

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

ಫಿರ್ಯಾದು ನಂ: CMP/180915/0001276

ಉಪಸ್ಥಿತರು: ಕೆ.ಪಾಲಾಕ್ಷಪ್ಪ, ನ್ಯಾಯನಿರ್ದೇಶಕರು

ದಿನಾಂಕ: 01 ನೇ ಏಪ್ರಿಲ್ 2019

ಫಿರ್ಯಾದುದಾರರು : **SRIHARI S DHANDAPANI**

A302, Orchid Woods, Bagalur road,  
Bengaluru - 560075

ವಿರುದ್ಧ

ಮರಿದಾರರು : **Puravankara Limited,**

**Purva Palmbeach,**

**A302, Orchid Woods, Bagalur road,**

**Bengaluru - 560075**

“ತೀರ್ಪು”

1. ಫಿರ್ಯಾದುದಾರರಾದ **SRIHARI S DHANDAPANI** ಇವರು ಎದುರಿ ಡೆವಲಪರ್ ವಿರುದ್ಧ ಈ ಫಿರ್ಯಾದನ್ನು ರೇರಾ ಕಾಯ್ದೆ ಕಲಂ 31 ರಂತೆ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಎದುರಿ ಡೆವಲಪರ್ ಅಭಿವೃದ್ಧಿಪಡಿಸುತ್ತಿರುವ **Purva Palmbeach**, ಇದರಲ್ಲಿ ಗ್ರಾಹಕರಾಗಿರುತ್ತಾರೆ. ಅವರ ಫಿರ್ಯಾದು ಹೀಗೆ ಇರುತ್ತದೆ.

I paid 3 lakhs as a blocking advance for the flat J1203 at Purva Palm Beach. But when I cancelled the booking for obvious reasons, i am been forfeited the entire booking amount and stating that the amount needs to be used only within Purva projects and this be considered as a gesture discount. I have cancelled it for a personal financial reason and forcing me to buy within a year is ir-reasonable and forfeiting 3 lakhs is unacceptable. Not that they are at loss too,

*P. Dhandapani*



they are still reselling the flat to another party and the deal is the flat is not even registered too.

Relief Sought from RERA : Refund of the advance

2. ಈ ಫಿರ್ಯಾದನ್ನು ನೋಂದಾಯಿಸಿಕೊಂಡು ಎದುರಿಗೆ ನೋಟೀಸ್ ನೀಡಲಾಯಿತು. ದಿನಾಂಕ: 25/10/2018ರಂದು ಫಿರ್ಯಾದುದಾರರು ಕಾಬರಿಲ್ಲ. ಡೆವಲಪರ್ ಪರ ಹಾಜರಾದ ಶ್ರೀ ಕಾರ್ತಿಕ್ ಇವರು ತಮ್ಮ ತಕರಾರು ಸಲ್ಲಿಸಿ ತಾನು ಯಾವುದೇ ಹಣ ಕೊಡಬೇಕಾಗಿಲ್ಲ ಅಂತ ಹೇಳುತ್ತಾರೆ. ಆ ಸಂಬಂಧ ಪ್ಯಾರಾ ನಂ.3 ರಲ್ಲಿ ಈ ರೀತಿ ಹೇಳುತ್ತಾರೆ,

It is pertinent to note that the apartment in purva palm Beach was marketed and sold to the Complainant by a channel partner viz., CBRE South Asia Private Limited (RERA Agent Refistration No: AG/KN/170726/000068) (the "Agent"). The complainant was regerred to promoter by the Agent and consequently, it is the sole responsibility of Agent to properly inform and educate the complainant of the terms and conditions of the application for allotment. Section 10(d) of the Act states that ever real estate agent registered under section 9 shall:

"(d) facilitate the possession of all the information and documents, as the allottee is entitled to at the time of booking of any plot, apartment or building, as the case may be;

Consequently, the Agent was required by law to inform complainant that a booking advance would be forfeited in case complainant cancelled his booking prior to execution and registration of the agreement to sell. The Agent has always been in possession of the application form and is aware of Promoters terms and condition of allotment and therefore, Agent's failure to duly inform complainant prior to submission of the application form constitutes a failure by the Agent to duly and diligently discharge its obligations under the Act.

*Handwritten signature and text:*  
 20/10/2019  
 20/10/2019



3. ಈ ಪ್ರಕರಣದಲ್ಲಿ ಫಿರ್ಯಾದುದಾರರು ಹಾಜರಾಗಲೇ ಇಲ್ಲ. ಆದ್ದರಿಂದ ಡೆವಲಪರ್ ಇವರು ಸಲ್ಲಿಸಿರುವ ತಕರಾರಿಗೆ ನಿಮ್ಮದೇನಾದರು ಉತ್ತರವಿದೆಯೇ ಎಂದು ಕೇಳಿ ಫಿರ್ಯಾದುದಾರರಿಗೆ ದಿನಾಂಕ:04/02/2019 ರಂದು ಈ ರೀತಿ ಇಮೇಲ್ ಕಳುಹಿಸಲಾಗಿತ್ತು.

Sir/Madam,

This is the reply given by the developer on your complaint. Since you remained absent on 25/10/2018, 12/11/2018, 22/11/2018, 27/11/2018, 11/12/2018, no reply was submitted by you. Hence, attachment is sent. If you get any reply you send it otherwise case will be decided

4. ಅದಕ್ಕೆ ಉತ್ತರವಾಗಿ ದಿನಾಂಕ:04/02/2019 ರಂದು ಈ ರೀತಿ ಉತ್ತರಿಸಿರುತ್ತಾರೆ.

Okie I will check and reply soon. Please hold on the case.

5. ನಂತರ ದಿನಾಂಕ:06/03/2019 ರಂದು ಫಿರ್ಯಾದುದಾರರು ಈ ಕೆಳಕಂಡಂತೆ ಉತ್ತರ ಕಳುಹಿಸಿ ತಮ್ಮ ದೀರ್ಘವಾದ ಉತ್ತರವನ್ನು ಕಳುಹಿಸಿರುತ್ತಾರೆ.

Attached in the deck is the response to the builder's notice on explaining my stand in detail with artifacts.

"I haven't seen any progress with regards to my EPFO whilst it has just got further complicated by stating that I can't withdraw the PF till my next change of job as I

am in this new company for the past 3+ months. Hence the option of proceeding this is even more a challenge and unfortunately, I want to completely back out from this deal. Do let me know how we take this further". As a result of the same, the Sales and Marketing Company CBRE had sent an e-mail to the Respondent on 07-02-2018 and informed to initiate the refund of booking amount in my favour but the respondent neither refunded the sale consideration amount nor considered the suggestion of the sales and marketing company.

4. It is submitted that, as a reply to the several e-mail communications, I requested the respondent to issue a credit note for the Part Sale Consideration amount i.e., for Rs:3,00,000/-. Without accepting my request, the Respondent had sent several e-mails and put pressure on me to execute the Agreement of Sale and to pay the balance Sale Consideration amount but I did not want to continue with the Project as

*Devi*  
01/06/19



I was under financial crisis as cited supra. Finally, the Respondent had sent an e-mail on 30-05-2018 for cancellation of booking as follows;

"As per your request for cancellation of unit no PB-WJ-1203 booked by you on 30th Sept 2017, vide your mail dt. 6th Feb 2018, we would like to inform you that your request has been accepted and your booking now stands cancelled. The booking advance amount paid by you has been forfeited in accordance with clause 18 of the booking form signed by you. Further as discussed and mutually agreed, as a goodwill gesture a discount to the extent of Rs.3,00,000/- will be offered to you, if you book an apartment in any of Purva projects on or before 30th September 2019 on the then prevailing selling price.

6. ಫರ್ಯಾದುದಾರರು ಕೂಲಿಸಿದ ಉತ್ತರವನ್ನು ನೋಡಿದಾಗ ಡೆವಲಪರ್ ಇವರು ಮುಟ್ಟುಗೋಲು ಹಾಕಿಕೊಳ್ಳುವ ನಿರ್ಧಾರವನ್ನು ಫರ್ಯಾದುದಾರರು ಬಲವಾಗಿ ಅಲ್ಲಗಳೆಯುತ್ತಾರೆ. ಹೀಗಿರುವಾಗ ಡೆವಲಪರ್ ಇವರಿಗೆ ಮುಟ್ಟುಗೋಲು ಹಾಕಿಕೊಳ್ಳುವ ಅಧಿಕಾರವಿದೆಯೇ ಎಂದು ನೋಡಬೇಕಾಗುತ್ತದೆ. ಈ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ಮುಟ್ಟುಗೋಲು ಹಾಕಿಕೊಳ್ಳುವ ವಿಚಾರದಲ್ಲಿ ಈ ರೀತಿ ಹೇಳಿರುತ್ತಾರೆ.

### 2013(1) Supreme Court Cases 345

#### SATISH BATRA V/S SUDHIR RAWAL

This court, again, in Videocon properties Limited versus Balachandra Laboratories, dealt with the case of sale of immovable property. It was a case where the appellant/plaintiffs had entered into an agreement with the respondent/defendants on 13th of May 1994 to sell the landed property own by the respondents and the sum of rupees 38 lakh was paid by the appellants as deposit or earnest money on the execution of the agreement. In that case, this court examined the nature and character of the earnest money deposit and took the view that the words used in the agreement alone would not be determinative of the character of the "earnest money" but really the intention of the parties and surrounding circumstances. The court held that the earnest money service to purposes of being part payment of the purchase money and security for the performance of the contract by the party concerned.



In that case, on facts, after interpreting various clauses of the agreement, the court held as follows (Balachandra Laboratories case SCC page 721- 22 para 15)

15. Coming to the facts of the case, it is seen from the agreement dated 13th May 1994 entered into between the parties- particularly clause 1, (which) specifies more than 1 enumerated (categories) of payment to be made by the purchaser in the manner and its stages indicated there in, as consideration for the ultimate sale to be made and completed. The further fact that the sum of rupees 38 lacs had to be paid on the date of execution of agreement itself, with other remaining categories of sums being stipulated for payment at different and subsequent stages as well as execution of the sale deed by the vendors taken together with the contents of the stipulation made in clause 2.3, Providing for the return of it, if for any reason the vendors fail to fulfil their obligations and clause 2, strongly support and strengthens the claim of the appellants that the intention of the parties in the case on hand is in effect to treat the sum of rupees 38 lacs to be part of the prepaid purchase money and not pure and simple earnest money deposit of the restricted sense and tenor Holi and related to the Purchase price assets in any manner. The mentioned made in the agreement or description of the same otherwise as 'deposit or earnest' and not nearly as earnest money, inevitably leads to the inescapable conclusion that the same has to and was really meant to serve both purposes as an usage in the decision noticed by Supra. In substance, it is, therefore, really a deposit or payment of advance as well and for that matter actually part-payment of purchase price, only. In the teeth of the further fact situation that the sale could not be completed by execution of the sale deed in this case only due to lapses and inabilities on the part of the respondent's irrespective of bonafides or otherwise involved in such delay and lapses, the amount of Rs. 38 lakhs becomes refundable by the vendors to the purchasers as part of the prepaid purchase price deposited with the vendors. Consequently, the sum of Rs. 38 lakhs to be refunded would attract the first limb or part of Section 55 (6) (b) of the Transfer Of Property Act itself and therefore necessarily, as held by the learned single judge, the defendants prima facie became liable to refund the same with interest due thereon, in terms of clause 2.3 of the Agreement.

Therefore, the statutory charges envisaged there in would get attracted to and encompass the whole of the sum of Rs. 38 lacs and the interest due thereon.

In the above mentioned case the court also held as follows  
Further it is not the description by words used in the agreement only that would be determinative of the character of the sum but really the intention of parties and surrounding circumstances as well, that

*[Handwritten signature]*  
D. S. Srinivas



The law is, therefore, clear that to justify the forfeiture of advance money being part of "earnest money" the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non performance by the depositor. There can be a converse situation also that if the seller fails to perform the contract the purchaser can also get double the amount, if it is stipulated. It is also the law that part payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part payment of the consideration and not intended as earnest money then the forfeiture clause will not apply.

- Booking Form ಜೊತೆ ಇರುವ Terms and Conditions of the application ನಲ್ಲಿನ ನಿಬಂಧನೆ 18 ರಲ್ಲಿ ಹೀಗೆ ಹೇಳಲಾಗಿದೆ.

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~~Deology~~



8. ಇದಲ್ಲದೆ ದಿನಾಂಕ:07/02/2018 ರಂದು ಡೆವಲಪರ್ ಇವರು ಫಿರ್ಯಾದುದಾರರಿಗೆ ಕಳುಹಿಸಿದ ಮೇಲ್ ಈ ರೀತಿ ಇರುತ್ತದೆ.

WE will go ahead with cancellation bur the Booking amount is 100% non refundable. The same is mentioned on the Booking form.

Kindly update the same to Mr.Srihari

9. ಅದಕ್ಕೆ ಉತ್ತರವಾಗಿ ಡೆವಲಪರ್ ಇವರು ದಿನಾಂಕ:12/02/2018 ರಂದು ಈ ರೀತಿ ಬರೆಯುತ್ತಾರೆ.

That's not my understanding as a result of the lengthy discussion that we had at the time of booking only based on the assurance which was given by your executives, I even went ahead and confirmed the booking. And you need to understand the genuinely of my reason and not being manipulative of it.

10. ಆದರೆ ಫಿರ್ಯಾದುದಾರರು ಕೊಟ್ಟಿರುವ ರೂ.3,00,000/- ಹಣವು ಮುಂಗಡದ ಹಣವೇ ಅಥವಾ ಪೂರ್ಣ ಪ್ರತಿಫಲದ ಭಾಗವೇ ಎನ್ನುವುದನ್ನು ಡೆವಲಪರ್ ಇವರು ಸಿದ್ಧಪಡಿಸಲು ವಿಫಲರಾಗಿರುತ್ತಾರೆ. ಈ ಮಾತನ್ನು ಏಕಾಗಿ ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಫಿರ್ಯಾದುದಾರರು ಡೆವಲಪರ್ ಇವರೊಂದಿಗೆ ನೇರವಾಗಿ ವ್ಯವಹಾರ ಮಾಡಿರುವುದಿಲ್ಲ. ಏಜೆಂಟ್ ಮೂಲಕ್ಕೆ ಈ ವ್ಯವಹಾರವನ್ನು ಮಾಡಿರುತ್ತಾರೆ. ಡೆವಲಪರ್ ಇವರು ಈ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಹಾಕಿರುವ ತಕರಾರಿನ ಪ್ಯಾರಾ ನಂ.4 ಮತ್ತು 5 ರಲ್ಲಿ ಹಿಗೆ ಹೇಳಿದ್ದಾರೆ.

By an email dated 07 February 2018, the complainant informed the Agent and Promoter that he intends to cancel has booking and not proceed with the transaction. On receiving this email, Promoter reminded the Agent by an email dated 07 February 2018 that the cancellation would be accepted but the booking amount of Rs.s3,00,000 would not be refunded, in accordance with terms and conditions already disclosed in the application form.

Promoter submits that promoter is not liable to refund booking advance paid by complainant and the complaints claim. If any, lies against the Agent for Agents failure to give complainant all necessary information prior to submitting the booking application form. Having voluntarily application form, complainant has agreed to the terms

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and conditions of allotment, including Paragraph 18 pertaining to forfeiture of application advance paid.

11. ಇದನ್ನು ಗಮನಿಸಿಕೊಂಡಾಗ ಫಿಯಾದುದಾರರು ಡೆವಲಪರ್ ಇವರು ಏಜೆಂಟ್‌ರೊಂದಿಗೆ ಮತ್ತೆ ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಬೇಕು ಎಂದು ಕೇಳುವುದು ಸೂಕ್ತವಲ್ಲ. ಡೆವಲಪರ್ ಇವರು ತಮ್ಮ ಏಜೆಂಟ್ ಮಾಡಿರುವ ತಪ್ಪಿಗೆ ಅವರ ವಿರುದ್ಧ ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಬಹುದಾಗಿದೆ. ಹಾಗಾಗಿ ಈ ಪ್ರಕರಣದಲ್ಲಿ ಫಿಯಾದುದಾರರು ಪರಿಹಾರಕ್ಕೆ ಅರ್ಹರು.
12. ಅಂತಿಮ ಆದೇಶ ಬರೆಯುವ ಮೊದಲು ಒಂದು ಮಾತು. ರೇರಾ ಕಾಯ್ದೆ ಕಲಂ 71(2) ಪ್ರಕಾರ ಫಿಯಾದುದಾರರನ್ನು 60 ದಿನಗಳ ಒಳಗೆ ಇತ್ಯರ್ಥ ಪಡಿಸಬೇಕು. ಒಂದು ವೇಳೆ ಇತ್ಯರ್ಥ ಪಡಿಸಲು ಸಾಧ್ಯವಾಗದಿದ್ದರೆ ಅದಕ್ಕೆ ಪ್ರಾಧಿಕಾರವು ಕಾರಣಗಳನ್ನು ನೀಡಬೇಕಾಗುತ್ತದೆ. ಈ ಫಿಯಾದುದಾರರನ್ನು ದಿನಾಂಕ: 15/09/2018 ರಲ್ಲಿ ಸಲ್ಲಿಸಲಾಗಿದೆ. ಆದರೆ ಈ ಪ್ರಾಧಿಕಾರದ SOP ಪ್ರಕಾರ 60 ದಿನಗಳನ್ನು ಪಕ್ಷಕಾರರು ಪ್ರಾಧಿಕಾರದ ಮುಂದೆ ಸಾಜಲಾದ ದಿನದಿಂದ ಲೆಕ್ಕ ಹಾಕಬೇಕಾಗುತ್ತದೆ. ಈ ಪ್ರಕರಣದಲ್ಲಿ ಫಿಯಾದುದಾರರು ಹಾಜರಾಗಿಲ್ಲದ ಕಾರಣ ಈ ಪ್ರಕರಣವನ್ನು ಕಾಲಮಿತಿಯಲ್ಲಿಯೇ ಇತ್ಯರ್ಥಪಡಿಸಲಾಗುತ್ತದೆ. ಅಲ್ಲದೆ ಫಿಯಾದುದಾರರಿಗೆ ದಿನಾಂಕ:04/02/2019 ರಂದು ಇಮೇಲ್ ಕಳುಹಿಸಿದರೆ ಅವರು ದಿನಾಂಕ:06/03/2019 ಕ್ಕೆ ತಮ್ಮ ಉತ್ತರವನ್ನು ಕಳುಹಿಸಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶ:

### ಆದೇಶ

ಮೇಲೆ ಚರ್ಚಿಸಿದ ಕಾರಣಗಳಿಗಾಗಿ ಫಿಯಾದುದಾರ ಸಂಖ್ಯೆ:

**CMP/180915/0001276** ಅನ್ನು ಮಂಜೂರು ಮಾಡಲಾಗಿದೆ.

1. ಇಂದಿನಿಂದ ಒಂದು ತಿಂಗಳ ಒಳಗೆ ಡೆವಲಪರ್‌ರವರು ಫಿಯಾದುದಾರರಿಗೆ ರೂ. 03,00,000/- ಗಳನ್ನು ಹಿಂತಿರುಗಿಸುವುದು, ಒಂದು ವೇಳೆ ವಿಫಲರಾದಲ್ಲಿ 31ನೇ ದಿನದಿಂದ 10.75%ರಷ್ಟು ಸರಳ ಬಡ್ಡಿಯನ್ನು ಸೇರಿಸಿ ಕೊಡಬೇಕಾಗುತ್ತದೆ. ಫಿಯಾದುದಾರರಿಗೆ ಮತ್ತು ಎದುರಿದಾರರಿಗೆ ಈ ಆದೇಶದ ಬಗ್ಗೆ ಮಾಹಿತಿಕೊಡುವುದು. [ಈ ತೀರ್ಪನ್ನು ಬೆರಳಚ್ಚುಗಾರರಿಗೆ ನೇರವಾಗಿ ಬೆರಳಚ್ಚು ಮಾಡುವ ಮೂಲಕ ದಿನಾಂಕ: 01.04.2019 ರಂದು ಪ್ರಕಟಿಸಲಾಗಿದೆ].

(ಕೆ. ಪಾಲಾಕ್ಷಪ್ಪ)  
Adjudicating officer



**CMP-1276**

**13.08.2022**

**Before the Lok-Adalath**

The execution proceedings in the above case taken up before the Lok-Adalat. The email dated: 08.08.2022 forwarded by the complainant in the case is hereby accepted and the said email shall be part and partial of the award. Hence, the execution proceedings in the above case stands disposed off as settled and closed in the Lok Adalat.

  
Judicial Conciliator.

  
Advocate Conciliator.





# ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp.No: 1276

ಪುಟ ಸಂಖ್ಯೆ .....

ವಿಷಯ .....

Srihari Dhandapani  
Purva Palmbeach

ಕಂಡಿಕೆ  
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

**CMP- 1276**

**08.08.2022**

As per the request of the complainant, the execution proceedings in the above case is taken-up for disposal in the National Lok Adalat to be held on 13.08.2022.

The complainant through email dated: 08.08.2022 has reported that he has received the compensation amount as per the order passed in the above case. Therefore in view of the said email the execution proceedings in the above case have been closed as settled between the parties. The matter is referred to Lok-Adalat to be held on 13.08.2022 for award.

  
Judicial Conciliator.

  
Advocate Conciliator.



**KARNATAKA STATE LEGAL SERVICES AUTHORITY**  
**BEFORE THE LOK ADALAT**  
**IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT**  
**BENGALURU**

**DATED: 13<sup>TH</sup> DAY OF AUGUST 2022**

**: CONCILIATORS PRESENT:**

Sri. I. F. Bidari

..... Judicial Conciliator

AND

Smt. Preethi N

..... Advocate conciliator

**COMPLAINT NO: CMP/180915/0001276**

**Between**

Mr. Srihari Dhandapani

..... Complainant/s

AND

M/s. Purvankara Limited.,

.....Respondent/s

**Award**

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having settled the matter, as per email dated: 08.08.2022 forwarded by the complainant and same is taken on record during the pre Lok Adalat sitting on dated: 08.08.2022.

The execution proceedings in the above case taken up before the Lok-Adalat. The email dated: 08.08.2022 forwarded by the complainant in the case is hereby accepted and the execution proceedings in the above case have been closed as settled between the parties. The email shall be part and partial of the award.

  
Judicial conciliator

  
Advocate conciliator