

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY

Dated 16th MAY 2022

COMPLAINT NO. CMP/210622/0008022

COMPLAINANTS.....

**1. LAKSHMI RAMESH ALIAS
NAGALAKSHMI RAVI**

2. M O RAVI,

3. PADMINI RAVI,

All are residing at
D-401, Salarpuria Gold Summit,
Hennur Main Road,
Next to Lulu Mart, Hennur,
Bengaluru - 560001.

(By Krutika Raghavan)

V/S

RESPONDENT.....

PURVANKARA LIMITED,

130/1, Ulsoor Road,
Bengaluru - 560042.

(By Anandarama K)

The complainant has filed this complaint under section 31 of the RERA Act against the project "Purva Palmbeach" for the relief of direction to restore the units as per the original floor plan at no cost and to handover the possession.

Brief facts of the complaint are as under:-

That the complainants have bought two flats in the year 2015 and requested the respondent that they be converted into a single 4 BHK duplex with 4 bathrooms. They have made payments towards the same accordingly. In 2017 without the knowledge / approval of

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the complainants, the respondents has carried out partial modifications completely different from what was agreed to. Hence, the complainants requested for restoration of the initial 2 units of bedrooms. Respondent agreed to carry out the same at no additional cost. But, he is illegally demanded payment of Rs.8,85,000/- plus tax to restore the units, although the partial modifications carried out by them was without the consent / knowledge of complainants. In the year 2019 the occupancy certificate was received but even as of January 2021 the units have not been reinstated. They have spent a total sum of Rs.22,75,000/- towards rent and EMI from 01/04/2019 to 01/03/2021 must be compensated. Hence, this complaint.

After registering the complaint, in pursuance of the notice the respondent has appeared before the Authority through his council and filed statement of objections as under:-

The respondent has denied all the allegations made against him by the complainant. According to him, there is no any violation or contravention of the provisions of RERA Act. So also there is no violation of any terms of the contract or agreements entered into between the parties. The occupancy certificate has been issued on 26/03/2019 and project has been completed and handed over to the Association. The respondent has already moved out from the completed project.

The complainants are agreement holders of two apartment units namely two bedrooms in the 11th Floor and another two bedroom apartment unit on the 12th Floor. The complainants had initially booked two apartment units and the complainant No. 1 at the time of booking she was an employee of the respondent company. Thereafter, the aforesaid units were swapped to L-1102 and L -1202 in wing L. In respect of aforesaid apartment units, the complainants have entered

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into agreement of sale in respect of undivided share and construction agreement.

In April 2017 complainants have requested that the aforesaid apartment units be converted into a duplex on the ground that she is going to be living out the said space and that she wanted the help of respondent in making her home as she envisioned it. The communication was through E-mail dated 14/04/2017. The respondent has forwarded a plan for converting the aforesaid apartment units into duplex and sought for confirmation and complainants have confirmed the plan and modifications by an SMS.

On 12/05/2017 the respondent sent a mail to the complainants that based on the SMS confirmation the respondent will go ahead with combining the apartment units into a duplex and that as confirmed the tentative costs for modifications would be about Rs.5 Lakhs. Thereafter by E-mail dated 15/05/2017 complainants have confirmed to carry out the requested modifications. In the plan for modification that was forwarded to the complainants, the location of stairs, the opening of slabs and closing of a walls etc., was clearly showed and said plan consisted of 2 bathrooms. Accordingly, the respondent carried out modifications and complaint No. 1 was constantly following up on the progress of the same.

After the modifications were carried out the complainants requested them to restore the units as per the original plan for which the respondent had agreed and informed the complainants that it can be done at an extra cost of Rs.2.5 Lakhs. However, the said Rs. 5 Lakhs and 2.5 Lakhs have not been paid by the complainants till date.

Presently, the apartments are in a state of modification for being converted and completed into a duplex apartment as requested by the

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complainants. Except constructing the stairs connecting the two units all other work has been carried out. The BBMP has issued Occupancy certificate on 26/03/2019. The project has been completed in time. The complainants have not paid the entire sale consideration. The respondent has informed the complainants as early as 06/06/2020 that the apartments have been handed over to the respective owners and asked the allottees to pay dues and to take possession. But, the complainants did not come forward for registration by paying the dues. The balance amount to be paid by the complainant is Rs.9,81,706/- and interest is Rs.3,97,302/- with regard to apartment unit No. 1102 and Rs.11,40,999/- with interest of Rs. 4,61,638/- with regard to apartment unit No. 1202. Hence, prayed to dismiss the complaint with costs.

The complainants have produced in all 5 documents such as copies of Agreement of Sale, Construction Agreement, payment receipts, Tripartite Agreement and cancellation notice.

The respondent has produced in all 4 documents such as copies of 5 emails, Occupancy certificate, modified plan and photographs of flat.

The mater was heard on 01/12/2021, 11/01/2022, 15/02/2022 and 08/03/2022.

On the above averments, the following points would arise for our consideration.

1. Whether the complainants have made out grounds to issue direction to the respondent to restore the L-1102 and L-1202 as per the original floor plan at his own cost and to handover possession?
2. What order?

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Our answer to the above points are as under:-

1. Partly Affirmative
2. As per final order for the following.

REASONS


Our answer to the point No.1: On perusal of the complaint averments and the documents available on record, it is apparent that the complainants have been allotted two units namely L-1102 and L-1202 each consisting of two bed rooms. The emails exchanged between the parties show that it is complainants themselves who have asked the respondent to convert units allotted to them in to a single 4 BHK duplex with 4 bathrooms.

According to the respondent as of now only work of construction of staircase linking 2 floors is remained. At this stage, the complainants are demanding restoration of units as per original plan at his own cost. Apparently this demand is unreasonable and unacceptable considering the fact that it is only at the demand of complainants those modifications were made. When the changes were made in the original plan at the instance of complainants themselves it naturally follows that they are liable for cost and consequences thereof.

That being the fact, demanding of restoration of units as per original plan without any cost on their part is quite unjustifiable. Therefore, this Authority comes to the conclusion that the prayer of complainants can be allowed in part subject to the condition that complainants shall bear the costs and consequences of such restoration. Accordingly, point No. 1 is answered in partly Affirmative.







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Our answer to the point No.2:- In view of the above discussion, we proceed to pass the following

ORDER

In exercise of the powers conferred under section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/210622/0008022 is hereby partly allowed. The respondent is directed to restore the units as per the original plan, but at the cost of complainants.

No order as to costs.


(Neelamani N Raju)

Member-2
K-RERA


(D. Vishnuvardhana Reddy)

Member-1
K-RERA


(H.C. Kishore Chandra)

Chairman
K-RERA