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"Above flat was booked during Feb 2015 in Vasathi Avante by entering into a construction agreement with Vasathi Housing Ltd. Per agreement, the flat was supposed to be handed over by Dec 2016 (complete in all respects). All payments to the extent of Rs 52,00,000 has been paid as and when demanded by the builder. As on date, the project is still not in livable condition and no OC has been obtained from the authorities. I have been continuously paying both EMI and rent and this has strained me very much financially. The delay has been close to 2 years and this has resulted in tremendous mental agony.

Relief Sought from RERA : Rs 80,000 for mental agony & financial losses."

2. On 25/10/2018, father of the complainant was present with his authority letter. The developer was present with Advocate. On 28/11/2018 the case was heard and hence reserved for orders.
3. In the complaint, the complainant sought for compensation but on 14/11/2018 he has given a memo which reads as follows:

"My son is working in Bombay and hence I have produced the P.A to represent him.

He has booked a flat in " Vasathi Housing' after payments (Flat no. W3- B- 202) as and when asked. The flat was supposed to be handed over by Dec, 2016. All payments to the extent of Rs. 52,00,000/- lakhs paid with excess payment amount to (Rs, 4,00,000). This payment

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consists of corpus fund and payment to be made while handing over.

My son is paying a heavy rent in Bombay and he is paying EMI of Rs. 39,000/- p.m on this flat. I am in Bengaluru and paying rent.

I request you to order Vasathi to refund my entire payments with suitable interest as he is yet to handover the flat."

4. To which the developer has filed his objection contending that the complainant is not entitled for the relief as sought in the complaint. In this regard, the contention taken by him is described in para no. 22 as follows:

"In view of the default by the complainant in payment of the amounts due under the Agreement for Construction and readiness of the apartment, the Hon'ble Authority may reject the complaint and direct the complaint to settle the matter by performing his duties under the Agreement and take possession."

5. In addition to it the developer has claimed counter claim of Rs. 3,87,125/- as per Sec. 19(6) of the Act.

6. I would like to say that the complainant has sought for compensation at the first instance but later he sought for refund of entire amount. In this regard, he has given the Memo of Calculation. During the course of argument it is submitted that the developer has said that the total sale consideration would be Rs. 51 lakhs but now the developer is claiming Rs. 54 lakhs. Therefore, it is his case that he has paid excess of Rs. 3,98,824/-.

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7. Further he also submitted that the developer has collected Rs. 1,38,159/- as corpus fund. On all these allegations, the complainant is seeking refund of the amount. Per contra on behalf of the developer, it was submitted that the complainant has paid Rs. 51,57,615/- and as such the complainant is still due a sum of Rs. 3 lakh and odd. The developer has also submitted that in case the complainant is ready to pay the due amount, he is ready to execute the sale deed.
8. In fact the complainant has sought for delay compensation at the first instance, later he has filed the MEMO demanding the refund of the amount. In this regard the respondent has filed the objection in Para 20 which reads under,

It is submitted that the complainant initially filed the complaint for the compensation to the extent of Rs. 80,000/- (Rupee eighty thousand only) for financial loss and mental agony. However, Complaint's father filed a letter on 14.11.2018 requesting a refund of the entire sale consideration. It is submitted that the Complaint's father without assigning appropriate reasons has now sought for a new and contrary relief sought in the complaint. It is here by submitted that the Complainant cannot arbitrarily change the nature of the relief according to his whims and fancies. Therefore, the letter dated 14.12.2018 filed by the father of Complainant cannot be taken on record. It is pertinent to note that the Complainant has paid only a sum of Rs. 51,57,615/-(Rupees Fifty One Lakhs Fifty Seven Thousand Six Hundred and Fifteen Only) as

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witnessed in the statement of accounts annexed by him. However, the Complainant and his father has falsely stated that the Complainant paid a sum of Rs.52,00,000/- (Rupees Fifty Two Lakhs Only) without any proof of the same this shows the intention of the Complainant who has filed the said letter only to extract more money and made wrongful monetary gains from the Respondent.

9. I would like say that withdrawal of the complaint is the choice of the consumers.

10. As per Section 18 of the RERA Act, it is the wish of the consumer to be with the project or to go out of the project. The wordings used in Section 18 are as under:

“ in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act”

11. By reading the above, it is clear that the Act does not make specific ground to go out of the project. However the parties have entered into agreement in the month of February 2015 with number of clauses, they are all binding upon each other. One thing is clear that the relief sought by the complainant is understood by the developer also. In view of the above principle the developer has to refund the amount to the complainant with interest by way of compensation.

Done
20/01/19

12. Before closing the judgment I would like to say that the complaint shall be disposed off within 60 days as per S.71(2) of the Act. This complaint has been filed on 02/10/2018 but as per SOP the 60 days may be computed from the date of appearance of the parties. In this case the parties have appeared on 25/10/2018 and as such the complaint is being disposed off with little delay. Hence, I proceed to pass the following :

ORDER

The complaint no. CMP/181002/0001344 is allowed by directing the developer to return the amount of Rs. 51,57,615/- to the complainant.

The developer shall pay the along with interest @10.25% from 1/5/2017 and interest @9%P.A on the amount paid on the respective dates of payment as per Karnataka Apartment Ownership Act, 1972 received prior to 1/5/2017 till the realisation of entire amount.

In case the developer has already paid the GST amount then the same may be deducted in the amount returnable to the complainant but the developer shall hand over the necessary documents to enable the complainant to take back that amount from the concerned authority.

The complainant shall execute the cancellation deed in favour of the developer after the entire amount is realised.

Intimate the parties regarding the order.

(Typed as per dictation, verified, corrected and pronounced on 01/01/2019)


(K.PALAKSHAPPA)
Adjudicating officer