



# ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ ..... Comp.No: 9094

ಪುಟ ಸಂಖ್ಯೆ .....

ವಿಷಯ ..... H. S Sridhara Murthy

Roshan Gardenia Apartment

ಕಂಡಿಕೆ  
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಉದ್ದೇಶಗಳು

10/03/2022

As per oral request of complainant and the respondent the matter is referred to Lok Adalat to be held on 12/03/2022.

Adjudicating Officer/ Co-ordinator, Lok Adalat

K-RERA

CMP/190120/0001927 and CMP/220309/0009094

Common order before Lok Adalath

The complainant by name Smt. Shreedevi Sridhar and respondent by name Ramu M. are present before Lok Adalath.

After negotiation the complainant has agreed to receive Rs.77,75,000/- towards full satisfaction of her claim amount and compensation as well. Since parties litigation have agreed and complainant reports receipt of sum of Rs. 77,75,000/- through RTGS to her account available in SBI, Lady Curzon Road Branch, Bengaluru, we the conciliators are satisfied with the genuineness of compromise so arrived by and between parties litigation.

In consonance with the statement so made by the complainant Smt. Shreedevi Sridhar has filed acknowledgment and the same is taken on record.

So, the complaint filed by the complainant is hereby stands closed as fully satisfied.

Judicial Conciliator  
(Gopala Krishna Raju)

P. R. Shankar

Advocate Conciliator  
(Sri. Ravi Shankar)

Shreedevi Sridhar  
12/3/2022

Complainant  
(Smt. Shreedevi Sridhar)


Ramu M.

Respondent  
(Ramu M.)

## ACKNOWLEDGEMENT

This is to bring to the notice of Real Estate Regulatory Authority, Bengaluru, Karnataka and National Lok Adalat, that we H S SRIDHARA MURTHY & SHREEDEVI SRIDHAR , complainant of CMP/190120/0001917 and CMP/220309/0009094 here by acknowledge the receipt of amount Rs.77,75,000/- (RTGS Ref: UTIBR52022031000361608, Dtd: 10/3/2022 & UTIBR52022031100363231, Dtd:11/03/2022) from Ramu. M, Proprietor Roshan Gardenia Apartment.

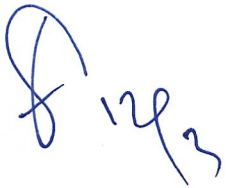
Thanking You,  
Yours' faithfully

  
(H S SRIDHARA MURTHY)

  
(SHREEDEVI SRIDHAR)

Place : Bengaluru

Date : 12<sup>th</sup> March 2022



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ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,  
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

**BEFORE ADJUDICATING OFFICER**  
**PRESIDED BY SRI L. BIDARI**  
**DATED 24<sup>th</sup> FEBRUARY 2021**

<b>Complaint No.</b>	<b>CMP/190120/0001927</b>
<b>Complainant:</b>	Sri. H.S.Sridhara Murthy #220, Ayyappa Swamy Temple Road, Katriguppe, BSK 3 <sup>rd</sup> Stage, Bengaluru – 560085 (In Person)
<b>Opponent:</b>	Sri. M.Ramu Flat #001, Roshan Palace Apartment, 92/A, 1 <sup>st</sup> Cross, Katriguppe, BSK 3 <sup>rd</sup> Stage, Bengaluru – 560085 (In Person)

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

Sri. H.S SRIDHARA MURTHY has filed this complaint bearing no. CMP/190120/0001927, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent Sri.M.Ramu, seeking the relief of refund of amount with interest @ 18%.

2. The brief facts of the case are as under:-

The respondent M.Ramu is a developer and has developed a Real Estate Project “ROSHAN GARDENIA APARTMENT” (here-in after referred as project) in his converted immovable property bearing no.1373, Survey Nos.95/2 and 95/3 situated at Uttarahalli Village and Hobli Bengaluru, South Taluk in all measuring 2 acres 36 guntas. The developer has constructed a residential apartment in the project. The



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complainant H.S.Sridhara Murthy along with his wife Smt.Sridevi Sridhar have entered into an agreement of sale dated:19-06-2015 with the respondent/developer M.Ramu, to purchase a flat bearing no.2047, 3 BHK in the 1<sup>st</sup> floor, in the aforesaid residential apartment, being constructed, in the project for a consideration amount of Rs.68,42,250/-. The complainant alleged in the complaint that the respondent orally committed to give him possession of the aforesaid booked flat in March 2016 but till date of filing of the complaint it was not given to his possession, hence prayer of the complainant, to direct the respondent, to refund the amount with interest @18%.

3. Thereafter receipt of the complaint from the complainant, notice was issued to the respondent, pursuant to which, the respondent appeared. The respondent has filed the statement of objection dated 21-02-2019, admitting the fact that the complainant along with his wife entered into an agreement of sale dated: 19-06-2015, to purchase apartment No.2047, in the aforesaid project, developed by him for a consideration of Rs.68,42,250/- excluding taxes, solar and maintenance charges etc. The respondent is contending that as on date of filing the statement objection, he has completed 95% of construction of the project. Therefore through post on 15-06-2016, he did demand the complainant to pay 90% of the consideration amount of the apartment, which comes to Rs.61,58,025/- as the complainant till that date has paid only Rs.56,50,000/- through cheque of different dates mentioned in the objection statement. The respondent pleaded that as per the request of the complainant, he has constructed a pooja room in the aforesaid booked apartment of the complainant, subsequently at the instance of the complainant altered the same spending Rs.76,800/-.

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The respondent has completed the project, received electrical power connection two months back, sanitary STP connection from 27-07-2018. The respondent undertakes to complete the construction of apartment and would handover possession of the same to the complainant with amenities on or before 31-03-2019, subject to payment of balance amount. The respondent has paid commercial tax amount of Rs.06,24,277.66/- on behalf of complainant to the commercial tax department. The complainant has delayed to pay the balance sale consideration amount. There is no delay on the part of the respondent, as on the date of filing of the objection, the apartment was completed in all aspects. The complainant has not approached the forum with clean hands. The complaint is not maintainable. These main grounds contended in the statement objection, prayer to dismiss the complaint with exemplary cost. The complainant on 15-03-2019 has filed the reply to the statement of objection filed by the respondent.

4. My learned predecessor in office on hearing both parties, on merits, appreciating materials and evidence on record, through judgment dated: 13-05-2019, did dispose of the complaint No. **CMP/190120/0001927**, allowing the said complaint, directed the developer to return contribution amount of Rs.6,50,000/- to the complainant with interest @10.75% per annum from September 2018, on the said amount, till realization and further directed the developer to discharge the loan raised in the name of the complainant with all its EMI interest and incidental charges, if any. It is also directed that complainant to execute the cancellation deed in favour of the developer after realization of entire amount. The developer was directed to pay Rs.5000/- towards cost to the complainant. The respondent being felt

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aggrieved by the said judgement dated:13-05-2019 did prefer an appeal before the Hon'ble Interim Tribunal (KAT) in Rera appeal no.89/2019 and subsequently said appeal stood transferred to Hon'ble Karnataka Real Estate Appellate Tribunal, Bengaluru (here-in after referred as appellate tribunal), wherein said appeal re-numbered as appeal (K-REAT) No.85/2020. The Hon'ble Appellate Tribunal through judgment dated:17-11-2020, allowed the said appeal (K-REAT) No.85/2020.(Old Rera appeal No.89 of 2019), allowing the said appeal set aside the order dated:13-05-2019 passed in **CMP/190120/0001927**, and remitted back the said matter to the Adjudicating Officer with a direction to reconsider the complaint afresh etc., as directed therein. Therefore as directed by the Hon'ble Appellate Tribunal (K-REAT) No.85/2020.(Old Rera appeal No.89 of 2019), the instant complaint No.CMP/190120/0001927, taken up for disposal, afresh.

5. Thereafter receipt of the records from the Appellate Tribunal, this Authority issued notice to both the parties, pursuant to which both parties appeared in person, through skype.
6. I have heard both the parties, through skype. Perused the records and the materials placed on record.
7. The points that would arise for consideration are :-
  - (1) Whether the complainant is entitled for refund of amount as prayed?
  - (2) What order?
8. My findings on the above points are as under :-  
Point No.1: Partly in the affirmative.  
Point No.2: As per final order.

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9. Point No.1: The prayer of the complainant made out in the complaint attracts the provisions of section 18 of the Rera Act as the case of the complainant is that respondent having orally committed to handover possession of the booked apartment No.2047 consisting in project in March 2016 failed to complete the construction of said apartment even as on the date of filing of complaint. Therefore the prayer of the complainant is to refund of amount with 18% interest. The complainant has lodged the instant complaint through online on 20-01-2019. The complainant and the respondent respectively both have advanced the argument in person through skype. During course of argument complainant and respondent both of them have submitted that respondent has entered into a registered agreement of sale dated: 19-06-2015 with complainant and his wife Sridevi Sridhar to sell the aforesaid apartment. The copy of said registered agreement of sale dated: 19-06-2015 is on record. There is no dispute that complainant along with his wife entered into agreement of sale dated: 19-06-2015 with respondent to purchase the apartment No.2047 in the project being developed by the respondent. No date of completion of construction of residential apartment in the project and particularly apartment No.2047 in the project is mentioned in the agreement of sale deed dated: 19-06-2015. The copy of commencement certificate dated: 03-06-2014 issued by the BBMP Bommanahalli Zone, Bengaluru disclose that the commencement certificate is being issued to construct the residential apartment in the project in the month of March 2014 subject to the conditions mentioned therein. The copy of the registration certificate of the project (Individual) issued by the Karnataka Real Estate Regulatory Authority in the name of respondent to construct residential apartment in the project is valid from 31-07-2017 to 31-08-2018 and further



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same is being extended for a period of 12 months and valid until 31-08-2019. These documents and materials on record evidences that the project of the respondent has been registered as ongoing project in Karnataka Real Estate Regulatory Authority. The respondent during argument submitted that he has not committed breach of any terms of the agreement of sale but in fact complainant has committed breach of agreement of sale in as much as not paying balance consideration amount of the apartment. The respondent further submits that as on today he has completed the project including apartment in question booked by the complainant and where as the complainant has not responded and paid the balance sale consideration as agreed in spite of sending mail and post to the complainant on 15-06-2016, 03-01-2017, 14-02-2017 and so far he has paid only 71% of the consideration amount. This apart the respondent submits that the complainant along with some other intending apartments buyers in the project forming group in what's-app told them not to pay the balance consideration of the apartments as a result there was about delay of 13 months in payment of consideration amount by such intending apartments buyers consequently he was unable to go-ahead with the construction in the meantime the cost of the construction materials increased about 15% whereby he sustained loss of about Rs.3 Crores. Therefore there is some delay in completion and not otherwise. The respondent has drawn the attention of the court to the copies of the e-mails, screen shots, copies of whatsapp chats in that regard produce by him. The respondent further submits that as per the wish of the complainant he has got effected alteration in the apartment in as much as constructing pooja room for which he has spent Rs.76,800/- and subsequently spent Rs.16,04,504/- to bring back the apartment to its



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original plan as per the wish of the complainant. The respondent in support of the argument drawn the attention of the Authority to the photographs and the calculation of cost made during such alterations in the apartment produce in the record. Per contra the complainant during argument submits that he has paid more than 80% of the sale consideration amount but respondent fail to handover possession of the apartment even as on date of the filing complaint. The complainant submits that the contention of the respondent that in the whatsapp group he informed some other home buyers in the project not to pay the balance consideration amount is not correct. The complainant further submits that the contention of the respondent that he has spent Rs.76,800/- for alteration in the apartment and spent Rs.16,04,504/- to bring back the apartment to its original plan as per the wish of the complainant is false.

10. The payment of consideration amount to the tune of Rs.56,50,000/- on different dates by the complainant to the respondent towards part consideration of the apartment in the project intended to be purchased by the complainant with his wife is not in dispute as same is supported by documents on record and the pleadings of the parties. The materials and the documents produced by the respondent in support of his contention that he has spent Rs.76,800/- for construction of pooja room and spent Rs.16,04,504/- for alterations in the apartment in question as per the wish of complainant are not convincing and credit worthy to be believed, as such contention of the respondent in that connection is not acceptable. The respondent has produced the copy of the occupancy certificate dated: 07-02-2020 issued by the BBMP Bommanahalli Zone, Bengaluru which evidences that construction of residential apartment in the project has been

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completed. The said occupancy certificate discloses that respondent applied for the occupancy certificate on 18-09-2019. This occupancy certificate and the materials on record evidences that the booked apartment No.2047, consisting in the project was not completed as on extended ending period of registration dated: 31-08-2019, which means said apartment in the project was not completed on 31-08-2018, which was the ending date mentioned in the original registration certificate of the project. Admittedly no completion date is mentioned in the agreement of sale dated: 19-06-2015, under the circumstances the time period mentioned in the registration certificate and extended registration certificate shall be taken as the foundation as the outer limit for the completion date of the apartment. Therefore there is much substance in the contention of the complainant that there is abnormal delay in completion of the project and construction of the apartment in question. The Authority generally cannot order for refund in case of the project is ready for occupation, but in the instant case the contention of the respondent is that the complainant has violated the terms of agreement of sale dated:19-06-2015 in making default of payment of instalments of sale consideration, as such said agreement of sale become null and void and as per the terms of the agreement of sale the respondent has right to take over all the rights and interest of the apartment in question, as per the clause mentioned in agreement of sale in page 6. The relevant clause in the said agreement of sale at pages 6 and 7 in the agreement of sale dated:19-06-2015 which reads as under :-

"The purchasers shall pay each instalment within 7 days from the date it falls due, which the same will be intimated to him/her, failing which the purchasers shall pay such amount along with an interest of 18% up to a duration of 60 days

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from the day the instalment falls due. If the purchasers defaults even after 60 days as stated above the vendor shall have the rights and interest to the purchasers to terminate this agreement and shall have the right to take over all the rights and interest of the purchasers and allot the same to any other person at the vendor discretion. In such event, the purchasers are entitled for refund of money after forfeiting the entire balance amount paid at the time of signing of this agreement and the balance amount shall be refunded after four month from the date of cancellation of this agreement without any interest. However, if the purchasers find an alternate customer for the same unit within the payment stages, the entire amount shall be refunded without forfeiting any part of it."

11. The respondent during the course of argument submits that there is an inclusion of arbitration clause in the agreement of sale dated: 19-06-2015 as such matter is referred to arbitration. This contention of the respondent will not holds good in view of the judgment in review petition (c) Nos.2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017 in the case of M/s Emaar MGF Land Limited v/s Aftab Singh passed by the Hon'ble Supreme Court of India.
12. The appreciation of entire materials on record discloses that the relationship between the complainant and the respondent not remained cordial subsequent to agreement of sale dated:19-06-2015 and moreover the respondent alternatively contending that because of the default in payment of consideration amount by the complainant the said agreement of sale become null and void and he is entitled for the rights and interest of the complainant in the apartment in question and he is at liberty to sell it to some others. Under the



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circumstances though as on today project has been completed and respondent has obtained occupancy certificate despite that in the interest of both the parties it is just to return and order for refunding of part consideration amount paid by the complainant to the respondent to meet the ends of justice. Since the right has been accrued to the complainant to seek return of sale consideration amount under Section 18 of Rera Act as there is much delay in handing over possession of the apartment. This Authority considering the facts and circumstances of the case is not inclined to award compensation to the complainant for delay in handing over the apartment. The respondent is contending that he has paid Rs.6,24,277.66/- towards commercial tax the said amount is rounded off at Rs.6,24,278/-. The complainant in the written reply submitted to the objection statement of the respondent has stated that he is aware that he has to pay the tax to purchase apartment in question. Thus I hold the point No.1 partly in the affirmative.

13. Point No.2: In view of my findings on point No.1, proceed to pass the following.

**ORDER**

- (a) The complaint filed by the complainant bearing No. CMP/190120/0001927 is partly allowed.
- (b) The respondent/developer is hereby directed to return an amount of Rs.15,75,722/- to the complainant along with interest @ 9% per annum from 01-09-2015 and also to return Rs.10,00,000/- received on 10-02-2016, Rs.04,50,000/- received on 01-04-2016,

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Rs.10,00,000/- received on 16-07-2016 and Rs.10,00,000/- received on 21-03-2017 respectively along with 9% per annum from respective dates of receipt of said amount to the complainant till realization of the entire amount.

- (c) The respondent/developer is hereby directed to refund Rs.6,24,278/- to the complainant which has been paid towards tax and reimburse the same from the department or from the new buyer.
- (d) The complainant is hereby directed to execute the cancellation agreement of sale after realization of entire amount.
- (e) The respondent/developer is hereby directed to pay Rs.5000/- as cost of the petition, to the complainant.
- (f) The complainant may file memo of calculation as per this order after 60 days in case respondent/developer failed to comply with the same to enforce the order.

Intimate the parties regarding order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounce on 24-02-2021)



I.F. BIDARI

Adjudicating Officer-1

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