

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 THIS 6th DAY OF FEBRUARY, 2023

COMPLAINT NO: CMP/201113/0007055

COMPLAINANT.....

DR. ASHA A,

R/a No. 66/2032,
Nehru Extension,
Maluru,
Kolar – 563130.

(Rep. By Sri. N.V. Vasanth, Adv.,)

V/S

RESPONDENT.....

BCV DEVELOPERS PVT. LTD.,

29th & 30th Floor, World Trade Center,
Brigade Gateway Campus,
No. 26/1, Dr. Rajkumar Road,
Malleswaram – Rajajinagar,
Bengaluru – 560055.

(Rep. By Kum. Sonali S.K. Adv.,)

**PROJECT NAME &
REGISTRATION NO.**

**JUNIPER AT BRIGADE ORCHARDS
PRM/KA/RERA/1250/303/
PR/170916/000462**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project “Juniper at Brigade Orchards” for the relief of refund with interest.
2. This matter has been remanded by the Hon’ble Appellate Tribunal for fresh consideration.

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Brief facts of the complaint are as under:-

3. The complainant has entered into an agreement of sale in respect of a flat with the respondent in his project for a sale consideration of Rs.73,07,938/- (Rupees Seventy Three Lakhs Seven Thousand Nine Hundred and Thirty Eight Only). Accordingly, they have entered into an agreement of sale on 07/09/2016 and she started paying the instalments as agreed. Till now, she has paid Rs.69,15,935/- (Sixty Nine Lakhs Fifteen Thousand Nine Hundred and Thirty Five Only). The respondent was supposed to handover the possession of an apartment to the complainant before 31/12/2019. In the meantime the complainant had visited her flat on 25/02/2020 to see the progress of work and she was shocked to see that her flat was constructed in different plan than the actual plan shown in the brochure. The respondent has failed to rectify the issue. Hence, this complaint.

Objections filed by the respondent:-

4. It has denied each and every allegation made against it by the complainant as false. It contends that the plans provided in the agreement of sale dated 07/09/2016, RERA brochures, sale plans all consists of the same plan that was provided to the complainant. They did not carry out any sort of deviation whatsoever as alleged. There is absolutely no variation in the construction of the apartment as the same is carried out in accordance with the sanctioned plan.
5. Further, it has contended that in the flat allotted to the complainant, a linear kitchen was planned which did not have any circulation place for cooking and utility area. Thus, slight modifications on the kitchen layout were made to suit for a comfortable living apart from this there is absolutely no change in the said plan. When the complainant raised objection to that effect, the said modifications were agreed to be rectified by the respondent. The complainant vide her e-mail dated 07/03/2020 sought for certain changes in the plan and the respondent upon consulting with the structural engineer agreed to the possible demands by removing the wall in the kitchen

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and also agreed to cover the small opening in the master bedroom. But the complainant kept demanding to remove the wall in the master bedroom which was not possible as the said wall is a load bearing wall and any change to the said wall would result in possible collapse of the entire building. In spite of agreeing to carry out the necessary changes as per requirements of the complainant, she chose to cancel the agreements. Further, the complainant was offered to provide an alternative flat in another block. But she has denied the same without any reason. Even the respondent had offered to refund the amount vide e-mail dated 24/05/2021 which was addressed to her counsel. She has refused to settle the issues. Hence, prayed to dismiss the complaint with cost.

Respondent has filed additional objection as under:-

6. That the complainant has not produced any documents to prove that the respondent has deviated the plans while constructing the apartment. As per clause 9 of the construction agreement dated 07/09/2016 the respondent may at its sole discretion may make minor changes in the apartment within permissible limits and as per the bye-laws.
7. The complainant has just invested her money in the apartment with an intention to sell the same subsequently for a higher gain. Thus, prayed to dismiss the complaint with cost.
8. In support of her claim, the complainant has produced in all 10 documents such as copies of Agreement to sale dated 07/09/2016, typical floor plan, deviated floor plan, letter correspondence in regard to payment, construction agreement, title certificate, statement of account for having paid the sale consideration, letter through e-mail for modification, reply regarding modification through e-mail, legal notice dated 25/08/2020 and postal acknowledgement.

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9. On the other hand the respondent has produced in all 2 documents such as copies of e-mails exchanged between complainant and respondent regarding modification and e-mail sent to complainant advocate offering full refund of amounts.
10. Heard arguments of both sides.
11. **On the above averments, the following points would arise for our consideration:-**
 1. Whether the complainant is entitled for the relief claimed?
 2. What order?
12. **Our answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following

REASONS

13. **Our findings on point No. 1:-** The grievance of the complainant is that on account of the substantial deviation from the plan shown in the brochure is not inclined to purchase the apartment.
14. On the other hand, contention of the developer is that except the kitchen which was linear as per original plan, they have not done any substantial deviation as alleged by the complainant. In addition to that they have carried out all modifications as per the demands made by the complainant. Only thing is that they did not remove the wall in the master bed room since it was a load bearing wall as its removal could result in collapse of entire building. Even then, the complainant opted out of the project. They have offered to refund the amount of Rs.62,83,637.70/- vide e-mail dated 24/05/2021.

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15. In the additional objections, the developer has contended that, the complainant intends to purchase the apartment as an investment, so that she can sell the same subsequently for higher gain. In the considered view of this Authority, the developer is not concerned with the purpose behind acquisition of property. His role is confined to do anything or everything which comes within the terms of agreement between the parties and nothing else. If the demand of the complainant is unreasonable and is not coming within the terms of agreement, he can very well refuse to yield to such demands. He need not bother as to why complainant is seeking such modifications. During the arguments, it was admitted by the promoter that there is a deviation from what was actually proposed in agreement of sale and the actual construction. That being the case, it is well within the legal right of the complainant to seek refund for entire amount with interest.
16. After hearing the matter, this Authority has passed a Judgement on 13/07/2022, directing the respondent to pay Rs.95,37,114/- (Rupees Ninety Five Lakhs Thirty Seven Thousand One Hundred and Fourteen Only) to the complainant. Aggrieved by the said order, the respondent builder has preferred an appeal before the Hon'ble Appellate Tribunal and matter came to be remanded with certain observations regarding calculation of amount payable to the complainant by the builder. Further, it is also observed that the Authority is required to state the reasons as to why the promoter is not entitled for deduction of the amount showed towards taxes from the amount payable to the allottee and that what was the principal amount and how the interest is calculated and that whether the amount ordered to be refunded to the allottee is inclusive or exclusive of GST and other taxes.
17. With regard to the principal amount the allottee had deposited with the promoter for purchase of the said flat and that the details of interest calculated to be paid by the respondent/promoter to the complainant are as under:-

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INTEREST CALCULATION TILL 30/04/2017 (BEFORE RERA)

S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	18-07-2016	623,640	286	30-04-2017	43,979
2	25-10-2016	1,197,454	187	30-04-2017	55,214
3	16-12-2016	555,103	135	30-04-2017	18,478
4	07-03-2017	567,003	54	30-04-2017	7,549
5				TOTAL INTEREST (11)	125,220

INTEREST CALCULATION FROM 01/05/2017 (AFTER RERA)

S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	2,943,200	2079	09-01-2023	8.15	10.15 AS ON 01-05-2017	1,701,560
2	11-06-2017	499,036	2038	09-01-2023	8.15	10.15 AS ON 01-06-2017	282,819
3	27-09-2017	515,920	1930	09-01-2023	8.15	10.15 AS ON 01-09-2017	276,893
4	07-02-2018	180,000	1797	09-01-2023	8.1	10.1 AS ON 01-02-2018	89,505
5	07-02-2018	191,918	1797	09-01-2023	8.1	10.1 AS ON 01-02-2018	95,431
6	23-11-2018	516,920	1508	09-01-2023	8.7	10.7 AS ON 01-11-2018	228,515
7	06-12-2018	515,920	1495	09-01-2023	8.7	10.7 AS ON 01-11-2018	226,107
8	13-05-2019	368,514	1337	09-01-2023	8.65	10.65 AS ON 10-05-2019	143,761
9	19-12-2019	737,030	1117	09-01-2023	8.2	10.2 AS ON 10-12-2019	230,062
10	TOTAL AMOUNT	6,468,458				TOTAL INTEREST (12)	3,274,653

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MEMO CALCULATION

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 09-01-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
6,468,458	3,399,873	0	9,868,331

18. Coming to the aspect of deduction of the amount towards GST and other taxes it is already discussed in the Judgement that, when the complainant is not going to purchase the said flat she need not pay the amount towards GST and other taxes. Because it is needless to say GST is to be paid in respect of property only once. If at all GST and other taxes are already deposited to the Government and are not refundable even then the developer is bound to make the refund in full i.e., with GST and other taxes. The respondent can very well collect the amount towards GST and other taxes from the subsequent purchaser as he has already paid the said amount out of his own pocket.
19. Having regard to all these aspects, the point raised above is answered in the Affirmative.
20. **Our findings on point No. 2:-** In view of the above discussion, complaint deserves to be allowed. Hence, we proceed to pass the following order

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/201113/0007055 is hereby allowed.

1. Respondent is directed to pay Rs.98,68,331/- (Ninety Eight Lakhs Sixty Eight Thousand Three Hundred and Thirty One Only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from

Not an official copy

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18/07/2016 to 30/04/2017 and at SBI MCLR +

2% from 01/05/2017 till 09/01/2023.

2. The interest due from 10/01/2023 up to the date of final payment will be calculated likewise and paid to the complainant.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.

(G.R. REDDY)

Member
K-RERA

(NEELMANI N RAJU)

Member
K-RERA

(H.C. KISHORE CHANDRA)

Chairman
K-RERA

**BEFORE THE HON'BLE KARNATAKA REAL ESTATE REGULATORY
AUTHORITY, AT BANGALORE**

COMPLAINT NO: CMP/201113/0007055

Complainant: Dr Asha A

-Vs-

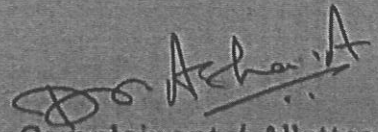
Respondent: BCV Developers Pvt Ltd

JOINT MEMO

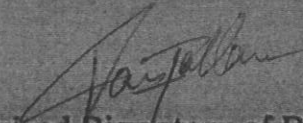
The Complainants and the Respondent in the above complaint jointly submits as under:

1. The complaint filed by the complainant came to be allowed on **6th February, 2023**. However, the complainant/allottee have not chosen to file the execution proceedings of the said order. The complainant and the respondent after due deliberation have got their dispute pertaining to the subject matter of the complaint settled amicably before the Lok - Adalat.
2. In view of the same, they jointly request this Lok Adalat to dispose off the complaint as amicably settled before Lokadalat since the Complainant has received an amount of **Rs. 97,02,080 /- (Rupees Ninety seven Lakhs two Thousand and eighty only)** towards the full and final satisfaction.
3. The claim of the complainant in this complaint is being fully satisfied and complainant has no further claim against the respondent in this complaint. Both the parties to the proceedings have no further claim whatsoever against each other in respect of the subject matter in connection with the above case before any forum or court relating to the subject matter of the above complaint. If there is any claim by either of the parties, parties have agreed that the same be disposed off as settled by filing an appropriate memo in such cases.
4. Parties further request that this settlement be recorded in the National Lok - Adalat to be held on **18.04.2023**.

Bengaluru


Complainant / Allottee

Date : 19.04.2023


Authorized Signatory of Respondent



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ಕಡತದ ಸಂಖ್ಯೆ Cmp. 7055

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Dr. Asha. A.

BCV developers pvt. ltd.

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP: 7055

19.04.2023

On 19.04.2023, both the parties are filed a joint memo stating that the matter has been settled between them and Complainant has received an amount of **Rs. 97,02,080 /- (Rupees Ninety seven Lakhs two Thousand and eighty only)** towards the full and final satisfaction. Perused the same. Here in this case judgment is passed on 06/02/2023 by allowing the claim of the complainant. Now, both the parties have come up with Joint Memo stating that the matter has been amicably settled. Therefore, considering the interest of both the parties at this stage, it is just and proper to consider their memo for settlement.

As per the request of the complainant and respondent, this complaint is taken up for amicable settlement before the National Pre- Lokadalat held on 19.04.2023.

The complainant and the Authorized signatory of the Respondent have filed the Joint Memo stating that the matter has been settled between the parties. The settlement entered into between the parties is Voluntary and Legal One. Hence, settlement is accepted.

19/4

Judicial Conciliator

S. J. H. H.

Advocate Conciliator.

For Respondent

KARNATAKA STATE LEGAL SERVICES AUTHORITY

BEFORE THE LOK ADALAT

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

DATED: 19th DAY OF April 2023

: CONCILIATORS PRESENT:

Smt. Maheshwari S Hiremath..... Judicial Conciliator

AND

Smt. Sujatha..... Advocate conciliator

COMPLAINT NO: CMP/201113/0007055

Between

Dr Asha A..... Complainant

AND


BCV Developers Pvt Ltd.....Respondent/s

(By: Authorized Person of the Respondent)

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 joint memo dated: 19.04.2023 filed during the pre Lok Adalat sitting on dated:19.04.2023, same is accepted. The settlement entered between the parties is voluntary and legal one.

The complaint stands disposed of as per the joint memo and joint memo is ordered to be treated as part and partial of the award.


Judicial conciliator


Advocate conciliator