

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
**Karnataka Real Estate Regulatory Authority, Bengaluru**  
ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,  
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

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**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**  
**Presided by Sri K Palakshappa**  
**Adjudicating Officer**  
**Date: 21<sup>st</sup> JANUARY 2020**

<b>Complaint No.</b>	<b>CMP/190807/0003844</b>
Complainant :	ANIL D PRABHUDEV B1003, Liberty Square 80 Ft., Road, Gubbalala Main Road, Near KSIT College Bengaluru-560109 Rep. by: Sri Hitendra V.Hiremath, Advocate
Opponent :	Mr.Narasimha Murthy Comforts Builders & Developers, #2, North Park Road, Kumara Park East Bengaluru- 560001 Rep. by: Kum. Bindu P, Advocate

**“J U D G E M E N T”**

1. ANIL D PRABHUDEV, Complainant has filed complaint bearing complaint no.CMP/190807/0003844 under Section 31 of RERA Act against the project ‘Comfort Heights’ developed by “Comfort Builders and Developers” as the complainant is the consumer in the said project. The complaint is as follows:

*Deve*  
21/6/2020

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**

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*This has reference to the Apartment that I have booked (A-904, 1920 Sq. Ft., Ref. Sale cum Construction agreement, dated. 15th Feb 2014) at the Comfort Heights Project (RERA Regn. No. - PRM/KA/RERA/1251/310/PR/180313/ 001730) which is being developed by Comfort Builders and Developers. I hereby like to inform you that our Apartment, A-904, in the said project, was due for handover within 36 months i.e by Feb'17, (Including a buffer period of 6 months), from the date of the Sale cum construction agreement (Dated 15th Feb 2014), and the said project is no-where close to completion. While I ensured 75% of the payments (Approx 67L) were paid by me by December 2015, to Comfort Developers, towards the said project, the project completion and Delivery/handover for possession, of the above mentioned project has not been adhered to, as per the Sale cum construction agreement with Comfort Builders. The project completion being delayed by over 30 months already, as of today (beyond Feb'17), I am in no-confidence, absolutely, to risk any further investments on the said project and would like to claim a FULL REFUND OF THE AMOUNTS PAID TILL DATE, with necessary penalties and interest, in-line with the terms that were imposed on me, as per the sale agreement.*

*Relief Sought from RERA : FULL REFUND, Incl Interest and Penalties.*

2. In pursuance of the notice issued by this authority, the complainant appeared through his counsel Sri Hitendra V Hiremath and developer has appeared through his advocate Kum. Bindu P. The developer has filed his objections. Both of them have filed their written arguments.
3. I have heard arguments and the matter was posted for judgment on merits.
4. The points that arise for consideration is as to:

Whether the complainant is entitled for refund of amount as prayed?

*Peru*  
*21/01/2020*

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5. My answer is affirmative for the following

**REASONS**

6. In the written arguments, the developer has submitted that he has informed the complainant by sending e-mail on 06.08.2019, the reason for delay in completion of the project. It means the developer has admitted the delay caused in completion of the project. When there is a delay the developer has no option except to compensate the consumers. Of course, it is the allegation of the developer that the complainant has not paid the instalments properly. It is the allegation of the developer that the complainant is still due a sum of Rs.24,25,875/-
7. I would say that as per Sec.18 of the RERA Act, when there is a delay in completion of the project, the right accrued to the complainant either to continue with the project or to go away from the project. It is made clear that when the complainant wants to go out of the project, his amount has to be returned. It is not the case of the developer that he has received Occupancy certificate in order to avoid relief what that complainant has now sought. When that being the case, there are no merits in the contention taken by the developer and reasons given by the developer will absolve him from the liability. In this regard, I would to like rely upon the decision of the Hon"ble Apex Court in Pioneer case which reads as under:

*[Handwritten signature]*  
24/6/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
Civil Appeal No. 12238/2018,  
Pioneer Urban Land & Infrastructure Ltd.  
V/s  
Govindan Raghavan

*which reads as under:*

*Para 6.1: In the present case admittedly, the appellant builder obtained the occupancy certificate almost two years after the date stipulated in the apartment buyer's agreement. As a consequence, there was failure to handover possession of the flat to the respondent flat purchaser within a reasonable period. The occupancy certificate was obtained after a delay of more than 2 years on 28/08/2018 during the pendency of the proceedings before the National Commission. In LDA v. M.K.Gupta, this court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for consideration, it is a "service" as defined by Section 2(1)(o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.*

*In Fortune Infrastructure v. Trevor D'Lima, this court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with the compensation.*

8. This is completely against to the observation made by the Apex Court in pioneer case where it is said that the developer shall not made to wait for indefinitely. The same reads as under:

*Per*  
*26/6/2020*

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2018 (5) SCC 442

*Fortunate Infrastructure and another*  
*v*

*Trevor D'Lima and others*

*This court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him, along with compensation.*

Two years is maximum period to wait for completion of a project from the due date. Here the due date was February 2017 and now we are in the year 2020. Hence, any length of argument made on behalf of the developer is not well founded and he is liable to refund the amount with interest.

9. From the above position of law it is clear that when there is a delay of two years from the due date the complainant can demand for refund of the amount. Admittedly, the due date was February 2017 and now it is already completed two years and 10 months of delay from the due date. Therefore, the developer cannot defend himself regarding the return of the amount. Hence, the complainant is entitled for the relief for the refund of the amount.

10. 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. In this case the parties appeared on 24.09.2019 and case is being disposed off on today is with some delay. With this observation, I pass the following

*Done*  
*21/01/2020*



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**ORDER**

- a. The Complaint filed by the complainant bearing No.CMP/190807/0003844 is hereby allowed
- b. The developer is hereby directed to pay Rs.66,31,765/-.
- c. The developer is hereby directed to pay the interest @ 9% p.a. on the respective amount paid on the respect date till 30/04/2017 and interest @ 2% p.a. above the MCLR of SBI on the total amount paid by the complainant except the GST amount is paid commencing from 01/05/2017 date till realization.
- d. The complainant is hereby directed to execute the cancellation of the agreement of sale after the entire amount is realized.
- e. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.
- f. The developer is hereby directed to refund the GST amount to the complainant with a direction to take back the same from the concerned department.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 21/01/2020).

  
K. PALAKSHAPPA  
Adjudicating Officer