

**BEFORE ADJUDICATING OFFICER, RERA**

**BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Complaint No. CMP/130905/0001239**

**Dated:16<sup>th</sup> August 2019**

Complainant : Arvind Arya  
1A, 203, Shilpitha Royal,  
Shri Sakthi Layout,  
Bengaluru-560067

AND

Opponent: Maithri Developers,  
No.25/7, Sri Kote Ashirwad Tower,  
Outer Ring Road,  
Bengaluru-560037

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

1. The Complainant has filed this Complaint against the Respondent seeking for the relief of relocation of D.G. set his Complaint reads as under;

While purchasing, I am assured by Developers Sales executive with documentary evidences of BBMP Approved plan and Sales Broucher, Stating Green Zone beside my booked apartment balcony. I was given possession in July-2016, after a year and half delay, teasing all penalty terms, in a under-developed project. While staying I noticed, preparation of a platform for Diesel Generator beside my

*[Handwritten signature]*  
16/08/19

balcony, and completely ignoring my objections on this by developer. We continued objection in due time, though ignoring all pleads/requests/memorandums Diesel Gen-set of Capacity 400KVA/500HP is placed just 12 feet away from balcony, Creating non-bearable Nuisance to adjacent residents along with multiple potential health issues in long term.

Relief Sought from RERA :DG Relocation to designated place.

2. After issuance of the notice the Complainant was present on 02.05.2019. Shilpa & Deepti have appeared on behalf of the developer but I would like to say that the Developer has not filed any objections. The Complainant has filed written arguments.
3. Therefore the point arise for my consideration is;  
Whether the Complainant has made out the Case to direct the Respondent/Developer to relocate the D.G. System?  
My answer is affirmative for the following;

### **REASONS**

4. The Complainant is the owner of an Apartment bearing No. 203, Block-1, A wing, in 2<sup>nd</sup> floor, measuring 1114 Sq.ft in the project by name Shilpitha Royal is an admitted fact according to him the Developer has located his D.G. Set in front of his unit.

5. According to the Complainant;

*The Petitioner further submits that, Diesel Generator is never communicated to be placed at this place when I booked the flat sighting this open space which is marked for plantation and Rain Water Harvesting pits, where I can utilize the Home and balcony with a peaceful environment for a healthy living alongside a green belt of natural air purifiers (plantation), replacing this (plantation/naturally free land) with*

*Deepti*  
16/05/19



environmental polluting machinery causing unbearable nuisance ( sound/ vibration/ smoke) where I along with members of my family are very sensitive to diesel fumes/smell and exhaust is placed over the top of my flat and concerned neighbors flats ruining their freedom of using terrace and susceptible to diesel exhaust/fumes and carcinogenic particles emitted from a Heavy Diesel combustion engine.

The petitioner further submits that, I booked Apartment considering all in mind want a safe place to live for me and my family members. Now an approximately 500 HP Diesel Generator is teasing us days and nights taking a toll on our peaceful life with its heavy sound and environment pollutants in and around backyard/home of our hard earned shelter.

The petitioner further submits that I was requesting in a very humble manner to relocate this heavy machinery away from said flats as much as possible to let us live healthy and happily. Regarding the same I have already given a formal representation to Respondent with signatures of other aggrieved residents for which respondents have not given any positive reply so far. Further I have politely requested multiple times (in tune of dozens) to multiple stack-holders of Maithri Developers of various levels on their concerns on Developer's decision in Diesel Generator placement along with multiple suggestion of alternative locations, though Developer and it's office bearer's ignored all request along with multiple terrible deviation from sanctioned and proposed plans.

6. By reading the above averments one thing is clear that the set up of DG set in front of the unit of the complainant is causing nuisance to the complainant and thereby he is suffering a lot without peace. At the same time he brought

*Devi*  
16/6/19



to my notice that the same is not covered by the plan. It is the duty of the developer to construct the apartment in accordance with the plan. There should not be any violation. Of course the location of DG set is needed but it should not cause any inconvenience to the residents. As per the narration made by the complainant it is producing sound and also imitating the smell which is not tolerable. At the cost of repetition I would say that it is the responsibility of the developer to keep the residents in a livable condition. The representation given by the complainant has not been considered and failed to give any proper explanation to this complaint itself proves that the developer has failed to keep the unit for peaceful enjoyment of the residents in general to the complainant in specific. Hence, the complainant was forced to file this complaint which deserves to be allowed.

7. As per Section 12 of the RERA Act, it is the duty and responsibility of the Developer to put up the Project with specifications as made in the plan. On perusal of the plan it is clear that the Developer has put up the D.G. Set against the sanctioned plan. Moreover the Developer who appeared before this Authority has failed to respond to the grievances of the Complainant.
8. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 05/09/2018. Since the project was not approved by that time the Complaint was not taken for disposal. The project was approved on 19/02/2019 afterwards notice has been issued to the parties. In the present case, the parties have appeared only on 02/05/2019. Hence, the complaint is being disposed of with some delay. With this observation I proceed to pass following order;

## **ORDER**

The Complaint No. CMP/180905/0001239 is hereby allowed.

- a. The developer is directed to relocate the DG set immediately since the same is not supported from the plan and to pay Rs. 10,000/-per month as compensation from the date of this complaint till the DG set is located at a proper place.
- b. Further the developer shall pay Rs. 5000/- as cost.
- c. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 16/08 /2019)

(K.Palakshappa)  
Adjudicating Officer