



## ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತದ ಸಂಖ್ಯೆ Cmp.No: 5653

ಪುಟ ಸಂಖ್ಯೆ .....

ವಿಷಯ Mr. Prashantha Mundkod Krishnappa

Prestige Lakeside Habitate

ಕಂಡಿಕೆ  
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

**CMP- 5653**

**28.09.2022**

As per the request of the complainant, the execution proceedings in this case is taken-up for disposal in the Lok Adalat.

The complainant Sri. Prashantha Mundkod Krishnappa joined through video call in pre Lok Adalat sitting held on 28.09.2022 and he has reported that the respondent/developer has complied the order passed in the above case and also has forwarded E-mail dated: 25.06.2022 in that regard. Therefore in view of the submission of the complainant, the execution proceedings in the above case have been closed as settled between the parties in the Lok Adalat. The conciliators to pass award.

  
Judicial Conciliator.

  
Advocate Conciliator.



**CMP - 5653**

**28.09.2022**

**Before the Lok-Adalath**

The execution proceedings in the above case taken up before the Lok-Adalat. The execution proceedings in the above case have been settled in pre Lok Adalat held on 28.09.2022 and the email dated: 25.06.2022 forwarded by the complainant in the case is hereby accepted and the said email shall be part and parcel of the award. Hence, the execution proceedings in the above case stands disposed off as settled and closed in the Lok Adalat.

  
Judicial Conciliator.

  
Advocate Conciliator.



# ಕರ್ನಾಟಕ ಲಿಯಲ್ ಎನ್ಫೋರ್ಸ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತದ ಸಂಖ್ಯೆ Comp.No: 5653

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ವಿಷಯ Mr. Prashantha Mundkod Krishnappa

Prestige Lakeside Habitate

ಕಂಡಿಕೆ  
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06.01.2023

Inadvertently name of the complainant was written as Mr. Chetan Devaraju instead of Mr. Prashantha Mundkod Krishnappa, in the Award copy of Lok Adalat dated: 28.09.2022. Hence for kind perusal.

ಆದೇಶ

A0) Perused the office note and the records. Acting U/Sec-151 CLC it is ordered to correct the name of the complainant as "Mr. Prashantha Mundkod Krishnappa" in the cause title of the award dated. 28-09-2022 passed pursuant of the Lok-Adalat order dt. 28-09-2022, as due to oversight the name of complainant is typed as "Mr. Chetan Devaraju" same be deleted and after amendment award be uploaded, & Award be award.

6/1/22

Amendment cancelled.

6/1/22

**KARNATAKA STATE LEGAL SERVICES AUTHORITY**

**BEFORE THE LOK ADALAT**

**IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT  
BENGALURU**

**DATED: 28<sup>TH</sup> DAY OF SEPTEMBER 2022**

**: CONCILIATORS PRESENT:**

Sri: I. F. Bidari

..... Judicial Conciliator

AND

Smt.: Preethi N

..... Advocate conciliator

**COMPLAINT NO: CMP/200406/0005653**

**Between**

Mr. Chetan Devaraju

..... Complainant/s

AND

M/s. Prestige Habitat Ventures.,

.....Respondent/s

**Award**

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, as per the email dated:25.06.2022 forwarded by the complainant and complainant appeared through video call during the pre Lok Adalat sitting on dated: 28.09.2022, same is accepted. The settlement entered between the parties is voluntary and legal one. The execution proceedings in the above case have been closed as settled between the parties. The email shall be part and partial of the award.

Judicial conciliator

Advocate conciliator

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**Karnataka Real Estate Regulatory Authority Bangalore**

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಂ.ಎ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,  
ಬೆಂಗಳೂರು-560027

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**BEFORE ADJUDICATING OFFICER**

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

**DATED 21<sup>ST</sup> SEPTEMBER 2021**

<b>Complaint No.</b>	<b>CMP/200406/0005653</b>
<b>Complainant:</b>	Mr. Prashantha Mundkod Krishnappa Kadthur, Thirthahalli Tq, Shivamogga – 577432. (In Person.)
<b>Respondent:</b>	Prestige Habitat Ventures The Falcon House No.1, Main Guard Cross Road, Bengaluru – 560 001 (By: Sri. Mohamed Sadiqh. B.A. Advocate, i.e., K V Legal)

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

Mr. Prashantha Mundkod Krishnappa (here-in-after referred as complainant) has filed this complaint bearing No. CMP/200406/0005653, under Section 31 of the Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the Prestige Habitat Ventures, (here-in-after referred as Respondent) seeking relief of a proper handover with appropriate compensation for delay and allotment of 2 car parks as promised or 100% refund with compensation for damages caused by the respondent.

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

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The owners No.1 to 5 described in the agreement to sell are the owners of the "Schedule-A" non-agricultural converted lands comprising of lands in various survey numbers of Gunjur Village and Balageri Village, both of Varthur Hobli, Bengaluru East Taluk in all measuring 28 acres 35.25 guntas. The respondent builder has developed residential apartments and residential villas in the project "Prestige Lakeside Habitat" (here-in-after referred as project) on the aforesaid Schedule-A property. The owners of Schedule-A property along with builder/developer M/s Prestige Habitat Ventures entered into an agreement to sell in December 2019 with the complainant where under the complainant agreed to purchase undivided right in Schedule-A property measuring 2134/6500583 th., described as Schedule-B and a ready to move in apartment built on Schedule-A property bearing apartment No. 12153, situated at Elinor(Building No.5), Tower 12, on 15<sup>th</sup> Floor/level being constructed in the project, measuring 2134 sq.ft super built up area and with one car parking described as Schedule-C in the agreement to sell, for consideration amount mentioned therein, also subject to terms and conditions mentioned therein.

3. The complainant alleged in the complaint that he did book the aforesaid apartment in November 2019, agreeing on price with Joythi Krishna, who told him to trust the Prestige brand and promised everything will be smooth. Among other things there were 2 key aspects promised, 1. Immediate handover as it was ready to move (this was primary reason for purchase) 2. For the agreed price, numbers of car parks were 2, which he was promised that would be done at the handover stage. The complainant signed booking form, sale agreement and also paid 100% amount. The

complainant had no reason to suspect the Prestige/builder as it is a big brand and thought that they are following some internal process. It is further alleged that as on date of filing complaint it was 5<sup>th</sup> month from booking and there is no sign of handover or registration. The delay in that regard, caused the complainant interest losses and other financial damages. The respondent betraying the trust, demand more money on 2<sup>nd</sup> car parking and twisting it saying complainant has signed the documents. The respondent is doing a bait and switch. The respondent threatening the complainant with 10% cancellation fee if he cancels the booking and forcing him to accept delay and fraud. Therefore the complainant has filed this complaint seeking relief as sought in the complaint.

1. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent has appeared through its Advocate. The respondent has filed objections/written submission, contending that complainant has filed false complaint. The complainant had submitted booking application form on 31.10.2019 to own apartment bearing No.12153 in the respondent project. The respondent allotted apartment No. 12153 to the complainant and intimated the same to the complainant through letter dated: 13.11.2019, specially mentioning that one car parking space is reserved for said apartment. Subsequently parties have entered into agreement to sell in respect of said apartment with one car parking. The complainant had agreed to pay Rs. 1,47,52,746/- towards purchase value of the apartment. The respondent did give discount of Rs.11,10,807/- in the apartment price. Thus complainant had paid Rs.1,36,41,939/- to the respondent towards purchase of apartment. The complainant on 27.12.2019 made final

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**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**

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payment of Rs. 5,83,620/-. The complainant submitted TDS payment certificate of Rs.1,46,157/- on 05.02.2020. The respondent on 28.02.2020 adjusted aforesaid discount amount in said consideration payable by the complainant. The complainant on 28.12.2019 had sent an email alleging that he noticed very late that in all the documents only one car parking is mentioned and all along his understanding was that there are 2 reserved car parks with 3 BHK apartments. The respondent through it's sales representative on 31.12.2019 forwarded the reply stating that never sales representative concerned told to the complainant the cost paid/charged, would include 2 car parks and if additional park is required, then it will be provided on payment of additional charges. The complainant has filed instant complaint contrary to booking application form, intimation of allotment and agreement to sell and is demanding 2 car park from the respondent. The respondent on 14.02.2020 has sent an email to the complainant for taking possession of apartment but complainant replied saying if the 2<sup>nd</sup> car parking is not given, then to refund him full amount. The complainant is working in Singapore. The respondent has been continuously following up with the complainant to take possession of the apartment and also to get sale deed registered in his favour. The complainant if unable to travel to India due to COVID-19 pandemic, he would have authorised some-one to take possession of the apartment. The complainant has no right to demand additional car park. The respondent is ready and willing to complete the hand over formalities and ready to execute register sale deed but complainant is not coming forward in that regard. The respondent without prejudice to the aforesaid contention submits that if the complainant demands termination of agreement and refund of amounts, then as per clause 20.2 of the agreement to sell



10% of total sale consideration will be forfeited. These main grounds, among others, contended in the objections, prayer to dismiss the complaint with exemplary cost. The complainant has forwarded detailed response to the statement objections of the respondent with update situation.

5. I have heard the complainant and heard Sri. Mohammed Sadiq Advocate for respondent through Skype. Perused the materials and records.

6. The points that would arise for consideration are:

- (1) Weather the complainant is entitled for refund with compensation? If so, to what extent?
- (2) Weather the complainant is entitled compensation for delay in handing over the possession of the apartment? If so, to what extent?
- (3) Weather the Adjudicating Officer has jurisdiction to direct the respondent to allot 2 car parking to the complainant as sought for?
- (4) What order?

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

Point No.1: Does not arise for consideration.

Point No. 2: Yes, to the extent as shown in the final order.

Point No.3: Negative.

Point No.4: As per final order, for the following:-

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**REASONS**

8. Point No.1: The facts that the owners of Schedule-A property along with builder/developer M/s Prestige Habitat Ventures entered into an agreement to sell in December 2019 with the complainant where under the complainant agreed to purchase undivided right in Schedule-A property measuring 2134/6500583 th., described as Schedule-B and also agreed to purchase a ready to move in apartment built on Schedule-A property bearing apartment No. 12153, situated at Elinor (Building No.5), Tower 12, on 15<sup>th</sup> Floor/level being constructed in the project, measuring 2134 sq.ft super built up area and with car parking described as Schedule-C in the agreement to sell, for consideration amount mentioned therein, also subject to terms and conditions mentioned therein are not in dispute. The jural relationship of parties, are admitted. The complainant is alleging that during oral talks with sale representatives of the respondent specially Sri. Joytis Krishna, it was agreed that the respondent would provide 2 car parking in the purchase price agreed to be purchased by the complainant bearing apartment No.12153 but whereas contention of the respondent is that the purchase price include to provide only one car parking and complainant has to pay extra charges, if at all he is in need of one more car parking. The complainant has lodged the instant complaint because respondent declined to provide 2 car parking and there is delay in handing over possession of the apartment also seeking compensation for mental pain and agony. The respondent during pendency of this complaint has handed over possession of the apartment and also executed a registered sale deed in favor of



the complainant. The complainant in the response, submitted to the objection of the respondent has clearly stated that he has taken possession of the apartment with one car park on 28.10.2020 and sale deed registration done on 06.11.2020. Thus clearly stated that in the instant complaint, he is seeking for remaining prayer made in the complaint for delay compensation and interest payment and also in respect of getting a 2 car parks. The respondent has produced copy of the letter dated: 28.10.2020 with regard to handing over of the possession of the apartment and copy of allotment letter dated: 20.02.2020 allotting one car park mentioned therein as default allotment the registered copy of sale deed dated: 06.11.2020 has also been produced, executed by the respondent with owners in favor of complainant represented by his power of attorney holder Mrs. Anusha Adharsha Gowda in respect of the apartment in question. Thus the materials on record proves that complainant has taken possession of the apartment in question and does not press for relief of refund of the amount paid to purchase the apartment with compensation, as initially prayed in the complaint, as such, the consideration of question of refund of amount with compensation does not arise for consideration. Accordingly I hold this point for consideration.

9. Point No.2: The fact that complainant did book the (ready to move in) apartment No. 12153 in the respondent project is not in dispute. The copy of booking application form dated: 31.10.2019 and copy of letter dated 13.11.2019 issued by the respondent to the complainant intimating the allotment of the said apartment have been produced. The records disclose that the price of the apartment

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No.12153 was Rs.1,47,52,746/- out of which discount of Rs.11,10,807/- is given and the remaining cost of the apartment is being paid by the complainant to the respondent. The complainant during argument as well in the response filed to the objections of the respondent in many words submitted that he has paid 100% payment of the value of the apartment in December 2019 as also forwarded TDS certificates on 04.01.2020, to the respondent, despite that the respondent delay to hand over possession of the apartment. The complainant further submits that he had booked ready to move in apartment paying agreed price as he wanted to shift his old aged parents for treatment at Bengaluru as they are suffering from ailments but because of delay in handing over possession of the apartment he was unable to get provide treatment to his parents which caused him immense mental pain and agony, apart from financial loss. The complainant submits that the respondent's employees were sending emails after emails demanding for clearance of outstanding balance and to acknowledge the email mentioning acceptance of possession of the apartment though the possession was not handed over which caused him lot of mental pain and agony hence prayed to grant compensation for delay in handing over possession of the apartment also compensation for mental pain and agony. The complainant drawn the attention of the Adjudicating Officer (here-in-after referred as AO) to the copies of the emails produced with written response filed to the objection of the respondent. Per contra Sri. M.S. learned counsel for the respondent submits that the complainant delayed to take possession of the apartment on the ground that he should be allotted and given 2 car parking in the



price paid by him but in fact only one car parking is provided to his apartment and same is mentioned in booking application form, intimation allotment letter and in agreement to sell. The learned counsel further submits that complainant has made final payment of Rs.5,83,620/- on 27.12.2019, on 05.02.2020 submitted TDS payment certificate and discount amount was adjusted on 28.02.2020, more over the respondent had not authorised any person on his behalf to take possession of the apartment as due to COVID -19 Pandemic complainant was unable to physically present to take possession. Therefore there is no fault on the part of the respondent in delivering possession of the apartment and delay if any, is due to the fault of the respondent and also due to COVID-19 pandemic, hence prayed to dismiss the complaint, as already complainant has taken possession of the apartment in October 2020 and sale deed has also be executed in November 2020.

10. The perusal of the copies of the emails exchanged between the parties discloses that the complainant has made 100% payment in December 2019 and has forwarded TDS certificate to the respondent on 04.01.2020. There is no dispute that the complainant booked the apartment 12153 in the respondent project which was ready to move in. The complainant has not produced materials to show that on 28.12.2019 he did give authorization in writing in favor of his wife, sister or brother-in-law to take possession of the apartment on his behalf on which date the respondent alleged to have been sent them back when they had been take possession of the apartment, much less, as contended by the complainant. The copy of the letter dated 28.10.2020 discloses



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that possession of the apartment was handed over to the complainant on said date and sale deed has been executed on 06.11.2020 which is admitted by the complainant. The copies of emails dated 30.07.2020 and 15.06.2020 discloses that respondent asked the complainant to clear outstanding balance. The email dated 11.08.2020 among others the respondent employees requested the complainant to acknowledge the email mentioning the acceptance of possession of apartment for their record purpose. These facts makes it clear that though the complainant had paid 100% value of the apartment in December 2019 but subsequently demanding for clearance of alleged balance due amount and asking for acknowledging the possession of the apartment though in fact not handed over to him will amounts to mental pain and agony apart from showing delay in handing over possession of the apartment. The copy of whatsapp messages exchanged between complainant and Joythis sale representative of respondent, enclosed at "Annex-F" with written response of the complainant discloses that said sales representative after the concluding oral transaction with the complainant in respect of apartment went on vacation for 10 days. The copies of emails exchanged between the complainant and the staff of the respondent discloses that whenever the complainant questioned with regard to sending him emails demanding to clear the outstanding balance and with regard to possession, subsequently they have forwarded emails asking apology from the complainant for inconvenience caused him because of such email forwarded to him and further they have stated that such emails are generated automatically through their customized system for sending to all their customers in India or



Abroad. Under the facts and circumstances of the case at the best the respondents should have completed process of handing over possession of the apartment including execution of sale deed on or before January 2020. The materials on record proves that there is a delay in handing over of the possession of the apartment (ready to move in) to the complainant though he has paid 100% sale value in December 2019. This fact causing mental pain and agony apart from sustaining financial loss to the complainant cannot be over ruled as such, he is entitled for compensation in that regard. Admittedly lockdown due to COVID -19 pandemic was declared on 24.03.2020 and subsequently, again, frequently lockdown was declared on many occasions because of COVID -19 pandemic. Therefore considering the fact and circumstances of the case it is just and proper to direct the respondent to pay compensation to the complainant for delay in handing over possession of the apartment by way of interest @ 2% above the MCLR of SBI, on the amounts received from the date of receipt of the respective amount till 20.03.2020 (as lockdown for covid-19 pandemic declared 1<sup>st</sup> time on 24.03.2020) till realization of the said amounts. At the same time the respondent is liable to pay an amount of Rs.50,000/- as compensation to the complainant with interest @ 2% above the MCLR of SBI on said amount from the date of this order till realization of said amount, towards mental pain and agony. Accordingly I hold this point No.2 for consideration.

11. Point No.3: As per the provisions contemplated U/Sec. 71 of RERA Act, the Adjudicating Officer has jurisdiction to adjudicate compensation only U/Secs. 12, 14, 18 and 19 of the RERA Act,

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taking in-to consideration the factors covered U/Secs. 72 of RERA Act, as such, the one of the relief claimed by the complainant to direct the respondent to allot 2 car parking for his apartment No.12153 in the price paid by him to purchase the said apartment, much less, as sought by the complainants is not coming within the jurisdiction of the Adjudicating Officer as the same is not partaking the character of compensation U/Sec. 12, 14, 18 and 19 of the RERA Act. At the best the Hon'ble K-RERA Authority has jurisdiction to decide about the said relief. Therefore the said relief of the respondent is not liable to be considered in this case, before the Adjudicating Officer. Accordingly I hold this point No.3 in the negative for consideration.

12. 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 06.04.2020, 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 parties given the reasonable opportunities to contest the case, as such, the Judgment is being passed on merits, with some delay.

13. Point No.4: In view of my findings on point Nos. 1 to 3, I proceed to pass the following:-

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**ORDER**

- (i) The complaint filed by the complainant bearing No.: CMP/200406/0005053 is partly allowed against the respondent.
- (ii) The respondent is hereby directed to pay compensation to the complainant by way of interest @ 2% above the MCLR of SBI, on the amounts received from the date of receipt of the respective amount till 20.03.2020 till realization of the said amounts.
- (iii) The respondent is directed to pay an amount of Rs.50,000/- as compensation to the complainant with interest @ 2% above the MCLR of SBI on said amount from the date of this order till realization of said amount, towards mental pain and agony.
- (iv) The respondent is directed to pay Rs.5,000/- as cost of this petition to the complainant.
- (v) The complainant is at liberty to approach the Hon'ble K-RERA Authority for the relief seeking direction to the respondent to allot him 2 car parking for he purchased apartment.
- (vi) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with the same to enforce the order.
- (vii) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 21.09.2021)

  
**I.F. BIDARI**

Adjudicating Officer-1