

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 1<sup>st</sup> September 2022**

**COMPLAINT No: CMP/190720/0003648**

**RECTIFICATION UNDER SECTION 39 OF RERA ACT**

**COMPLAINANT....**

**KARKALA RAHUL BHAT**

G305.Arvind Sporcia  
Manyata Tech Park Gate-5  
Rachenahalli Main Road  
Rachenahalli,  
Bangalore Rural 560 045.

**(Rep. in person)**

**V/S**

**RESPONDENT.....**

**ARVIND SMARTSPACES LIMITED**

24, Government Servant's  
Society, Behind Citibank  
C.G. Road, Gujrat-380009

**(Rep. by Smt. Bindiya Kulkarni,  
Advocate)**

**(amended vide order dated  
25 /1/2023)**

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

1. This complaint is filed under section 31 of the RERA Act, against the project 'Arvind Sporcia' for the relief of refund and for making the car parking open.

**The brief facts of the complaint are as under:-**

2. The complainant submits that Arvind Smart spaces have adopted lottery allotment for selling the Open Car Parking and selling the covered/stilt car

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parking persons to the buyers on a higher rate without any proper procedure. It is further submitted that the Respondents were unable to give details on what basis car parking was allotted and have blindly fooled the buyers that they are allotting for basement(covered car parking) and thus sold the open car parking. The complainant contended that the Respondents would have allotted the parking area much earlier at the time booking itself and would have showed to the concerned people. The complainant further alleged that lottery is a scam with an intention to earn money besides there is no provision for visitor parking as was promised earlier. The complainant further said that the Respondents were suppressed the facts of details of apartment and have also not shared with the buyers.

2A. The advocate for respondent had filed an application dated 18.1.2023 inviting attention of the Authority to rectify the factual mistake that has crept in the Authority's judgement dated 1<sup>st</sup> September 2022.

(a) The promoter name mentioned as Arvind Sporca instead **ARVIND SMARTSPACES LIMITED**

The application has been verified and it is found necessary to rectify the order dated 1<sup>st</sup> September 2022.

(i) This rectification is done within two years from the date of the original judgement i.e. of 1<sup>st</sup> September 2022.

(ii) The respondent has filed an appeal before KREAT vide no.100/2022.

(iii) No substantive part of the order is amended

The Authority's judgement dated 1<sup>st</sup> September 2022 is declared Non Est and replaced by this order dated 25 /1/2023.

3. Hence, this complaint.

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4. After registration of the complaint, in pursuance of the notice, the respondents have appeared before this Authority through their advocate Smt. Bindiya Kulkarni and filed the objections as under:
5. **Objections of Respondent:-** The Respondent denied all the allegations made against them by the complainant as false. They contended that the complaint filed by the complainant against the respondent is not maintainable either in law or on true facts of the case and prayed for dismissal of the complaint.
6. **The** Respondents further contended that the complaint does not present the true facts of the case and that the Complainant has grossly misrepresented facts and is guilty of suppression of facts. It is further submitted that the above complaint is nothing but an attempt to arm twist the Respondent and extort money from the Respondent.
7. The complainant was allotted apartment G-305, 3<sup>rd</sup> Floor, Block-G in the project named as Arvind Sporcia along with one car park as desired by the complainant in terms of the agreement to sell dated 27.06.2018 and sale deed dated 22.10.2020. It is further submitted that the complainant was allotted the said car parking O-147 by the Respondent in terms of the sale deed dated 22.10.2020 and has been using the same ever since the allotment of the said car park.
8. The Respondent further contended that the complaint does not disclose the issues regarding the usages of car park and has filed this complaint with an ulterior motive to harass the Respondent. It is further submitted that the allotment of car parking was done based upon lottery system and this was followed for all apartment owners which has not been challenged by any of the owners. The Respondent further contended that the complainant was fully aware of the location of the car park before executing the sale deed. Ever since the execution of sale deed, the complainant was in use of the car parking (since

Ans

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2020) which shows the conduct of the complaint and hence pray for dismissal of this complaint.

9. In support of his claim, the complainant has produced in all 3 documents such as Occupancy Certificate of Arvind Sporcia issued by BBPM vide No: BBMP/Addl.Dir./JD North/0161/2014-15 dated 23.3.2018, Open Parking Map, Photos of Car Parking Sold and Irregularities at Gate to sell Car Parking(dated 21.7.2022)
10. On the other hand, the Respondents have produced in all 6 documents in support of their defence such as copy of email dated 8 July, 2019 from Sporcia Care to all Members of the with regard to Sporcia Car Park Process Lottery to be held on 20.7.2019, Block Parking Allotment Sheet(covered), CD with regard to containing video graph of the entire car parking lottery event, e-mail dated 22.7.2019 with regard to allotment of Car Parking Space for apartment No: G-305 to the complainant, and copy of sale deed executed on 22.10.2020, plan sanctioned by BBMP, tax payment receipt.
11. Both sides have submitted written arguments. On 12.7.2020, the Respondent has submitted additional objections. The details are as under:
12. The Respondent after entering into an agreement with all the home buyers, sent an intimation vide email dated 8.7.2019 to all the home buyers in the project '**Arvind Sporcia**' inviting them to participate in the lottery allocation of car parking on 20.7.2019 at 11.00 a.m. in Arvind Sporcia at the club house and the complainant was also requested to participate. The Respondent further contended that it was notified that the car parking allocation was process of lottery and which was accepted by all the home buyers of the project.
13. It is submitted that 300 home buyers participated in the lottery on 20.7.2019 and based upon the lottery, car parks were allotted to each home buyers blockwise (**Block-A to Block-G**). It is pertinent to state that complainant herein remained

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absent for the reasons best known to him. It is submitted that Respondent has called upon the apartment number of the complainant and individual present in the lottery volunteered to participate with respect to the said apartment for allotment of car park and that the Respondent has video graphed the entire process of car parking lottery.

**14.** It is further submitted that after the allotment of car parking, the Complainant was informed vide email and also through letter informing him that car parking No: 147 was allotted to him but, however, the complainant failed to accept the letter. It is further said that on 22.10.2020 sale deed was executed in favour of the Complainant along with the car parking No: 0-147 and now filing the complaint without participating in the lottery and after execution of sale deed and using the same since 2020 shows the conduct of the complainant.

**15.** In the light of the above facts, the Respondent prays this Hon'ble Forum be pleased to dismiss the above complaint, with exemplary costs, in the interest of justice and equity.

**16.** Heard both sides.

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

1. Whether the complainant is entitled for the relief of refund as claimed?

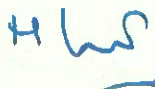
2. What Order.

**18. Our answer to the above points are as under:-**

1. In the Affirmative

2. As per final order

**REASONS**



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**19. Our answer to point No. 1:- on perusal of the materials on record,** the complainant was conveyed apartment G-305, 3<sup>rd</sup> Floor, Block-G in the project named as Arvind Sporcia along with one car par as desired by the complainant by the Respondent in terms of the agreement to sell dated 27.6.2018 and sale deed dated 22.10.2020 besides car parking O-147.

**20.** It is noted that the Respondent has informed through e-mail dated 08/07/2019 to all the allottees that the unit-wise car park space allotment for a particular block will be done through lottery system and that this process will be held on 20<sup>th</sup> July 2019 at 11.00 a.m. in Arvind Sporcia Club House and requested all the members to participate in the process.

**21.** It is noted on the submission made by the Respondent that more than 400 home buyers participated in the lottery on 20/07/2019 and based upon the lottery, car parks were allotted to each home buyers block-wise. It is pertinent to note that the complaint herein has remained absent for the best known to him and the Respondent has called upon the apartment number of the complainant and individual present in the lottery volunteered to participate with respect to the said apartment for allotment of car park.

**22.** It further noted that the Respondent after the lottery of allotment of car parking, the complainant was informed vide email and also letter informing him that car parking No: 147 was allotted to him but, however, it appears that the complainant failed to accept the letter.



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23. Section 2 (y) of the Act, with regard to parking reads as follows:

*“garage” means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas”*

24. As per Section 2(y) of the above Act, Respondent shall provide covered parking to the allottees. In the present case, the complainant provided open car parking which is not chargeable by the Respondent. But as per agreement of sale, the Respondent has to provide covered parking to the complainant.

In the light of the above facts, our answer to this point is in the affirmative

25. Our answer to Point No. 2:- In view of the above discussions, 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/190720/0003648** is hereby allowed with directions to the Respondent to allot covered car parking to the complainant.

No order as to costs.



(H.C. KISHORE CHANDRA)

Chairman  
K-RERA



(NEELMANI N. RAJU)

Member  
K-RERA

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY  
5301 S. DICKINSON DRIVE  
CHICAGO, ILL. 60637  
U.S.A.  
TEL. (312) 937-1234  
FAX (312) 937-1234  
WWW.CHEM.UCHICAGO.EDU

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