

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 04<sup>th</sup> May 2023**

**CMP/200718/0006202**

**Present**

**Hon'ble Chairman Shri. H.C. Kishore Chandra**

**Hon'ble Member Shri. G.R.Reddy**

**COMPLAINANT.....**

**Dundappa Kotagi**  
H No. 752/6, CCB 242,  
Bhagyanagar 2nd cross,  
Belagavi -590006.

**(In person)**

**V/S**

**RESPONDENTS.....**

**Suresh Enterprises Pvt.Ltd**  
Akshay Centre Gokul Road,  
Hubli - 580030  
**(Rep. by Vishwas N, Advocate)**

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### **JUDGEMENT**

1. This complaint is filed under section 31 of the RERA Act against the project "Akshay Town Yerikoppa", developed by "Suresh Enterprises Pvt.Ltd" for the relief of direction to the respondent to execute the agreement of sale and interest on delay period.
2. This project is situated at sy.no.37/3, Yerikoppa, Dharwad.
3. This project has been registered in RERA bearing registration No.PRM/KA/RERA/1259/410/PR/171215/001076.

**Brief facts of the complaint are as under:-**

4. The complainant had booked 3bhk duplex row house in Akshay town of Yerikoppa in March- April 2012 and has paid an advance of Rs. 4,00,000( four lakhs) and balance amount of Rs. 8,00,000(eight lakhs) paid in financial year 2014-15 to the respondent. The respondent orally promised him that the possession of property will be given within 36 months and not executed an agreement of sale in this regard though there is a direction of this Authority to execute the agreement. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and filed objections as under:
6. That they have started the said project "Akshay Town Yerikoppa" in the year 2012 with the approval of urban development authority Hubli/Dharwad. Due to the unforeseen reasons the project has been stalled and hence, the respondent had decided to cancel the project and offered to return the booking amount to all the respective customers with interest. Except the complainant herein, all other customers have been exited from the project.
7. Admittedly this complaint has been filed on the basis of oral agreement which is of civil nature and comes under civil court and not under the jurisdiction of this Authority. In the absence of agreement of sale between the parties, the complainant is not an allottee or aggrieved person under the Act. Further, in complaint No.CMP/200718/0006202 vide judgement dated 19/11/2018 categorically it was observed that there is no agreement between the complainant and the respondent herein. There is no document constituting a binding agreement to sell. In the absence of any agreement, there is no relationship of promoter-allottee or developer-customer between the parties.

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8. Further, the complainant has not challenged the judgement dated 19/11/2018 which was dismissed and hence it has attained finality. There is no delay as there was no agreement mentioning the date of possession. The complainant has baselessly asserts that he was orally promised possession within 24 months which is practically impossible. Hence, prayed to dismiss the complaint.
9. The complainant has filed the rejoinder to the objections filed by the respondent.
10. In March-April 2012 the complainant had booked 3 BHK duplex row house in Akshaya town Yerikoppa, now registered in RERA with registration No.PRM/KA/RERA/1259/140/PR/171215/001076 Akshaya town Yerikoppa developed by Suresh Enterprises Pvt Ltd. Hubli and made an initial deposit payment of Rs.4,00,000/-. The rates agreed were Rs.1000/- per sqft for a down payment of the balance amount without a bank loan. The developer orally promised that the possession of the property will be given in less than 36 months time. When asked for agreement, he told that the company is a highly reputed and trusted company in North Karnataka hence agreement is not required.
11. Later, as no communication was received from the developer regarding the commencement or progress of the project, in financial year 2014-2015, they have made a down payment of the balance amount of Rs.8,00,000/- in two instalments completing the total down payment towards the cost of the property in the project.
12. As on date more than 10 years passed after the initial booking of the house and seven years after the total down payment towards the cost of the property, no communication received from the developer regarding the progress of the project and the expected date of completion.



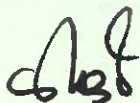


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13. On 08/08/2017 and 03/10/2017 he wrote 2 letters with supporting documents to the developer requesting him to compensate for his suffering of huge loss due to rent payments and also loss of interest on the amount paid to the developer. On 05/05/2018 he sent a notice to the developer in this regard. The developer didn't reply to the said letters and notice. On enquiry he was told that project will be completed soon.
14. On 17/07/2018 he had filed a complaint before AO for the relief of delay compensation in complaint number CMP/180717/0001044. After hearing, the said complaint came to be closed with remarks that "Under section 18 of RERA Act, agreement is must for delay compensation, developer has taken money before enactment of RERA Act but not given the agreement even after commencement of RERA Act which is wrong, should have followed section 13 of RERA Act(issue of agreement for sale)" (judgement page 3, paragraph 3 & 4), ordering with intimation to both the parties "to take the agreement first and then apply for delay compensation through RERA" .
15. After receipt of said judgement dated 19/09/2018 he had started following up with the developer for execution of the agreement and wrote letters on 26/11/2019 and 07/03/2020. But the developer didn't reply to his communications and not executed the agreement till date which amounts to contempt of RERA judgement.
16. Further, on 27/08/2021 he had received a letter from the builder dated 24/08/2021 for cancellation of the booking of the property. On the same day he had replied that he is not interested in the cancellation of booking and requested a new date for execution of agreement of sale. But the builder didn't reply for the same till now. Hence, prayed to issue direction to the builder for execution of agreement of sale and payment of interest on delay period from 01/04/2014 till date.





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17. In support of his claim, the complainant has produced the following documents such as the copy of

1. Brochure of advertisement
2. Project plan
3. Payment receipts
4. Notice dated 24/08/2021
5. Judgement of complaint no.1044
6. Intimation for agreement dated 26/11/2019
7. Notice dated 07/03/2020
8. Memo of calculation
9. RERA Registration certificate dated 15/12/2017 in respect of Akshay Town Yerikoppa project.

18. Respondent has not furnished any documents on his behalf.

19. This matter was heard on 30/05/2022, 10/06/2022, 20/06/2022, 04/07/2022, 22/07/2022 and 13/09/2022.

20. Heard both sides.

21. Both parties have filed written submissions.

22. **Based 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?

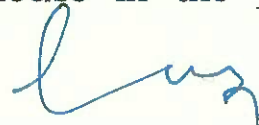
23. **Our findings to the above points are as under:-**

- 1) In the Affirmative
- 2) As per the final order

**REASONS**

24. **Our findings to point No. 1:-** The grievance of the complainant is that he had booked 3BHK duplex row house in the project of





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respondent in the year 2012 and paid Rs. 12,00,000/- (Twelve lakhs only) to the respondent. The respondent had orally promised him that the possession will be given within 36 months and had avoided to execute agreement of sale inspite of direction of this Authority and several request made by him. Further, the respondent sent him a letter dated 24/08/2021 for cancellation of said booking.

25. On the other hand, the respondent had contended that due to unforeseen reason the said project has been stalled and hence he had decided to cancel the project and to refund the booking amount to all the customers with interest. Except the complainant herein, all other customers have been exited from the project. In cmp.no.1044 filed by the complainant herein on 17/07/2018 before Adjudicating officer for the relief of interest on delay period, the said complaint came to be closed with observation that as there is no agreement between the parties. Said order was not challenged by the complainant.
26. Undisputedly, the complainant had paid an amount of Rs.12,00,000/- on 31/03/2015 to the respondent for purchase of row house in the said project. On 17/07/2018 the complainant herein had filed a complaint in cmp.no.1044 before Adjudicating Officer against the respondent herein for the relief of interest on delay period. After hearing both parties Adjudicating Officer had disposed of the said matter vide judgement dated 19/09/2018 observing that the developer could have executed agreement of sale in respect of 3 BHK duplex row house in favour of complainant as per sec.13 of RERA Act. In the absence of such agreement of sale, the relief of interest on delay period cannot be granted to the complainant as per sec. 18 of RERA Act. Hence, the complainant was directed to get the said agreement of sale executed from the developer and then he can claim for such relief. In this regard, the complainant had sent a intimation to the respondent on 26/11/2019 requesting him to execute the agreement immediately

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as per judgement dated 19/09/2018 in cmp.no.1044. Further, once again the complainant had sent a notice on 07/03/2020 to the respondent with reference to said judgement dated 19/09/2018 asking the respondent to execute the agreement within 30 days from the date of receipt of said notice.

27. But, the respondent instead of executing agreement of sale in favour of complainant as per direction of Adjudicating Officer vide judgement dated 19/09/2018 in cmp.no.1044, he had sent a notice to the complainant on 24/08/2021 for cancellation of booking and requested the complainant to come to their office and to send a request for refund of amount along with bank details. This project has been registered under RERA. This also indicates confirmation of earlier booking by the respondent even a oral agreement is a valid agreement.
28. However, the respondent has failed to execute the agreement of sale and to pay the interest on delay period to the complainant. Having regard to all these aspects, the complainant is entitled to get executed agreement of sale by the respondent with regard to said row house and for interest on delay period. In this regard, the complainant has furnished memo of calculation from 31/03/2015 till 11/07/2022. Having regard to all these aspects the point raised above is answered in the Affirmative.
29. **Our findings to point No.2:-** In view of the above discussion, all the complaints deserve to be Allowed. Accordingly, 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 complaints bearing No.

**CMP/200718/0006202** is hereby allowed as under.

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- i. The respondent is directed to execute agreement of sale in respect of 3 BHK duplex row house. in the project Akshay Town Yerikoppa situated at sy.no.37/3, Yerikoppa, Dharwad in favour of complainant within 60 days of from the date of this order.
- ii. Respondent is directed to pay a sum of Rs. 8,44,040/- (Eight lakh forty four thousand and forty only) towards interest on delay at the rate of 9 % calculated from 31/03/2015 to 30/04/2017 and MCLR + 2% from 01/05/2027 till 11/07/2022. Further, the interest due from 12/07/2022 will be calculated at the rate of MCLR+2% on principal amount of Rs.12,00,000/- till realisation.
- iii. If the respondent fails to comply with this order, the complainant is at liberty to initiate action against the respondent in accordance with law.

No order as to costs.

(G.R.Reddy)  
Member  
K-RERA

(H.C. Kishore Chandra)  
Chairman  
K-RERA