

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 14th November 2022

COMPLAINANTS.....

1. CMP/UR/191226/0004984

Kiran Agaradahalli Veerappa,
Shobha Nilaya, Sri Rama Mandira Road,
Jayanagar 2nd Cross,
Shivamogga - 577201.

2. CMP/200226/0005483

PRADDEEP S KAPPATTANAVAR
Flat No. 201 Swarna silicone castle
midas seetharam palya hoodi main
road whitefield. Bengaluru Urban-
560048.

3. CMP/200806/0006316

DR G RAMANGOWD
No. 12 Block 4-5, Gabbur Tq. Devadurga,
Raichur,
Raichur-584113.

4. CMP/191124/0004799

NAGARAJ,
S/o Venkan Gouda h . No. 12/8
GABBUR Tq: Devadurga,
Raichur- 584113.

(Rep. by Sri. Girish Kumar R, Adv.)

V/S

RESPONDENTS.....

**M/S. ANTEVORTA DEVELOPERS
PVT. LTD.,**

No. 514 Dalamal Towers Nariman Point,
Maharashtra, Mumbai City- 400021.

**(Rep. by Sri. Chethan, Authorized
Signatory)**

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1. The above said complaints are filed under section 31 of the RERA Act against the project "Glengate" developed by "M/s. Antevorta Developers Private Limited" for the relief of entire refund along with interest.
2. All these matters are taken up together for disposal as they are arising out of the same project and have common issues.

Brief facts of the complaints are as under:-

3. **In complaint No.4984:** The complainant Kiran Agaradahalli Veerappa had booked a flat bearing No. 604 in 6th Floor in the project of respondent by entering into an agreement for sale and construction agreement dated 26-09-2014 and paid an amount of Rs.87,24,378/-(Eighty seven lakh twenty four thousand three hundred seventy eight only). The Developer has agreed in the agreement to complete the project within 46 months + 6 months grace period from the date of Agreement of sale i.e. by 26/03/2018. These being the facts, without completion of the project, the respondent is asking him to get register the flat which is incomplete and to take possession of the same by demanding money. Delivery date has also been exceeded. Hence, this complaint.

4. **In support of his claim, the complainant has produced following documents:**

- i. Payment details
- ii. Agreement to sell along with construction agreement dated 26-09-2014 between the respondent and Complainant.
- iii. Affidavit Cum Declaration submitted to RERA by respondent.
- iv. Registration Certificate granted by RERA to the opponent that demonstrates the fact that there is a delay in completing the project.
- v. Order in complaint No.CMP/190319/0002454 dated 30-10-2019.
- vi. Photograph of the banner at the side of the said project depicting the case number pending before Hon'ble High Court of Karnataka.

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- vii. Case details of Writ Appeal No.16566-70/2011 along with interim order of the Honourable High Court of Karnataka in writ appeal no. 16566/2011.
 - viii. Case details of Writ Petition No.454-459/2014 was filed before the Hon'ble High Court of Karnataka.
 - ix. Commencement Certificate dated 28.05.2015
 - x. Occupancy Certificates dated 03-04-2019
 - xi. Undertaking dated 04.12.2019 filed by the Opponent before the Hon'ble High Court of Karnataka in WA 16566-70/2011.
5. After registering the complaint, in pursuance of the notice, the respondent has appeared before the Authority through his counsel and filed statement of objections as under:
6. It has denied the entire allegations made against it by the complainant as false. It contends that this complainant had previously filed a complaint No.2454 before this Authority in respect of same apartment claiming compensation and clarity on completion of the project. Further, during the course of proceedings on 09/07/2019 the complainant had filed additional facts and tried to mislead the Authority by seeking for the relief to cancel the agreement and requested for interest along with the damages from the respondent and this Authority passed an order directing the complainant to pay the amount to the developer within a month from the date of the order and the developer was directed to handover possession by receiving amount from the complainant and to complete the amenities within a month from the date of order. Accordingly, the respondent had sent a communication to the complainant to come forward to comply with the order of the court. In the meanwhile the complainant had preferred an appeal challenging the said order in appeal No. 238/2020 on 27/12/2019.
7. Again the same complainant had filed the present complaint on 21/12/2019 on the similar grounds against the same respondent

Asst

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which amounts to ResJudicata. The said fact of filing another case and its pendency was not disclosed before Appellate Authority. The complainant has not produced any order wherein it was declared that the title of the respondent is defective due to pending litigations before Hon'ble High Court of Karnataka.

8. In the earlier case also the respondent had admitted the pending litigation in writ. appeal No.16566/2011 before Hon'ble High Court of Karnataka and this respondent was made as party to the said case very recently and hence, the order to maintain status quo is not applicable to this respondent. The application filed by this respondent to implead has been allowed and Hon'ble High Court clarify its earlier order and permitted the respondent to construct and complete the pending works. The said case is pending for final consideration and as on the date there is no impediment to sell the apartment to the customers and to handover the possession of the apartments. Hence, this respondent has not hidden any litigation. Further, this respondent has been deleted in W.P. No.454/2014 and this fact was referred in writ. appeal No. 16566/2011.

9. As per the agreement of sale, the possession was supposed to be handed over to the complainant on 26/03/2019 and project was completed and final demand was raised on 21/12/2018. The occupancy certificate was obtained on 15/11/2018 and the same was intimated to the complainant. The complainant has made delay in making the payment earlier and he is due for delay with interest i.e. Rs.3,404/- as on the date of raising of the final demand. As per the demand letter dated 21/12/2018 the complainant was to make payment before 19/01/2019. But till date he has not made the said payment. Hence, he is liable to pay a sum of Rs.21,33,390/- including GST charges. Hence, prayed to dismiss the complaint with cost.

10. **In complaint No. 5483:** The complainant Pradeep S. Kappattanavar had booked a flat No.204, on 2nd floor A block in the

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Project of respondent and paid an amount of Rs.79,76,364.25/- (Seventy nine lakhs seventy six thousand three hundred and sixty four rupees only) on various dates. He has signed agreement for sale and construction agreement with builder on 27/06/2014. As per the agreement the delivery was to be done within 46 months with grace period of 6 months i.e. by 24/10/2018. The issues raised in the complaint are that there is a delay in providing amenities and construction of compound wall is incomplete. Further, he has also stated in the complaint that, there was a litigation pertaining to the project land and there is a delay in completion of project. The complainant seeks refund of the entire amount paid with interest.

11. In support of his claim, the complainant has produced following documents:

- i. Agreement to sell along with the construction agreement dated 27.06.2014 between the complainant and respondent
- ii. Payment details
- iii. Affidavit cum declaration submitted to RERA by respondent
- iv. Registration certificate granted by RERA to the respondent
- v. Photographs of the project
- vi. Case details of writ appeal No.16566-70/2011
- vii. Interim order of the Hon'ble High Court of Karnataka in Writ Appeal No.16566/2011.
- viii. Photographer of the banner at the site of the said project depicting the case number pending before Hon'ble High Court of Karnataka.
- ix. Under taking dated 04-12-2019 filed by the Opponent before the Hon'ble High Court of Karnataka in WA 16566-70/2011.
- x. Case details of writ petition No.454-459/2014 was filed before the Hon'ble High Court of Karnataka
- xi. Commencement certificate dated 28/05/2015
- xii. Occupancy Certificates dated 03-04-2019
- xiii. Layout plan
- xiv. Occupancy certificate dated 03/04/2019

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xv. The sale deed dated 15.05.2019

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

13. It has denied the entire allegations made against it by the complainant as false. It contends that the booking of this apartment was done on 07/08/2013 and said booking was cancelled on 15/11/2013 as the complainant had failed to comply with the booking terms and pay the complete booking amount. Further, on the request of the complainant, the respondent had re booked the same apartment and both parties had entered into agreements dated: 27/06/2014. The complainant continued of defaulting in paying instalments. Hence, the respondent sent him review letter dated: 12/05/2015 and final notice on 31/07/2015. But, the complainant didn't pay even on 31/08/2015. As there was no response from the complainant, the respondent issued cancellation notice again on 19/09/2015. The complainant once again requested the respondent not to cancel the unit and assured the payment arrangements on 25/09/2015.

14. As per the agreement of sale dated: 27/06/2014, the possession was supposed to be handed over to the complainant on or before 27/10/2018. This respondent had completed its construction at that point of time and applied for occupancy certificate on 15/11/2018 and obtained the same on 03/04/2019. This complaint is filed on 25/02/2020 which is after 10 months of the receipt of occupancy certificate. The final demand was sent on 15/04/2019 asking the complainant to make the final payment within 14/05/2019. There is no delay in completion of the project.

15. As on the date of raising of final demand, the complainant was due of Rs.8,432/- towards delay interest. Further, as per the demand

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letter dated : 15/04/2019 the complainant was to make the payment within 30 days. But till today he has not made the said payment.

Hence, approximately Rs.2,75,988/- of interest is due as on 05/01/2021. As on the date the complainant is liable to pay a sum of Rs. 18,97,977.17/- including GST charges. There was no hindrance to execute the sale deed and to take possession of the apartment as all basic facilities were in place.

16. Further, the respondent had not hidden any litigation with its customers. With regard to litigations, there is repetition of the facts narrated in the statement of objection filed in Cmp.No.4984 Hence, prayed to dismiss the complaint with costs.

17. **In complaint No.6316:** The complainant Dr. G. Ramangowd has booked a flat bearing No.304 in 3rd floor in A block in the project of the respondent by entering into an agreement for sale and construction agreement dated 08-06-2015 and paid an amount of Rs.78,96,592/-(Seventy eight lakhs ninety six thousand and five hundred ninety two only) to the developer on different dates. The Developer has agreed in the agreement to complete the project within 46 months + 6 months grace period from the date of Agreement of sale i.e. by 08/10/2019. These being the facts, without completion of the project, the respondent is asking him to get register the flat which is incomplete and to take possession of the same by demanding money. Delivery date has also been exceeded. Hence, this complaint.

18. In support of his claim, the complainant has produced following documents:

- i) Agreement to sell along with the construction agreement dated 08-06-2015 between the complainant and respondent.
- ii) Payment details
- iii) Affidavit cum Declaration submitted to RERA by opponent

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- iv) Registration Certificate granted by RERA to the opponent that demonstrates the fact that there is a delay in completing the project.
- v) Photographs of the onsite incomplete structures.
- vi) Case details of Writ appeal no.16566-70/2011
- vii) Interim order of the Hon'ble High Court of Karnataka in writ appeal No16566/2011.
- viii) Photographer of the banner at the side of the said project depicting the case number pending before Hon'ble High Court of Karnataka.
- ix) Undertaking dated 04.12.2019 filed by the Opponent before the Hon'ble High Court of Karnataka in WA 16566-70/2011.
- x) Case details of Writ Petition No.454-459/2014 was filed before the Hon'ble High Court of Karnataka.
- xi) Commencement Certificate dated 28.05.2015.
- xii) Occupancy Certificate dated 03/04/2019
- xiii) Layout Plan
- xiv) Sale deed dated 15.05.2021

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

20. It has denied the entire allegations made against it by the complainant as false. It contends that the complainant had paid a sum of Rs.1,14,16,504.46/- towards sale consideration and Rs. 7,75,908/- towards tax and franking charges. The complainant was a chronic defaulter. The respondent had sent him reminder emails on 21/10/2014, 15/11/2014, 21/01/2014, 13/09/2019, 16/01/2020 and 19/06/2020. But he didn't turn up. On 08/05/2020 complainant wrote letter to them stating 'due to COVID he is unable to visit Bengaluru, he confirms when he would be able to complete the transfer.

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21. As per the agreement of sale dated: 08/06/2015 the possession was supposed to be handed over to the complainant on or before October

2019. This respondent had completed its construction at that point of time and applied for occupancy certificate on 15/11/2018 and obtained the same on 03/04/2019.

22. This complaint is filed on 06/08/2020 which is after 16 months of receipt of occupancy certificate. The final demand was sent on 15/04/2019 asking the complainant to make the final payment within 14/05/2019.

23. As on the date of raising of final demand, the complainant was due of Rs.3,977/- towards delay interest. Further, as per the demand letter dated :15/04/2019 the complainant was to make the payment within 30 days. But till today he has not made the said payment. Hence, approximately Rs.2,07,288/- of interest is due as on 13/11/2021. As on the date the complainant is liable to pay a sum of Rs. 28,23,935.82/- including GST charges. And complainant is liable to pay a total outstanding sum of Rs.31,44,056/- including all the charges. There was no hindrance to execute the sale deed and to take possession of the apartment as all basic facilities were in place.

24. Further the respondent had not hidden any litigation with its customers. With regard to litigations, there is repetition of the facts narrated in the statement of objection filed in Cmp.No.6316 Hence, prayed to dismiss the complaint with costs.

25. **In complaint No.4799** The complainant Nagaraj has booked a flat bearing No.203 in 2nd floor in C block in the project of the respondent by entering into an agreement for sale and construction agreement dated 03-01-2015 and paid an amount of Rs.77,11,857/- (Seventy seven lakhs eleven thousand and eight hundred fifty seven only). The Developer has agreed in the agreement to complete the project within 03-05-2019. These being the facts, without completion of the project, the respondent is asking him to get register the flat which is incomplete and to take possession of the same by

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demanding money. Delivery date has also been exceeded. Hence, this complaint.

26. In support of his claim, the complainant has produced following documents:

- i) OAgreement to sell along with the construction agreement dated 03-01-2015 between the complainant and respondent.
- ii) Payment details
- iii) Acknowledgement of payment and also reminder letter.
- iv) Affidavit cum Declaration submitted to RERA by opponent
- v) Registration Certificate granted by RERA to the opponent that demonstrates the fact that there is a delay in completing the project.
- vi) Photographs of the onsite incomplete structures.
- vii) Case details of Writ appeal no.16566-70/2011
- viii) Interim order of the Hon'ble High Court of Karnataka in writ appeal No16566/2011.
- ix) Photographer of the banner at the side of the said project depicting the case number pending before Hon'ble High Court of Karnataka.
- x) Undertaking dated 04.12.2019 filed by the Opponent before the Hon'ble High Court of Karnataka in WA 16566-70/2011.
- xi) Case details of Writ Petition No.454-459/2014 was filed before the Hon'ble High Court of Karnataka.
- xii) Commencement Certificate dated 28.05.2015.
- xiii) Occupancy Certificate dated 03/04/2019
- xiv) Vakalath

27. The complainant has produced additional documents in support of their claims such as copy of

- i) Payment details
- ii) Agreement to sell along with construction agreement dated 26-09-2014 between the Opponent and Complainant.
- iii) Affidavit Cum Declaration submitted to RERA by opponent

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- iv) Registration Certificate granted by RERA to the opponent that demonstrates the fact that there is a delay in completing the project.
- v) Order in complaint No.CMP/190319/0002454 dated 30-10-2019.
- vi) Photograph of the banner at the side of the said project depicting the case number pending before Hon'ble High Court of Karnataka.
- vii) Case details of Writ Appeal No.16566-70/2011 along with iterim order of the Honourable High Court of Karnataka in writ appeal no. 16566/2011.
- viii) Case details of Writ Petition No.454-459/2014 was filed before the Hon'ble High Court of Karnataka.
- ix) Commencement Certificate dated 28.05.2015
- x) Occupancy Certificates dated 03-04-2019
- xi) Undertaking dated 04.12.2019 filed by the Opponent before the Hon'ble High Court of Karnataka in WA 16566-70/2011.

28. After registering the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and filed statement of objections as under:

29. It has denied the entire allegations made against it by the complainant as false. It contends that the complainant had paid a sum of Rs.72,38430/- towards sale consideration and Rs. 4,52,992/- towards tax and franking charges. As per the agreement of sale, the possession was supposed to be handed over to the complainant on or before 03/05/2019. The said building was completed in the month of May 2018 and respondent had applied for occupancy certificate immediately and obtained the same on 15/11/2018. This complaint is filed on 24/11/2019 which is after the receipt of occupancy certificate. The final demand was sent on 21/12/2018 asking the complainant to make the final payment within 14/01/2019.

30. As on the date of raising of final demand, the complainant was due of
Rs.1,18,204/- towards delay interest. Further, as per the demand letter

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dated :21/12/2018 the complainant was to make the payment within 14/01/2019. But till today he has not made the said payment. Hence, approximately Rs.3,09,142/- of interest is due as on 08/08/2020. As on the date the complainant is liable to pay a sum of Rs. 20,06,302/- including GST charges. There was no hindrance to execute the sale deed and to take possession of the apartment as all basic facilities were in place.

31. Further, the respondent had not hidden any litigation with its customers. With regard to litigations, there is repetition of the facts narrated in the statement of objection filed in Cmp.No.4799. Respondent sent communication to the complainant on 21/12/2018 to pay the outstanding amount and to take the possession of the apartment. Hence, prayed to dismiss the complaint with costs.

32. The respondent has produced documents on 06/09/2022 in support of its defence such as copy of

- i) Agreement of sale and construction agreement
- ii) Occupancy certificate
- iii) Interest Calculation sheet
- iv) Demand letter
- v) Order passed in Writ Appeal. No. 16566/2011, Orders Passed in SLP (C) No(s). 13697/2021
- vi) Khata certificate and extract
- vii) Board resolution letter
- viii) Supreme Court Order in SLP 31652/2016
- ix) Supreme Court order in IREO Grace Real Tech Pvt. Ltd., v/s. Abhishek Khanna and others Civil appeal No. 5785/2019 dated 11/01/2021.
- x) The respondent has also filed objections for the rejoinder on 05/09/2022 and has filed the copy of
- xi) The relevant orders in the said W.A.No.16566/2011,
- xii) Petition in W.P. No.454/2014,
- xiii) The order of the deletion of the said prayer in W.P. No. 454/2014,
- xiv) Dismissal order in SLP 13697/2021

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xv) The Khata certificate and Khata extract of the said 10 acres of land and dismissal order in RP No.274/2021

The complainant in cmp.4984 has filed statement of rejoinder as under:

33. The promoter has made false statement while entering to the agreement of sale in so far as No.204 on 2nd floor in B block of "Glengate" in the "House of Hiranandani-Hebbal". Undisputedly, the promoter has filed an affidavit in W.A.No.16566/2011 before the Hon'ble High Court of Karnataka stating that the compound wall, gate and road proposed to be constructed on Sy.No.68/5 & 69/7 will be removed if the promoter fails to succeed in the litigation. The review petition in respect of schedule property wherein this project has come up is pending before Hon'ble High Court in review petition No.318/2022. The promoter has violated as per section 3, section 4(2)(1)(B) of the Act in making a false declaration the promoter has received a sum of Rs. 87,24,378/- from the complainant. The interest from the date of payment till filing this complaint which comes to Rs.62,74,627/-. So, the promoter has to refund the total amount of Rs.1,51,070/- to the complainant.
34. In comparison of the sale deed draft sent by the developer before the registration, there is a change in the schedule with respect to larger area and schedule A in comparison with the sale agreement executed by the developer, which is detrimental to the interest of the buyer.
35. The opponent has committed gross violation of the sanctioned plan by shifting the club house of the project to a place contrary to the position shown in the plan. It also amounts to violation of the provisions under RERA wherein 2/3rd of the allottees permission need to be sought before making any changes in the sanctioned plan.
36. The developer has specifically represented the complainant that the project of the alleged "Glengate" is to be developed as the forming part of the alleged "the House of Hiranandani-Hebbal" subjecting the entire property thereof into the provisions of the Karnataka Apartment

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Ownership Act, 1972 However, by registering deed of declaration(DOD), dated 11/01/2019, the developer has brought only the landed property of the alleged "Glengate" to the provisions of the said Act, being an independent unit from its larger project of "the House of Hiranandani-Hebbal". Such a deed of declaration (DOD) requires to be executed as nearly as possible to the form A framed under Rule 3 of the Karnataka Apartment Ownership Rule, 1975 and model byelaws framed as Exhibit B and however, the alleged deed of declaration stated to be got registered by the developer in respect of the said "Glengate" so far away from prescribed form A and exhibit B. Apart from that, the boundaries of the schedule property have been got changed in the said deed of declaration, being inconsistent with the sale agreement entered into with appellant herein. Accordingly, on reading with contents of the said deed of declaration r/w the agreement to sell entered into with the complainant, the acquirer of apartments in the alleged "Glengate, requires to pay the membership fees and mainatnace charges amongst other in respect of club house etc., which have not been provided as common area and facilities to the alleged "Glengate. Hence, as per the provisions contemplated under sec.3 of the Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1972 r/w rule 8 of the rules also the appellant/complainant cannot be compelled to proceed further with the aforesaid development project of the developer.

37. The promoter has received a sum of Rs. 87,24,378/- from the complainant for the said apartment. The interest from the date of payment until filing complaint before the Authority is Rs.62,74,627/-.

38. Therefore, the total amount to be refunded by the promoter to complainant is Rs. 1,51,16,070/-. Hence, prayed to allow the complaint.

39. These matters were heard on 28-09-2022, 13-10-2022 and finally on 27-10-2022.

40. Heard arguments of both sides.

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41. **Based on the above documents and arguments on all the above cases, the following points would arise for our consideration:-**

- 1) Whether there was any pending litigation that affects the right of the complainants?
- 2) Whether there was a change in schedule in the AOS, sale deed and DOD?
- 3) Whether the club house area is different than has been shown in the layout plan?
- 4) Whether there is a delay in completion of the project?
- 5) What order?

41. **Our findings to the above points are as under:-**

- 1) In the Negative
- 2) In the Negative
- 3) In the Negative
- 4) In the Negative
- 5) As per the final order

REASONS

42. **Our findings to point No. 1:-** During the oral arguments the complainants in complaint No.4984, 6316, 5483 and 4799 have sought for refund on the ground that there was litigation pending before Hon'ble High Court of Karnataka that was not disclosed to the complainants.

43. They have pointed out clause 15 of the Agreement of sale between the parties wherein it is agreed that the seller shall convey the purchasers that the project shall be free from attachment, encumbrances, and court or acquisition proceedings of any kind as under:-

- 1) ~~The promoter has filed a false affidavit before the Authority at the time of marking an application for registration of project.~~

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- 2) *The promoter has made false statement while entering to the agreement of sale in so far suppressing the fact of pending litigation.*
- 3) *Undisputedly the promoter has filed an affidavit in W.A.No.16566/2011 before the Hon'ble High Court of Karnataka stating that the compound wall, gate and road proposed to be constructed on Sy. No.68/5 & 69/7 will be removed if the promoter fails to succeed in the litigation. It is submitted that the review petition with respect to the schedule property wherein this project has come up is pending before the Hon'ble High Court of Karnataka in review petition No. RP 318/2022.*
- 4) *The promoter has violated as per Section 3, Section 4(2)(1)(B) of the Act in making a false declaration. In view of the said fact, the Authority Suo Motu take appropriate action as per Section 7(1)(c) of the Act.*

44. Further, it is also pointed out that the AOS mentions that the seller is the absolute owner of the schedule 'A' property and its title thereto is clear, marketable and subsisting and it has the power to convey the same and right to carry out on the development as per the scheme.

45. The developer has produced the order copy of the WA no 16566/2011 and stated that they have become party to the said case only on 07/08/2019. Further the said writ appeal got dismissed on 02/08/2021. A SLP was filed challenging the said order and the same also has got dismissed on 17/09/2021 by the Hon'ble Supreme Court. A review petition was also filed and the same was got dismissed by the Hon'ble High Court.

46. With regard to the other writ petition No 454/2014 the developer has brought our attention to the order dated 14/02/2014, 15/01/2021 & 24/09/2021 wherein the prayer against the developer got deleted and further their names also got deleted from the case.

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47. As there was no pending case against them the question of disclosing the pending litigation at the time of registration of the project before RERA does not arise.
48. The advocate for the complainant pointed out on a pending review petition filed in WA 16566/2011. The developer has stated that there is no restraining orders from the court on the said petition and hence will not amount to defect in title and also the said issue was already decided by the Hon'ble Supreme Court and one such revision petition was already disposed of.
49. Therefore, this Authority is of the view that as there is no impediment from any of the court or any orders restraining the developer in continuing with their business the same cannot be considered as title defect. This Authority cannot look into the merits of the pending cases. In case by virtue of the pending litigation, if the developer was unable to do their business and handover the apartment, then this Authority could have considered it as the title defect. Hence, this point is answered in the Negative.
50. **Our findings to point No.2 and 3:-** Both these points are taken up together for discussion as they are interrelated.
51. It is the argument of the complainant in complaint No.4799 that there is a change in details of schedule property. In the agreement of sale, it was argued that the schedule A property is very different from the draft deed of declaration (DOD) and sale deed.
52. He has invited the attention of this Authority to the draft of sale deed sent by the developer and also copy of sale deed executed by the developer to another allottee in respect of apartment with said project.
53. The complainant has stated that, in comparison of the sale deed draft sent by the developer before the registration, there is a change in the schedule with respect to larger area and schedule A in comparison with the sale agreement executed by the developer, which is detrimental to the interest of

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the buyer. It is also submitted that the copy of the sale deed executed by the developer to another allottee in respect of the apartment in the said project.

54. The opponent has committed gross violation of the sanctioned plan by shifting the club house of the project to a place contrary to the position shown in the plan. It also amounts to violation of the provisions under RERA wherein 2/3rd of the allottees permission need to be sought before making any changes in the sanctioned plan.
55. The respondent advocate has contested on the issue of the differences in the schedule property have pointed out that the agreement of sale contains the property of larger property schedule.
56. Measuring in all 40470 sq.mts equalling to ten acres of vacant land. Whereas the schedule A property shown in the agreement of sale which is actually the project area measuring 5459.79 sq.mts.
57. The promoter has submitted that they have not changed the extent of the project, but they had changed the boundaries mentioned in the agreements to perfect the title at the time of executing the sale deed which will be the title document for the Allottees. Further they have even submitted that they can retain the same schedule as mentioned in the agreements at the time of execution of the sale deed to the complainants. Further, the said ground cannot be considered as title defect and a ground for refund.
58. Further, the complainant advocate has mentioned that while obtaining the commencement certificate, the developer has hidden few survey numbers purposely. The respondent drawn our attention to the fact that while mentioning the survey numbers in the commencement certificate the respective authorities will look into the khata certificate and khata extract issued by BBMP and while entering the survey numbers inadvertently few survey numbers were missed. However, the same was got rectified at the time of obtaining the occupancy certificate. Hence this ground also cannot be considered as title defect and a ground for refund.

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59. Further, the complainant has not provided any such document except a bald plan which is not a sanctioned plan to prove his claim. Hence, points No. 2 and 3 are answered in the Negative.

60. **Our findings to point No.4:-** It is the contention of the complainant that as per the agreement of sale the date of delivery was to be in December 2017 and the occupancy certificate was received on 03/04/2019. Hence, there is a delay of handing over the possession as per section 18 of the Act. The complainant is entitled for delay interest.

61. Further, the Developer has relied upon the judgement passed by the Hon'ble Supreme Court in IREO Realtech wherein the court has stated that even though there is a delay of 6 months as the project has been completed and the possession was offered after obtaining of the occupancy certificate the allottee is obliged to take the possession of the property. However, the developer is obliged to pay the delay interest for the period of delay which has occurred from the date of agreed possession till the date of offer of possession was made to the Allottee.

"Allottees are obliged to take possession of the apartments, since the construction was completed, and possession offered after the issuance of Occupancy Certificate. The Developer is however obliged to pay delay compensation for the period of delay which has occurred from the date of agreed date till the date of offer of possession was made to the allottees".

62. The decision of Hon'ble Supreme Court applied in the case where there is only 5 months delay. However, in the case of delay, the Authority ordered delay period interest at the rate of SBI MCLR+2% to be paid within 60 days.

63. On perusal of the complaints in four matters they have relied on the same documents for refund. In these four cases, 4984, 5483, 6316 and 4799, the date of delivery was to be on 26.01.2019, 27.10.2018, 08.10.2019 and

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03.05.2019. Occupancy certificate has been received on 03/04/2019. Hence, there is no delay in completion of the project in respect of the case No.4984, 6316 and 4799 issues raised by the complainants except in case No.5483. With regard to the question of litigation in change in AOS, sale deed, DOD and club house area, the Authority holds that the decision in complaint No. 2498 holds good and the complainants have not been able to prove their grievances and they deserve to be rejected.

64. It is the argument of the promoter that, if there is a short delay in completion and the refund cannot be ordered as the construction was completed and occupation certificate has been received, as per the case law cited above.

65. In all the four cases the respondent has adopted the same arguments.

1. In Complaint No.4984, agreed date of handing over possession was on 26/03/2019. Occupancy certificate received on 15/11/2018. The said project was completed and final demand was raised on 21.12.2018. Period of delay NIL.
2. In Complaint No.5483, agreed date of handing over possession was on 27.10.2018. Occupancy certificate received on 03.04.2019, intimation given to the complainant to take possession through mail dated 16/04/2019. Period of delay 6 months, prescribed rate of interest which complainant entitled is SBI MCLR + 2%.
3. In Complaint No.6316, agreed date of handing over possession was on 08/10/2019. Occupancy certificate received on 03/04/2019, intimation given to the complainant to take possession through mail dated 15/04/2019. Period of delay NIL.
4. In Complaint No.4799, agreed date of handing over possession was on 03/05/2019. Occupancy certificate received on 15/11/2018, intimation given to the complainant to take possession through mail dated 21-12-2018. Period of delay NIL. Hence, the points raised above is answered in the Negative.

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66. Our findings to point No.5:- In view of the above discussion, the complaints are deserve to be partly allowed. Accordingly, we proceed to pass the following order.

ORDER

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/191226/0004984**, **CMP/200806/0006316** and **CMP/191124/0004799**, their prayer for refund of amount with interest is hereby rejected as there is no delay in completion of the project.
2. In respect of complaint No. **CMP/200226/0005483**, the respondent is hereby directed to pay the delay period interest for the period of 6 months as per prescribed rate of interest under Rule 16 of the Karnataka RERA Rules, from 27/10/2018 to 16/04/2019.
3. Respondent is directed to pay the interest on delay for 6 months as aforesaid to the complainant in **CMP/200226/0005483** with prescribed rate of interest SBI MCLR + 2% within 60 days from the date of this order failing which the complainant in **CMP/200226/0005483** is at liberty to enforce the said order in accordance with law.


(Neelamani N Raju)
Member-2
K-RERA


(D. Vishnuvardhana Reddy)
Member-1
K-RERA


(H.C Kishore Chandra)
Chairman
K-RERA

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