

**BEFORE ADJUDICATING OFFICER, RERA**

**BENGALURU, KARNATAKA**

**Presided by :K.PALAKSHAPPA.**

**Adjudicating Officer**

**Complaint No. CMP/181209/0001737**

**Date: 13<sup>th</sup> MAY 2019**

Complainant : DEEPAK GUPTA  
Flat No. 302, A block, VRR Hertiage,  
Doddanekundi Village, K R Puram,  
Bengaluru- 560037.

AND

Opponent : Vasathi Avante  
Vasathi Housing Ltd.,  
850/2, D Block, Sahakar Nagar,  
Bengalure - 560092

---

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

1. Deepak Gupta, complainant under complaint no. CMP/181209/0001737 has filed this complaint under Section 31 of RERA Act against the project "Vasathi Avante" developed by Vasathi Housing Ltd., as he is the consumer in the said project. The complaint is as follows:

*"I booked flat W1-A-1005 in Vasathi Avante on 1st February 2015 by paying 20% amount upfront. I was told the handover date as June 2016 before the booking. The draft agreement which was sent to me two weeks later had the completion date mentioned as December 2016 with 6 months of grace period which is 1 year later than the originally communicated date. It was totally one sided*

*Per 4*  
*13/5/19*

towards the builder too. This came as a big surprise and impacted the trust I had on the builder. I was not ready to sign it in that state and I had several discussions with them for months together to correct the handover date and also make the clauses mutually agreeable. During October 2016, builder sent me an email stating they would cancel my booking and deduct 3.5 lakhs from my booking amount if I don't sign the agreement without any changes and pay the delay charges. As the construction was in very advanced stage, I paid 2,01,390/- Rs. towards delay payment charges on 21/11/2016 along with demand amount of 46,96,401/- Rs through bank loan and signed the agreement. By early March 2017, 95% of the total flat cost was paid to the builder. Later on, I came to know that there was an ongoing case on the builder which he had hidden from us and this caused further damage on the trust I had on the builder. Builder kept on delaying the project again with no sight of handover soon. During January 2018, I sent an email notice to the builder to cancel the flat and refund me the entire amount as per clause 5.4 of the construction agreement with interest. Builder has not responded to it since then even after several follow-ups.

Relief Sought from RERA : Refund of Rs. 73,53,729/- with 24% interest"

2. In pursuance of the notice issued by the authority, the complainant was present on 16/01/2019. The developer was present through his counsel and filed his objection. Later I have heard the argument on both sides. The claim of complainant is for refund of his amount of Rs. 73,53,729/-. The developer has opposed the same.

*Done*  
13/01/19

3. The point that arises for my consideration is:  
Whether the complainant is  
Entitled for refund as prayed by him.

4. My answer is affirmative for the following.

### R E A S O N S

5. The complainant has agreed to purchase a flat bearing No. W1 A 1005 on 1/2/2015 and paid booking amount of 20%. It was said that completion date would be June 2016 but later the draft of agreement sent for signature where the completion date was mentioned as December 2016 with 6 months grace period. Therefore, the complainant did not sign it, but the developer has issued a notice in the month of Oct, 2016 stating that he will cancel the agreement in case the draft of agreement is not signed. According to complainant he has paid Rs. 2,01,390/- in the month of November 2016 and got released the bank loan of Rs. 46,96,401/-. It means by the end of March 2016 he has paid 95%. Later the complainant learnt that a case is pending on the project which was not disclosed by the developer. Therefore, he expressed his willingness to cancel the agreement by demanding the refund with interest.

6. The developer has stated in his objection statement as under:

*"It is therefore submitted by this respondent that the present complaint filed by the complainant is premature, and liable to be dismissed. It is also submitted that the complainant has not made full payment towards the sale consideration as detailed*

*Devi*  
13/10/2017

above and is instead harassing the respondent through this litigation and causing delaying and hindrance in handing over the possession of apartments that are ready for occupation. Further, the complainant is not entitled to any compensation under the provisions of the Act, in relation to delay as claimed by him and the cancellation of the agreement is illegal and void as the complainant has failed to make timely payments in accordance with the agreement.

It is submitted that the promoter/the respondent herein, is in the process of completing the project in terms of the assurance/representations made in the agreement to sell entered with the complainant. However, the complainant and other allottees have not made the payments as per the payment schedule, agreed under the agreement of sale. This non-payment and/or delay in payments, by the complainant and other allottees, have been the major reason for the respondent/promoter's inability to complete the project within the time agreed in the agreement to sell. However, construction of the present complainant's flat is complete in all respects and electricity connection is also obtained to the same. Other basic amenities have also been provided in the said 'A' block in the "Vasathi Avante" project, (the vasathi avante project consist of 'A' 'B' and 'C' Block), where the apartment of the complainant is situated. It is submitted that, despite the fact that the promoter faced various hurdles with the land owners and allottees, the promoter has successfully completed construction of Block 'A' and 'B', in all respects.

*Done*  
13/6/19



7

It is submitted by the respondent that the complainant has not only violated the terms of payment specified under the Agreement, he is now claiming refund of total sale consideration, for reasons best known to the complainant. It is submitted that, the agreement of sale has clearly laid out provisions for refund in case of termination or cancellation of the agreement. The relevant portion of the agreement is reproduced below:-

13.1 in case the purchaser cancels this agreement, the builder herein shall be entitled to recover the amounts from the purchaser an amount of Rs. 100/- per sq ft of the total sale consideration of the Schedule C property, as liquidated damages and refund of the balance sum due, if any, under this agreement within 90 days from the date of termination or 30 days from the date of Resale/transfer of schedule C property to the third party and such forfeiture/recovery as aforesaid by the builder will be automatic without further notice on the purchaser cancelling this agreement as aforesaid.

The aforesaid cancellation and termination of the agreement clause cannot be used by the complainant without according appropriate reasons for the same and without providing sufficient notice. Even if the relief sought by the complainant comes to be allowed, the respondent will be able to refund the sale consideration after deducting the liquidated damages and other damages as ascertained, only after transfer or re sale of the said apartment to be third party. Hence, the said termination or cancellation of the agreement after completion of the project and readiness of the apartment is not acceptable and is highly unfair and unethical on the part of the complainant."

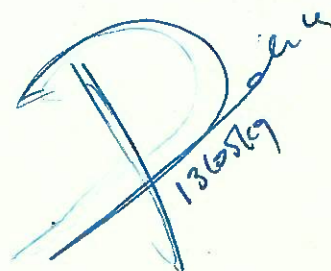
7. Therefore the question arises for my consideration as to the relief of refund of the amount. It is true that the complainant has sought for refund of the amount for two grounds.
8. Firstly the agreement is not as per the terms of talks made at the time of taking the booking.
9. Secondly there is a civil litigation which was not disclosed by him.
10. On 01/02/2015 the complainant had agreed to purchase the flat bearing no.W1A1005, where the total consideration amount was Rs. 71,09,359/- excluding miscellaneous charges.
11. But the counsel for the developer has drawn my attention that the project was completed. He has produced the photography to show the same. But I would like to say that the developer has failed to convince this authority because as per the agreement the completion date was June 2017 but in the RERA he has given on 31/12/2018 now we are running in the month of May 2017. It is not the case of the developer that he has already obtained the Occupancy Certificate. Unless he obtained the Occupancy Certificate he cannot claim that he has completed the project. The counsel for the developer submits that of argument the complainant had given the consent. But it is not correct to say so; because Section 17 mandates the developer to deliver the possession of the flat after

A handwritten signature in blue ink, possibly reading 'D. S. S.', with the date '13/05/17' written below it.

7

obtaining Occupancy Certificate and therefore there is no wrong on the part of the complainant to claim the refund. The completion means a project shall be completed as per the Act. It is the duty of the developer to call the consumer to take the possession of any flat only after obtaining the Occupancy Certificate. Just because he has completed the civil work on the flat is not correct to say that the project is ready for occupation. The date for completion was given as June 2017 and the builder has given the date of completion as December 2018 and now it is also crossed. The developer has not completed the project officially and hence, the prayer of the complainant for refund to be honoured without any deduction.

12. AS per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the Complaint was presented on 09/12/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 16/01/2019. Hence, there is little delay in closing the complaint. With this observation I proceed to pass the order.



**ORDER**

The Complaint No. CMP/181209/0001737 is allowed.

- a) The developer is hereby directed to return Rs. 16,00,000/- to the complainant.
- b) The developer is hereby directed to pay interest @ 9% P.A on the respective payment made on the respective date up to 30/04/2017 and @ 10.75% P.A from 01/05/2017 till the completion of the amount.
- c) The developer is hereby directed to discharge the loan amount with its interest, EMI and any incidental charges.
- d) The complainant is hereby directed to execute the cancellation deed of agreement after the entire amount is realised.
- e) The developer shall pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 13/05/2019)

  
(K.PALAKSHAPPA)  
Adjudicating Officer