

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
Karnataka Real Estate Regulatory Authority Bangalore  
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 SR K PALAKSHAPPA**  
**DATED 3<sup>rd</sup> AUGUST 2020**

<b>Complaint No.</b>	<b>CMP/UR/180922/0001300</b>
<b>Complainant</b>	Rishi Ratnakar 522, 1 <sup>st</sup> D Cross, 15 <sup>th</sup> Main, 3 <sup>rd</sup> Stage, Bengaluru-560079. Appeared through his father with GPA
<b>Opponent</b>	Provident Housing Limited 8, Ulsoor Rd, Yellappa Chetty Layout, Bengaluru Urban-560042.

1. Rishi Ratnakar, the complainant has filed this complaint no. CMP/180922/0001300 under Section 31 of RERA Act against the project "Provident Sunworth" developed by 'Provident Housing Limited., seeking for the relief as under:

*I Rishi Ratnakar, had booked 3BHK Super Premium apartment (7A-1108), measuring 1082 sqft at Provident Sunworth apartment complex at prelaunch by builder - Provident Housing Limited in March 2013 costing around 40 Lakhs by paying booking amount of Rs 1 Lakh. Thereafter, I availed housing loan from India Bulls Housing Finance Limited amounting to Rs 23 Lakh which was paid to builder on completion of different slabs as agreed. Thereafter I made payments with my personal savings. Until now I have paid 85% of the cost. Attaching statement of account FYR. Project completion was agreed as end of 2015, but it was delayed by almost a year. I was not allowed to visit construction site until this time stating safety reasons by the builder. As I had purchased the apartment at pre-launch, there was no inspection possible. In Nov*

*Donu*  
03/08/2020

## ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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2016, when project was completed & I was called for inspection, I noticed that the property has been constructed next to Vrushabhavati Valley, which gives out unbearable bad smell & hence the place is non-habitable. Air pollution here is a serious health concern. The property also has borewell dug very close to the drainage, though it appears that it has been stated in the approvals that no borewell can be dug at the premises. I'm surprised how OC & pollution control board NOC was given. I noticed NOC is given in 2009, but project was launched only in 2013. During 2016, there was an issue regarding legality of land which was aired in BTV news. It appears that this issue is not yet resolved. I had raised this concern with the builder at their office, but they tried to cover this matter stating they would be taking measures to resolve the issue. However, air pollution problem exists till date & I cannot move into this apartment because of this and the health risks me & my family have to face. I have already invested huge amount & also been paying home loan principal & interest since 2013. Since Sep 2016, I have not made any payments to the builder as they are not addressing my concern. I have had several email communication with the builder regarding this & on several occasions me & my father Mr H.T Ratnakar have visited their office to discuss this matter. But they are not addressing my concern. I am attaching email communications FYR. I have also on several occasions requested the builder to resolve this matter, instead they have been sending emails to make payment with delay interest charges. Now they have sent emails asking me to complete the payment with delay interest charges & to register the property, failing which they will cancel my booking & proceed for recovery of the property along with holding charges, damages, penalty & interest. I request honorable court to intervene in this matter & provide justice. I request status quo until resolution is provided, & builder to refund my money with interests.

Relief Sought from RERA : Refund of money with interest

2. After registering the complaint notice has been issued to the parties, the complainant has appeared through his father by giving general power of attorney where as the respondent has appeared through his representative and filed his reply. Before going to discuss on merits I would like to narrate some facts. This complaint was filed against the unregistered project. Therefore the Secretary has initiated preliminary enquiry regarding non

*[Handwritten Signature]*  
03/08/2020

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**  
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registration of the project. However complaint was transmitted to adjudicating officer for disposal on 13/12/2019.

3. Accordingly notice has been issued to the parties. Father of the complainant has appeared with power of attorney and the developer has filed his objections. The matter was posted on 27.03.2020, but due to lock down the case was not taken up. After lifting the same and in order to maintain the social distance the parties have been called for hearing through Skype. On 03.07.2020 argument was heard and posted the matter for judgment.
4. The point that arise for my consideration is
  - a. Whether the complainant proves that he is entitled for the relief as sought in the complaint?
  - b. If so, what is the order?
5. My answer is affirmative in part for the following

**REASONS**

6. In this case the complainant is the customer of the developer is not in dispute. The complainant has said that he had visited the site and noticed that it is adjacent to Vrushbhavathi river and thereby it was impossible to live there on account of unbearable smell. It is also his case that he has paid 85% of amount to the developer. It is his further case that in the year 2016 there was an issue regarding legality of land which is not yet resolved. There is an air pollution problem also. It is the case of the complainant that he and his father had demanded to re-pay the amount but the developer failed to resolve it. Further it is alleged that instead of resolving the issue, the developer had issued demand notice levying interest. For the above said reason the complainant is seeking the refund of the amount.

*Demu*  
*03/08/2020*



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7. On going through the objection filed by the developer it is clear that he has not registered the project since he has taken the occupancy certificate on 18.11.2015 itself.

8. The developer has appeared and filed his objection statement where he has pleaded some important facts which are as under:

*With reference to the complaint filed by the complainant, we reply as follows:*

1. Occupancy certificate for both phases of the project were issued by the Bengaluru Development Authority on 18.11.2015 and 27.04.2017, copies of which has been attached to this reply notice for your reference. As per the section 3(2)(b) of the Real Estate (Regulations of Development) Act 2016, registration of the real estate project is not mandated if the project has received the occupancy certificate prior to commencement of the Act.

2. As occupancy certificate was received prior to the Act coming into force, the requirement to register the project does not arise. Consequently, non registration of the project is not in contrivance to Section 3 of the Act.

3. For the reason stated above the complainant filed before this authority is not maintainable. Any complaint before this authority with reference to the project are outside this scope of this authority jurisdiction and are barred by jurisdiction

9. The developer has not registered his project with this authority since he has already received the occupancy certificate. Further it is submitted that he has no any obligation to refund the amount.

10. Shri. Karthik represented the developer submits that he is not liable to pay anything to the complainant since the complainant has failed to take the sale deed. But his argument is not acceptable so far as liability is concerned because the developer had committed violation of section 19(10) of the Act moreover as per the discussion made by the Haryana Authority the liability to

*[Signature]*  
03/08/2020

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pay either delay compensation of refund of the amount is not based upon the registration of the project.

Haryana REKA Gurugram in  
Complaint No.7/ 18  
M/s Simmi Sikka  
v/s  
M/s Ennor MGF Land limited Sikandarpur

The domain of the authority extends even to the projects which have not been registered, and also not exempted from registration. No promoter shall advertise, market, book sell or offer for sell or invite persons to purchase in many manner any plot apartment or building as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the real estate regulatory authority established under this act. In case of violation the authority may take action for non-registration under section 59. Accordingly, the projects which have not been registered, but are registrable in case of violation of Section 3 comes within the domain of the authority and authority is well within its power to initiate legal proceedings and also to entertain complaints regarding violation of the provisions of the Act. The authority cannot take a stand that the project is unregistered, accordingly authority has no jurisdiction to entertain the complaint. Where the complainant will go? The complainant may make a complaint to the authority regarding non registration of the project as well as may request the authority for compliance of obligations by the promoters in case the promoter violates any of the provisions of the act. The rules and the regulations made there under. The authority in such case cannot take a stand that the let project be got register and only there after entertain the complaint. If a complaint in such cases is not entrained by the authority a scrupulous promoter or builder or developer may not register the project to avoid

*Dec 4*  
*03/09/2020*

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*jurisdiction of the authority. This will frustrate the very purpose of the Act regarding giving relief to the complainant and ensuring compliance of the obligations by the promoters, real estate agents and allottees.*

*The act provides for obligations of the promoter, real estate agent and allottees both during the registration phase as well as post expiry of validity of registration i.e., after the completion of the project. The obligations post-expiry of the validity of registration are to be ensured by the authority in both in the case of parties which were registered and validity of registration expired as well as for the project where completion certificate was obtained prior to coming into force of this Act and exempted from registration. The obligations from the promoter after completion of the project such as handing over of possession and executing a registered conveyance deed within specific period, workmanship and structural defect rectification liability without any limitation period etc. are applicable for all the real estate projects, both registered as well as exempted from registration.*

11. From the above discussions made by the authority some light is thrown on the confusion raised by the representative of the developer. I would say that the developer has collected the amount from the complainant but failed to comply with Section 19(10) of the Act. Of course the occupancy certificate was taken prior to the commencement of the act but for the reasons stated in the complaint the complainant had not dared enough to take the sale deed. The developer also has not initiated any proceedings against the complainant to take sale deed. The complainant is being paid the amount to the developer since 2013 itself. Now we are in the year 2020. Even though the developer had received the OC but the transaction is not completed since the sale deed is still to be executed. The complainant has said in his complaint as follows:

*P. S. S.*  
*03/08/2020*



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*Since Sep 2016, I have not made any payments to the builder as they are not addressing my concern. I have had several email communication with the builder regarding this & on several occasions me & my father Mr. H.T Ratnakar have visited their office to discuss this matter. But they are not addressing my concern. I am attaching email communications FYR. I have also on several occasions requested the builder to resolve this matter, instead they have been sending emails to make payment with delay interest charges. Now they have sent emails asking me to complete the payment with delay interest charges & to register the property, failing which they will cancel my booking & proceed for recovery of the property along with holding charges, damages, penalty & interest.*

12. What it indicates means through the OC was received prior to May 2017 but the transaction was not completed means the complaint is maintainable here and adjudication can be done. Therefore the stand taken by the developer holds no water.
13. Generally when the OC has been received which is an indication of completion of the project, then the allottee shall take the sale deed as per S.19(10) of the Act. Here the complainant is demanding for refund of his amount since the project has been developed very close to Vrishabhavathi river which is emitting bad smell. It is the case of the complainant that he is demanding the developer to return the amount but the same was not met for one or the other reasons. Though the OC was received prior to commencement of the Act, till this date the demand of complainant has not been met by the developer. No sale deed is executed. Thereby there is a clear violation.
14. From the above discussion it is clear that merely because the project is exempted from the registration does not take away the right of the complainant. However, the complainant is not entitled for the relief of refund for the reason that the project was already completed as per OC much earlier to this complaint. I would say that the complainant might not have taken the sale deed because

*Dr. H*  
0368/2020

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the project is developed adjacent to Vishabhavathi river which emirates bad smell and causing pollution. I would say that the complainant has filed this complaint after the lapse of one and half year from the date of completion of the project officially. Of course the complainant has produced some e-mail notices requesting the developer to make arrangement to avoid the pollution. In addition to it he has placed his grievance to take further action. I would say that when once the OC has been received it is the duty of the parties to obey S.17 and 19(6)(7)& (10) of the Act. Though the developer has said that the complainant has refused to take the sale deed but no proof is placed. I would say that when the project was completed officially then the first duty of the buyer is to make payment and to take the sale deed.

15. In view of the completion of project and also as per the observation made by different authorities I cannot order for refund of the amount. I am herewith reproducing the same for better reference.
16. S.18 is meant to protect the interest of the consumer to some extent. His prayer for refund of his amount is only because the project is suffering from pollution. When the project is officially completed the allottee cannot be permitted to demand for refund of his amount. In this connection I would like to refer to some decisions of different authorities who have held that it is not proper to order for refund when the project is officially ready for occupation.

**a. Haryana Real Estate Regulatory Authority**

**in**

**CMP No. 326/2018**

**dated 27/11/2018**

**Mr. Ashok Jaipuria v. M/S Ireo private limited:**

*Keeping in view the present status of the project and intervening circumstances, awarding of refund of the paid*

*Polu*  
03/08/2020



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amount to the complainant with the termination of agreement dated 26.10.2012 at this belated stage would not serve the ends of justice and this will also hamper the very purpose of completion of project and interest of existing allottees who wishes to continue with the project. As such complainant is entitled for delayed possession charges @ 10.75% p.a. as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project

**b. Complaint No. 743/2018**

**Puneet Dhar & Billa Dhar**

**v.**

**M/s Supertech Ltd.**

The complainants are demanding refund of the entire amount paid till date but keeping in view the current status of the project and the revised date as per the RERA registration certificate, giving refund at this time will hamper the interest of other allottees in the project. So, the complainants are not allowed to get refund and they will get interest for delay @ 10.75% p.a. from the due date of possession till the possession is actually delivered.

**c. Complaint No. 63/2018**

**Pramod Kumar Agarwal**

**v.**

**S.S. Group Pvt. Ltd.,**

However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint at this stage of the project, it will adversely affect the rights of other allottees who wish to continue with the project. However, the complainant will be entitled to a prescribed rate of interest till the date of handing over of possession.

*[Handwritten Signature]*  
03/08/2020

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**d. Complaint No. 145/2018**

**Smt. Pushpa Gupta**

**v.**

**M/s. VSR Infratech Pvt. Ltd.,**

Thus the authority, exercising powers vested in it under Section 37 of the Haryana Real (Regulation & Development) Act, 2016 hereby issue directions to the respondent to promoter is directed to pay interest at the prescribed rate of 10.75% per annum for every month of delay. Promoter is allowed to adjust amount if due against the allottee and shall be allowed to charge interest at the same rate of 10.75%. calculation sheet be shared with the allottee within 7 days. Allottee has alleged that necessary information was not shared by the respondent, accordingly promoter is directed to share necessary information with the allottee concerning the unit allotted to her so that she may not be kept in dark.

**e. Complaint No. PKL 451/2018,**

**Manoj Suneja**

**v.**

**TDI Infrastructure Pvt. Ltd,**

Keeping in view the conduct of the respondents, they will not be entitled to the benefit as ordered by the undersigned in Complaint Case No. 49 of 2018- Parkash Chand Arohi Vs Pivotal Infrastructure Pvt. Ltd.

The request of the complainant for refund of money cannot be accepted for the reason that the respondents have developed the colony and have obtained a part competition certificate and have offered the possession to the complaints. When the possession is offered, the complainant cannot be allowed refund but they shall be entitled to compensation for the period of delay

*P*  
03/08/2020

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**d. Maharashtra Real Estate Regulatory Authority**  
**Mumbai in**

**CMP No. CC0060000004479**

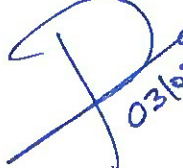
**Bhuvneshwar Pathak**

**v**

**Salvo Resorts Pvt. Ltd.**

*Simple present tense used in the starting line of section 18 clearly indicates that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given, as the case may be, the said provision ceases to operate.*

17. From the above discussion made by different authorities it is clear that when the project is completed then the question of refund of amount paid by the buyer does not arise.
18. In the above circumstances I have to allow this complaint in part by directing the developer to execute the sale deed and the complainant shall comply with S.19(6)(7) and (10) of the Act. Before concluding my discussion I would say that at the time of argument the complainant has sought for delay compensation. In this regard I would say that the project was completed prior of commencement of this Act. But as per E-mail sent by the complainant to the developer is after the induction of this Act. Therefore there is a continuity of the cause which was arisen prior to this act but continued even after May 2017 for appropriate measures. There is a clear violation of S.19(10) from both sides. The complainant has entered into agreement in the year 2013 and till today his dream has not come to true. The developer has received the OC much earlier to the induction of this Act but he failed to take action for execution of sale deed and put the complainant into possession of the same. In this regard I have discussed in the above paras since the project was officially completed prior to coming into force of this act but the cause has been continued I feel that the parties may be directed to comply S.19(6)(7)(10) of the Act.

  
03/08/2020



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**Karnataka Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,  
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

19. Before passing the final order I would like to say that as per Section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 22/09/2018. Since this complaint was filed against the unregistered project, the file was with the Secretary who has taken necessary steps against the developer with regard to the registration of his project. Later the complaint has been transferred to this authority on 13/12/2019 for disposal in accordance with law. Afterwards this authority has issued notice to the parties and filed the objections. In the meanwhile on account of natural calamity COVID 19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2020 and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.

**ORDER**

- a. The Complaint filed by the complainant bearing No. CMP/180922/0001300 is hereby allowed in part.
- b. The developer shall execute the sale deed by giving possession within one month from today.
- c. The complainant shall participate in taking the sale deed by paying legally payable amount to the developer.
- d. The developer shall pay the delay compensation in the form of simple interest on the total amount paid @ of 9% from the date of due date till 30/04/2017 and @ 2% above the MCLR of SBI from May 2017 till the possession is delivered.
- e. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 03/08 /2020).

**K. PALAKSHAPPA**  
Adjudicating Officer