RERA registration is June 2020. The relief sought by the complainant is premature one. These main grounds among others contended in the statement objections, prayer to dismiss the complaint with cost.

4. This authority i.e., Adjudicating Officer, on hearing both side, appreciating materials and documents on record through judgment and order dated 31.01.2020, did dismiss the complaint CMP/190912/0004118, against which complainant had preferred appeal before the Hon'ble Karnataka Real Estate Appellate Tribunal Bengaluru(here-in-after-referred as appellate Tribunal) in appeal (K-REAT) No. 256/2020. The Hon'ble Appellate Tribunal through its judgment and order dated 29.01.2021, partly allowed the appeal, modified the order passed by the Adjudicating Officer (here-in-after referred as AO), in so far as it relates to the claim of interest, compensation and GST amount is concerned and partly rejected in-respect of claim of damages and relegated the matter to the AO for considering the quantum of interest and compensation. The respondent being felt aggrieved by the judgment and order dated 29.01.2021, in appeal (K-REAT) No. 256/2020 passed by the Hon'ble Appellate Tribunal had preferred RERA Appeal No. 1/2021 before the Hon'ble High Court of Karnataka at Bengaluru. The Hon'ble High Court of Karnataka at Bengaluru through judgment dated





30.06.2021 dismissed the RERA Appeal No. 1/2021. Thus the instant case has been taken up for considering the quantum of interest and compensation, relating to the claim of the complainant, as directed by the Hon'ble Appellate Tribunal.

5. I have heard Smt. P.M. learned Advocate for the complainant and heard Sh. V.B.S learned Advocate for the respondent, through Skype. Perused the records and materials.

6. The points that would arise for consideration are:

- (1) Whether the complainant is entitled for interest and compensation? If so, to what extent?
- (2) What order?

7. My findings on the above points are as under:

Point No.1: Yes, to the extent as shown in the final order.

Point No.2: As per final order, for following:-

### **REASONS**

8. Point No.1: The fact of parties entering into the agreement to sell dated 03.09.2014 is admitted one. As per the terms of the agreement to sell dated 03.09.2014 the flat was to be handed over to the purchaser within a period of 36 months with a grace period of 3 months from the date of agreement to sell which comes to on or before December 2017. There is no dispute that subsequent to agreement to sell supplement agreement dated 27.04.2017 came to be executed between the parties as per which the date of completion of project and handing over of

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possession of flat is extended up-to December 2018 but complainant is complaining that she had put her signature on the said agreement because of pressure of the respondent side and on the ground that construction would not proceed and would be delayed if not signed. So also there is no dispute that complainant has got issued two legal notices dated 05.09.2018 and dated 31.10.2018 respectively through her counsel calling upon the respondent to refund the entire amount with interest and compensation. There is no dispute that cancellation deed dated 24.05.2019 has been executed but complainant alleges that she had signed on the said cancellation deed under protest and received the amounts mentioned in the post dated cheque referred in the complaint. The Hon'ble Appellate Tribunal in its judgment dated 29.01.2021 in appeal (K-REAT) No. 256/2020 considering these facts also the objections raised by the respondent and also referring to the observations of their lordships in the judgment dated 02.04.2019 in Civil Appeal Nos. 12238/2018 and 1677/2019 passes by the Hon'ble Supreme Court Of India in the case of Pioneer Urban Land and Infra structure Ltd. VS Govindan Ragavan and others, appreciating said documents for limited purpose, to determine the legitimate right of the complainant U/Sec. 18 of the RERA Act and also considering the materials on record observed that cancellation agreement and supplementary agreement are one sided, favourable to respondent and by virtue of said agreements complainant has not lost her right for claiming interest, compensation on the amounts paid and for GST amount paid, as such, the complainant can seek said relief. The Hon'ble Appellate Authority observed that because of sensing delay in handing over flat the complainant has cancelled the flat booking

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and not for any other reasons. Once the supplemental agreement and cancellation agreement are considered as without free consent, then the date of delivery of possession mentioned in agreement to sell dated 03.09.2014 shall be foundation for violation of provisions of Sections 18 and 19 of the RERA Act in respect of delay in handing over possession of the flat, which gives right to the complainant to withdraw from the project. Therefore it is made clear that because of delay in handing over possession of flat as per the terms of agreement of sell dated 03.09.2014 the complainant has cancelled the booking of the flat and sought for refund of amounts paid to the respondent with interest and compensation including amount paid towards TDS. The records disclose that the previous complaint CMP/190212/0002077 has been closed through judgment date 04.11.2019 passed by the AO, on withdrawal memo, with liberty to the complainant to file another complaint, if required. The Hon'ble Appellate Tribunal having considered agreement to sell, supplemental agreement, cancellation agreement and materials on record observed that complainant is entitled for interest, compensation, on the amounts paid and the GST amount and relegated the matter to the AO, for considering quantum of interest and compensation, under the circumstances at this stage AO, need to consider only the quantum of interest and the compensation on the amounts paid and also with regard to GST amount and nothing more.

9. There is no dispute that the complainant has received Rs.50,00,000/- and Rs. 97,83,062/-respectively out of the total paid amount of Rs.1,49,20,268/- to the respondent. An amount of Rs. 1,37,206/- has been adjusted towards TDS i.e., GST amount. Admittedly the respondent has not paid interest and

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compensation to the complainant on the amounts paid to him in-respect of flat, which she is entitle to receive under statutory provisions contemplated under sections 18 and 19 of the RERA Act. There is no dispute that the aforesaid amount of Rs.1,49,20,263/- is being paid by the complainant to the respondent in respect of the flat. The sections 18 and 19 of the RERA Act, have come into force from 01.05.2017 from which date the complainant is entitle for interest on the respective amounts from the dates of payment of respective amounts as prescribed under K-RERA rules and entitle for interest at the rate of 9% per annum on the respective amounts from the dates of payment of respective amounts till 30.04.2017, as compensation, by way of interest, as complainant has withdrawn from the project. Admittedly the complainant has paid GST amounts from the Pan card of the respondent, hence it is just to direct the respondent return Rs.1,37,206/- to the complainant and with liberty to the respondent to reimburse the same from the department or from the new buyer. Thus I hold point No.1 accordingly for consideration.

10. As per the provisions contemplated U/sec. 71(2) RERA Act the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 12.09.2019, thereafter notices issued directing the parties to appear through Skype for hearing as because of COVID-19 pandemic the personal hearing before the Adjudicating Officer not yet commenced. The case was once decided by the AO on 31.01.2020, against which appeal was preferred. The parties given the reasonable opportunities to contest the case, as such, the judgment is being passed on merits, with some delay.

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11. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

**ORDER**

- (i) The complaint filed by the complainant bearing No.: CMP/1909/2/0004118 is partly allowed.
- (ii) The respondent is hereby directed to pay compensation to the complainant on the amount of Rs.1,47,83,062/- by way of interest @ 9% per annum on respective amounts, from the dates of receipt of respective amounts till 30.04.2017 and from 01.05.2017 @ 2% above the MCLR of SBI till the payment of entire amount.
- (iii) The respondent/developer is hereby directed to refund Rs.1,37,206/- without interest to the complainant which has been paid towards GST (TDS) and reimburse the same from the department or from the new buyer.
- (iv) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (v) The complainant may file a memo of calculation as per this order after 60 days in case respondent failed to comply with this order to enforce the order.
- (vi) Intimate the parties regarding this order.  
(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 23.08.2021)



**I.F. BIDARI**

Adjudicating Officer-1



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**Karnataka Real Estate Regulatory Authority, Bengaluru**  
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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

**BEFORE ADJUDICATING OFFICER, RERA**

**BENGALURU, KARNATAKA**

**Presided by Sri K PALAKSHAPPA**

**Adjudicating Officer**

**Date: 31<sup>st</sup> JANUARY 2020**

<b><u>Complaint No.</u></b>	<b><u>CMP/190912/0004118</u></b>
Complainant	SUMAN RUPANAGUDI Sobha Aster Apartments No.1072, 6 <sup>th</sup> Cross Vijaya Bank Colony Bilekahalli Bengaluru-560070 Rep.by Sri Promod Nair, Advocate
Opponent	Adarsh Developers Adarsh Premia-Sales Lounge #3, Outer Ring Road Bengaluru- 560070 Rep. by Sri V.B.Shiva Kumar, Advocate

**“J U D G E M E N T”**

1. SUMAN RUPANAGUDI, Complainant has filed this complaint bearing complaint no.CMP/190912/0004118 under Section 31 of RERA Act against the project ‘Adarsh Premi-Phase-1’ developed by “Adarsh Developers” as the complainant is the consumer in the said project. The complaint is as follows:

*[Handwritten Signature]*  
31/01/2020

**ಕರ್ನಾಟಕರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**  
**Karnataka Real Estate Regulatory Authority, Bengaluru**  
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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

The Complainant herein being desirous of owning an apartment in Adarsh Premia executed an agreement dated 03.09.2014 (Agreement to Sell) inter alia with the Respondent for purchase of the residential apartment bearing No. 401 on the fourth floor in Block B, having a super built up area of 2385 Sq. Ft, in Adarsh Premia being constructed by the Respondent along with a proportionate undivided share in the Schedule A Property as described in the Agreement to Sell (as detailed in Schedule 1 to this Application). The Agreement to Sell is produced as Annexure-1. ii. Clause 2.3 of the Agreement to Sell dated 03.09.2014 provides as follows: 2.3) Period for completion of sale: The sale of the Schedule B and C properties are subject to Clause No.15 (Force Majeure) mentioned below, shall be completed within 36 months with 3 months grace period provided that the purchaser/s is/have paid the entire amounts due and payable under this agreement to the Developer herein. As per the said clause and the representations made by the Respondent the completely constructed apartment was to be delivered to the Complainant in the year 2017. iii. The Respondent vide letter dated 27.04.2017 informed the Complainant that in light of the proposed amendment to the Transfer of Development Rights by the Karnataka Town & Country Planning Department, the completion time schedule of the project has undergone a revision. The letter dated 27.04.17 is produced as Annexure-2. The Complainant was coerced to enter into a supplementary agreement dated 27/04/2017 (Supplementary Agreement) based on the Respondent's false promise that the construction of the Schedule 1 property would be completed and handed over by the end of December 2018. The Supplementary Agreement is produced as Annexure-3. iv. The Complainant was not afforded any time to reconsider and evaluate the terms of the supplementary agreement and was pressurized into signing the Supplementary Agreement on the very same day on the pretext that the construction of the Schedule 1 property would not proceed and would be delayed as a result. v. The Complainant and her husband visited the construction premises in May 2018 to inspect the progress of the construction. To their surprise, they found that the construction had not progressed as per the revised schedule. On making enquiries with the personnel of the Respondent who were supervising the construction work, they were informed that the project might require another 3-4 years to be completed. vi. As a result of the inordinate delay in handing over the Schedule 1 property, the Complainant was constrained to cancel the booking of the Schedule 1 property vide her letter dated 24.05.2018 and sought for a refund of the monies paid. The Complainant also conveyed to the Respondent the issues being faced and her disappointment and the significant emotional turmoil caused by the continued delay in the handover.

Relief Sought from RERA :Payment of interest and compensation on amounts

*Do not follow*



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**Karnataka Real Estate Regulatory Authority, Bengaluru**

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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

2. In pursuance of the notice issued by this authority, the complainant has appeared through his counsel Sri Promod Nair and developer has appeared through his advocate Sri V.B.Shiva Kumar. The complainant has filed his physical copy of the complaint and also necessary documents. Similarly, the developer has also filed his objection statement with some documents.
3. I have heard arguments.
4. The points that arise for consideration is as to:

Whether the complainant is entitled for the relief as sought in the complaint as prayed?

5. My answer is Negative for the following

**REASONS**

6. It was submitted at the time of the arguments that the complainant has entered into agreement with the developer on 03.09.2014 wherein the developer has agreed to complete the project within three years. However, three months grace was there and therefore, the final deadline given to the complainant was December 2017. However, in the month of April 2017, a supplementary agreement was executed wherein the developer has agreed to complete the project and to hand over the flat bearing No.B-401 in 4<sup>th</sup> floor, B Block on or before December 2018. It is submitted by the complainant that in the month of May 2018, the representatives of the developer had informed the complainant that completion of the project would take another 3 to 4 years. Therefore, the complainant has sent a letter dated 24.05.2018 for refund of his amount. It is also the case of the complainant that the same was

*Devi*  
31/01/2020

**ಕರ್ನಾಟಕರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**

**Karnataka Real Estate Regulatory Authority, Bengaluru**

ನಂ:1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,  
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

accepted by the respondent and assured that he will refund the amount within 60 days. But the same was not materialised and therefore, the complainant was constrained to file this complaint before this authority in complaint bearing No.CMP/190212/0002077. But the said complaint was withdrawn with a liberty to file fresh complaint. She also said in the complaint that on 24.04.2019 the respondent has informed to the complainant that he would refund the amount paid by issuing two post dated cheques dated 30.05.2019 for a sum of Rs.50,00,000/- and another dated 30.06.2019 for a sum of Rs.99,20,268/-. But the developer has put a rider stating that cheque will be issued only in case the complainant has signed the cancellation deed. It is also stated that, the developer has reduced the second amount of Rs.99,20,268/- to Rs.97,83,062/- as the complainant would have claim TDS amount directly. As there was no option to the complainant she has signed the cancellation deed dated 24.05.2019. However, she herself denied stating that before signing the cancellation deed she has sent several e-mails that cancellation deed would be executed under protest. Further, the complainant has proceeded to say that on 29.05.2019 the respondent has sent another e-mail requesting the complainant not to present the cheque on 30.05.2019 and not to present the same till 10.06.2019. Therefore, the complainant has filed this complaint for refund of TDS of Rs.1,37,206/-, interest on consideration amount of Rs.1,49,20,268/- @ 10.75% p.a. and also compensation of Rs.10,00,000/- towards mental agony.

*Devi*  
31/06/2019

7. The allegation made by the complainant has been strongly opposed by the developer. It is the say of the developer that the complainant has executed cancellation deed voluntarily for the full and final settlement. The same has not been challenged by the complainant and therefore, the present complaint is not maintainable. As per supplementary agreement dated 24.07.2017 the completion date was June 2020. But the complainant has taken back the amount hurriedly even premature to the date of completion.
8. By reading the allegations as well as the defence taken by the developer one thing is clear that the developer has already returned amount to the complainant. The complainant had taken the amount from the developer and executed cancellation of agreement of sale. This complaint was filed on 12.09.2019 and prior to this the complainant has already executed the cancellation of agreement of sale. It means as on the date of the complaint there was no contract between the complainant and the developer and as such the developer has submitted that there was no contract as on the date of complaint.
9. Of course, the complainant is seeking the interest amount payable on the amount paid to the developer is the subject matter of this complaint. Generally as per Sec.18 of the Act, the complainant is entitled for the compensation in the form of interest on the amount paid to the developer towards purchase of a flat. Here the amount paid to the developer was already received by the complainant before filing this complaint. Moreover, she

*[Handwritten signature]*  
24/01/2020



ಕರ್ನಾಟಕರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

**Karnataka Real Estate Regulatory Authority, Bengaluru**

ನಂ:1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,  
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

has also executed cancellation of agreement of sale as per the request made by the developer. But, now she has alleged that the developer has taken the cancellation of agreement of sale by putting pressure on her. Further, it is the allegation of the complainant that the developer has not paid the interest amount and therefore, this complaint is filed.

10. My question is whether the complainant can seek the relief unless she questioned the terms of the cancellation of agreement of sale. I would say that, as rightly pointed out by the counsel for the developer that the complainant cannot seek such relief unless she questions the terms of the cancellation of agreement of sale. The relief sought by the complainant for grant of interest on the ground of delay which was based upon the agreement of sale. Sec.18 of the Act deals with the agreement of sale. Under the same the aggrieved person will get either delay compensation or refund of the amount based upon the terms of the agreement of sale. But, here the agreement of sale was already ceases to be operative in view of the execution of the cancellation of sale agreement. It means as on the date of filing of this complaint there was no relationship of developer and the consumer under the document called as agreement of sale. Moreover, in the cancellation of agreement of sale, there is a clear recital regarding the clearance of payment. The developer has produced the zerox copy of the cancellation agreement, wherein it is clearly mentioned as under:

Para-5 It is hereby agreed and confirmed between the parties that neither the second party or its legal heirs, representatives, agents

or any one claiming through or under them, have dealt with the schedule B property in whatsoever manner and the second party or their legal heirs, representatives, etc., shall not claim any right, title and interest in respect of the schedule B property, by virtue of agreement to sell dated 03/09/2014. The second party herein is entitled to deal with the schedule B property in any manner as it deems fit.

Para-7 : The second party declare and confirm they shall henceforth have no right, title or interest or claim whatsoever in respect of the schedule A property, nor shall they make any such claim before any authority/court hereafter. The second party further declares that the first party is now at full liberty and within their absolute right and discretion to deal with and/or dispose of the schedule B property, to anyone else as they may deem fit, subject to clearance of all the cheques stated above, without any obstruction, objection or claim from the second party of whatsoever nature.

11. By reading the above paras, it is very clear that the complainant has not retained any claim over the property in question under the agreement of sale. But it is the argument of the complainant that she has signed the said cancellation of sale agreement under protest. It means whatever the terms mentioned in the agreement dated 24/05/2019, for which the complainant is having grievance. Therefore, the complainant has to question validity of this document, but cannot seek relief under

*Deenu*  
31/01/2020

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**Karnataka Real Estate Regulatory Authority, Bengaluru**

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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

the agreement of sale dated 03.09.2014 and supplementary agreement dated 27/04/2017. Therefore, I would say that the present complaint filed for the relief of monetary benefits under the agreement of sale is not correct. Of course the complainant has mentioned as under protest in the said document. When that being the case she has to question the validity of the said document. I would say that RERA Act deals with the agreement of the sale and its violation on the said document. In case the prayer of the complainant has to be considered by reading the contents of the cancellation deed executed by the complainant, then the complaint shall have the allegations on the terms mentioned in this deed. The complaint filed by the complainant does not say anything as to why she has executed the cancellation deed under protest. She had to explain the circumstances in her complaint

12. In the next para the complainant has said that she has withdrawn from the project just because there is an inordinate delay in completing the project. It is natural that the consumer will get the compensation in the form of interest @ 2% above the MCLR of SBI, in case the developer has failed to complete the project in terms of the agreement of sale. But here as on the date of filing of this complaint there is no agreement of sale. More over the complaint who had executed the cancellation agreement has agreed to receive the amount of Rs. 1,47,83,062/- towards the full and final settlement. This is mentioned in the cancellation agreement where the complainant has put the signature under protest. Now the question is whether the complainant could raise the



voice against the own documentary evidence? Answer is no because Section 91 of Indian Evidence Act debars her from taking such kind of defence. Moreover the complainant was kept quiet for a period of 4 months after the execution of cancellation deed. No explanation is given by the complainant as to what are the circumstances to make her to put the signature in the cancellation deed. She has to explain to the authority the circumstances made her to write as under protest while putting her signature. Certainly Section 18 would come to the aid of the complainant in case this complaint is filed before the execution of cancellation deed. I mean this complaint was filed against the agreement sale prior to this cancellation deed I would have appreciated it. In the absence of such material evidence I say that there is no force in the case of the complainant to claim the interest against the agreement of sale which is not at all existence.

13. Coming to the relief of Rs. 10,00,000/- towards mental agony is also not applicable since the Hon'ble Apex Court held that compensation under mental agony cannot be granted under a general agreement. In this regard I would like to refer a decision:

*When compensation for mental agony can be granted: - in the case of Ghaziabad Development Authority v. Union of India, (2000)6 SCC 113 wherein whilst considering a case of breach of contract under Section 73 of contract Act, it has been held that no damages are payable for mental agony in case of breach of ordinary commercial contract. The Supreme Court considered the case of Lucknow Development Authority AIR1994 SC 787 and held the liability for mental agony had been*

*Devi*  
3/12/2020

ಕರ್ನಾಟಕರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

**Karnataka Real Estate Regulatory Authority, Bengaluru**

ನಂ:1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ,ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,  
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*fixed not within the realms of contract but under principals of administrative law. In this case the awards towards mental agony was deleted on the ground that these were no pleading to the effect and no finding on that point. There is no conflict between these two authorities. Thus where there is a specific finding of misfeasance in public office compensation for mental agony can be granted. If there are findings of misfeasance of public office then the principles set out in Ghaziabad Development Authority case, (2000) 6SCC 113, will have no application and the principles set out in Lucknow Development Authority's case AIR1994 SC 787. Would apply. In such case it would be open for the commission/forum to grant compensation for mental agony Ghaziabad Development Authority v. Balbir Singh, AIR 2004 SC 2141 (Para 7 at pg 2149).*

14. In view of the above position of Law question of giving the compensation of under mental agony does not arise. Further as per the cancellation agreement the payment has already been disbursed and concluded and as such no possibility to consider again and hence the complaint is liable for dismissal. By reading the contents of the complaint it reveals that she is asking the relief based upon the sale agreement which was not at in existence as on the date of complaint in view of execution of cancellation agreement dated 24/05/2019. In view of the absence of allegations as against the cancellation deed the complainant cannot maintain this complaint.

*Devi*  
31/01/2020

ಕರ್ನಾಟಕರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

**Karnataka Real Estate Regulatory Authority, Bengaluru**

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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

15. The learned counsel appearing for the complainant has given written argument along with some judgments. Wherein it is said that the complainant had paid Rs.70 lakh in the year 2014 and Rs.1.26 crores has been given to the developer before July 2017. It means the complainant wanted to say, the developer made use of her money and now he has returned only principal amount, but not the interest. Of course there is full force in her submission. If this complaint has been filed without any cancellation deed her claim could not be appreciated. She has received amount from the developer and filed this complaint subsequently stating that she is entitled for the interest for the delay caused by the developer. At the cost of repetition it is not correct because there was no agreement of sale as on the date of this complaint.

16. In this regard, the complainant has given citation of Supreme Court of India.

i) In the Supreme court of India

Civil Appeal Nos.12238/2018 and 1677/2019

Pioneer urban land and Infrastructre Limited

Verses

Govindan Raghavan and others

ii) In the National Consumer Disputes Redressal Commission, New Delhi

First Appeal No.522 of 2017

Appellants : Vivek Kishorechandra Metha and others

verses

Puranik Builders Pri.Ltd., & others

*Done*  
31/6/2020

ಕರ್ನಾಟಕರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
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ನಂ:1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,  
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The 2nd decision has been given by the complainant to say that money paid by the complainant was utilized by the developer. In this regard he has drawn my attention to para-11 of the judgement, which reads as under:

*Para-11 - Coming to the question of interest, it is the main agreement of the appellant that amount remained with the opposite parties for about one year and therefore, the opposite party is liable to pay the interest on this amount. As there was no agreement between the parties, the opposite parties are not entitled to deduct any earnest money or any amount for that matter.*

Hon'ble Supreme Court in Alok Shanker Pandey v. Union of India & ors., MANU/SC/7114/ 2007 : II(2007) CPJ (SC) has held that:

"9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if a A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence

*Devi*  
*3/6/2020*



equity demands that A should not only pay back the principal amount but also the interest thereon to B.”

17. The other decisions given by the complainant are also supports her contention that money has been taken over by the developer and enjoyed the same for the development of his project.
18. Generally, as per Sec.18, the complainant would be entitled for the compensation in the form of interest, in case, the developer has failed to complete the project within the due date. In this regard, the learned counsel for the developer has drawn my attention to see para-8 of the supplementary agreement. The same was executed on 27/04/2017 in para-8 of the said document it is said that the project would be completed within 36 months with three months grace period. It means it comes to July 2020. But even earlier to this document the complainant had received the amount from the developer. According to the developer when there is no expiry of completion date as mentioned in the supplementary agreement, question of grant of interest by way of compensation does not arise. The supplementary agreement executed by the complainant is admitted by the complainant, Clause 8 binds her. Hence, I would say that the complainant is not entitled for the relief of interest for the reason that the completion date was admitted by the complainant under the supplementary agreement as 2020. But in the mean while cancellation deed executed by receiving principal amount, it is not questioned in this document. Hence, the complainant is not entitled for the relief as prayed in her complaint.

*Devi*  
31/01/2020

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19. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed of by the Authority within 60 days from the date of receipt of the complaint. The said 60 days be computed from the date of appearance of the parties. In this case the parties appeared on 24.09.2019 and case is being disposed of on today is with some delay. With this observation, I pass the following

**ORDER**

a The Complaint filed by the complainant bearing No.CMP/190912/0004118 is hereby dismissed.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 31/1/2020).

K. PALAKSHAPPA  
Adjudicating Officer