

**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 SRI K. PALAKSHAPPA**  
**ADJUDICATING OFFICER**  
**DATED 14<sup>th</sup> SEPTEMBER 2020**

<b>Complaint No.</b>	<b>CMP/190809/0003859</b>
<b>Complainant</b>	Suman B Pirgal # 14/1, 4th Floor, Sankeshwara Towers, 1st Cross, RV Road, Near Minerva Circle, Bengaluru - 560004. Rep. By His advocate Sri Sudarshan Suresh
<b>Opponent</b>	Ramesh Kumar Landowner Saraswati, Gandhinagar, Mangalore - 575003 <u>Another Address:</u> Hotel Deepa Comforts MG road, Mangaluru -575003. Rep. by Sri Rajesh S. Advocate

**JUDGMENT**

1. Smt. Suman B Pirgal, the complainant has filed this complaint no. CMP/190809/0003859 under Section 31 of RERA Act against the project "PROVIDENT SKYWORTH PHASE 1" developed by 'Provident Housing Limited., seeking for the refund of the amount paid towards purchase of flats. His complaint reads as under:

  
14/09/2020

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I, Mr. Suman B Pirgal, (holding PAN Number AALPP7893B) have entered into an Agreement of Sale with Mr. Ramesh Kumar (Land Owner) for the purchase of (a) Flat bearing No. B2A-303 on the Third Floor, in the ?F? Block of the Apartment Building known as PROVIDENT SKYWORTH with carpet area of 1360 square feet along with one car parking space and undivided share in land of 0.325% approximately measuring 438.48 square feet in the project. (b) Flat bearing No. B1-404 on the Fourth Floor, in the ?F? Block of the Apartment Building known as PROVIDENT SKYWORTH with carpet area of 1331 square feet along with one car parking space and undivided share in land of 0.3190% approximately measuring 430.39 square feet in the project. (c) Flat bearing No. B2A-703 on the Seventh Floor, in the ?F? Block of the Apartment Building known as PROVIDENT SKYWORTH with carpet area of 1360 square feet along with one car parking space and undivided share in land of 0.325% approximately measuring 438.48 square feet in the project. (d) Flat bearing No. B1-704 on the Seventh Floor, in the ?F? Block of the Apartment Building known as PROVIDENT SKYWORTH with carpet area of 1331 square feet along with one car parking space and undivided share in land of 0.3190% approximately measuring 430.39 square feet in the project. The project PROVIDENT SKYWORTH is bearing Registration Number (PROVIDENT SKYWORTH PHASE 2-PRM/KA/RERA/1257/334/PR/170916/000400 & PROVIDENT SKYWORTH PHASE 1-PRM/KA/RERA/1257/334/PR/170916/000355) located on BAJPE ROAD DEREBAIL, MANGALORE, DAKSHINA KANNADA. As per the agreement, we have agreed for the full and final consideration of Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs Only). We have paid the Developer Rs.1,00,00,000/- (Rupees One Crore only) by two RTGS payments from my account held in Standard Chartered Bank, M.G Road, Bangalore and the same is acknowledged by the Developer as per the Agreement of Sale. Further, as per the agreement, the sale transaction shall be completed within 6 months and the possession shall be handed over to the buyer. However, the same has not been done and the entire amount paid and additional Rs. 20,00,000 liquidated damages was supposed to be repaid to me.

*When the construction was not in progress, we approached the vendor and discussed about the progress. The vendor convinced us that he is going to give us the Flat as per time frame stipulated mentioned in the agreement. Now the time-frame has also been exceeded, the project is not ready. The Vendor has neither given the possession nor the refund as stipulated in the Agreement. Accordingly, we are not willing to go ahead with the same. Wherefore, it is respectfully prayed that this Honourable Court to order the Vendor to refund the amount with interest till the date of repayment to the Complainant.*

*Relief Sought from RERA: Return of amount paid, liquidated damages & other*

2. After registering the complaint notice has been issued to the parties, the complainant has appeared through his advocate where as the respondent has appeared through his Advocate. The respondent has filed his objections for which the complainant has filed his reply along with written arguments with some citations.
3. Heard the arguments through Skype
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. This complaint has been filed by the complainant against the respondent who is the landowner of the land where the developer has developed his project by name Provident Skyworth Phase 1. In fact the developer who developed the project is not the party in

*Done*  
*14/12/2020*

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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the complaint. However at the time of issuing notice, automatically notice will reach the developer also. In view of the same the developer has filed his reply in the similar case registered as CMP 3857 which is also going to be disposed off today which reads as under:

*We, provident Housing Limited ("the company"), are developers of the real estate project, provident Skyworth Phase 1 (the "Project") (Registration Number: PRM/RERA/1257/334/PR/170916/000355), Located at Derebail, Mangalore.*

*The company submits that the project has been developed pursuant to the Joint Development Agreement and sharing agreement executed between the Company and landowner, certain apartments units were apportioned and allotted to the share of the landowner (the "Landowner's Share").*

7. The Complainant himself has stated in this complaint that he has entered into an agreement to sell with the landowner. A plain reading of the complaint makes it abundantly clear that the Complainant's grievances are with the land owner. It is abundantly clear that the company has not been named or referred to as Respondents in this complaint and have been incorrectly named and summoned as party to this case.
8. In light of the above, we request that the company be discharged from this complaint as we are not a party to it and no cause of action against the Company exists. A fresh notice may be issued to the landowner to answer and respond to the Complainant's grievances.

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9. By going through the complaint allegations the complainant has not made any kind of allegation against the developer. It is the transaction done in between the land owner and the complainant.
10. It is the case of the complainant that he has entered into agreement with the respondent who is the landowner of the project for purchase of 4 flats. The description is as under:

*Flat bearing No.B2A-303 on the Third Floor in the F Block of the Apartment Building known as PROVIDENT SKYWORTH with Carpet area of 1360 sq.ft along with one Car parking space and undivided share in land of 0.325% approximately measuring 438.48 Sq.ft.*

*Flat bearing No.B1-404 on the Fourth Floor in the F Block of the Apartment Building known as PROVIDENT SKYWORTH with Carpet area of 1331 sq.ft along with one Car parking space and undivided share in land of 0.319% approximately measuring 430.39 Sq.ft.*

*Flat bearing No.B2A-703 on the Seventh Floor in the F Block of the Apartment Building known as PROVIDENT SKYWORTH with Carpet area of 1360 sq.ft along with one Car parking space and undivided share in land of 0.325% approximately measuring 438.48 Sq.ft.*

*Flat bearing No.B1-704 on the Seventh Floor in the F Block of the Apartment Building known as PROVIDENT SKYWORTH with Carpet area of 1331 sq.ft along with one Car parking space and undivided share in land of 0.319% approximately measuring 430.39 Sq.ft.*

11. The respondent has admitted the execution of agreement of sale to the above flats but taken a different view. According to him the present complaint is not maintainable since the complainant has



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given the money under an agreement called Investment Agreement. The Xerox copy of the same is produced. The complainant has taken a firm stand that he is not the party to the said investment agreement. It is true also. No where the complainant is a party to the said agreement. When that being the case the stand taken by the respondent that it is an investment but not an agreement as determined in S.13 of the Act holds no water.

12. When there is a separate agreement of sale in respect of the above mentioned flats, then the stand taken by the respondent falls on the ground. Further I would say that the said investment agreement was executed by one Stuart Clarke on 27/03/2018 whereas the agreement of sale regarding the flats was on 26/03/2018. Hence, is there any connection with the investment agreement or not is not a matter before me. It is clear case that there is an agreement of sale agreeing to sell 4 flats to the complainant for a consideration amount of Rs. 1,10,00,000/-and towards the same the complainant has paid Rs. 1,00,00,000/-. At this stage I would say that those flats fell to the share of the respondent. The same was also supported from the stand taken by the developer as above. The respondent has not denied the same but he has taken different view by saying that it is only an investment and one Stuart Clarke shall be the necessary party. In so far as necessary party is considered there is no force in the argument of the respondent since as rightly said by the complainant he is not the party to the investment agreement which was executed on the next day where there is no reference about the agreement of sale which was executed in the previous day. Therefore the stand taken by the respondent is not correct.

*Dr. H. S. H. H. H.*

13. Now the question regarding the other aspects as contended by the complainant. Before going to said aspect I would say that the complainant has filed this complaint seeking refund of his amount based upon the principle of S.18 of the act. It says that if the promoter has failed to complete the project or failed to deliver the possession then the promoter is either liable to pay delay compensation or to refund the amount paid by him as per the wishes of the buyer. Here in this case the complainant has sought for refund of his amount and accordingly the respondent is liable to pay the same. According to complainant the respondent has assured him that he will deliver the possession of the above flats within 6 months from the date of agreement of sale. Accordingly the respondent has not complied with and as such a right has been accrued to the complainant.
14. Now the important question is as to the filing of complaint against the land owner without making the promoter as party. Why I have raised this question because as per S.18 the buyer will get a right to claim the compensation or refund only in case the promoter has failed to comply with the terms of agreement as per S18 of the Act. Here there is no role of promoter but the allegations have been made only against the landowner. In this regard the learned counsel for the complainant has referred to the definition of the word Promoter which includes the landowner also. In this regard he has referred to some legal aspects:

*"The Complainant cannot be called as investor because the term "investor" is not defined either in Agreement or nowhere defined under RERA. Any purchase of the Apartment is an Allottee as per section 2(d) of Rera Act. Thus the connection of Respondent that complainant is an investor will not holds good to the facts of the case and it is neither sustainable on*

*Devi*  
*14/04/2020*

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*facts in the eyes of law. The concept of investor is applicable under consumer protection Act and not under Rera Act. Under Rera Act any buyer is an allottee. Since the project is registered under Rera only the provision of Rera will be applicable in co-ordination and not in derogation to defend the main object of the Act. Thus the concept of the Investor is not applicable under Rera and as such more specifically to the Complainant.*

*Hence, in the above case also since the Complainants has entered into Agreement of Sale by paying 1 crore consideration and since the said consideration is admitted and accepted by the Respondent/promoter, the Complainant becomes an Allottee since the day of passing of consideration and the Sale Agreement. Further, the Complainant Suman B Piragal is not a party to the alleged Investment Agreement and as such the contention of the respondent that the complainant is an Investor is not applicable to the above case.*

*Further in this Hon'ble Authority in Compliant.No. CMP/190327/0002525,Between Ravikumar Chandrashekar Iyer vs Mantri Serenity, similar observations was made and it is held that, The Complainant cannot be called as investor because the term "investor" is not defined either in Agreement or nowhere defined under RERA. Any purchaser of the Apartment is an Allottee as per section 2(d) of Rera Act. Thus the connection of Respondent that complainant is an Investor will not holds good to the facts of the case and it is neither sustainable on facts in the eyes of law.*

*It is submitted that, the respondent is relying on alleged Investment Agreement, even if it is presumed that there exists any such Agreement, such Agreement cannot deter allottee rights under RERA Act.*



*In the case of Sunil Dias vs Omkar Ventures Pvt Ltd., The Hon'ble tribunal under Maharashtra Real Estate Regulatory Authority (Maha RERA) in its recent order stressed that an 'Investment Agreement' between the promoter and allottee, will not eclipse the right of the allottee. The complainant had urged complete refund of his amount with interest. The Complainant Sunil Dias had appealed against RERA order, which was passed in favour of Omkar ventures, the developer. "It cannot be said that virtue of investment agreement as on May 27, 2013, the original complainant becomes an investor. Since the subsequent receipts issued by the promoter to the allottee to illustrate that it was towards purchase of an apartment as an allottee. Branding the agreement of an investment agreement will not eclipse the rights of allottee under RERA act,".*

*Further, in the case of Srushti Sangam Developers Pvt.Ltd. V. Sarvapriya Leasing (p) ltd. And ors, the Hon'ble Maharashtra RERA Court held that*

*"In view of above mentioned definition of "Allottee" as well as all the contents of registered agreements for sale executed between Promoter and complainant, it is crystal clear that the complainant is Allottee. Once the complainant is an allottee and admittedly original Respondent No.1 is Promoter who wanted to redevelop the property of the said project and the said incomplete project is duly registered with Maha RERA with registration No.P5180001286, the provisions of RERA Act 2016 are attracted to the present matter and the complainant is having a status of "Allottee". The concept of investor is not defined or referred in RERA Act 2016. Once the project of promoter was incomplete on the day of application of RERA Act on 1/5/2017 and promoter registered the said incomplete project with Maha RERA there will be Promoter and Allottee as per the definition given*

*Devi*  
*14/05/2017*

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*under Section 2 of RERA Act 2016 and there cannot be a party having a status of "Investor".*

*Similarly in the case of Ketan Gajara vs JVPD properties pvt. ltd., it is observed by Maharashtra RERA Court that:*

*" All the terms and conditions of the allotment letters clearly indicate that the complainants agreed to purchase that flats for consideration to be paid by then in installments depending upon the stages of the construction and the last installment payable was at the time of handing over the possession. Therefore, merely because it is mentioned in Clause 10 of the allotment letters that the complainants are investors that will not make them the investors in the real sense. A person who pays money to the promoter in anticipation of buying a flat, invests his money for house and therefore, Section 12 of RERA also refers to such amount as investment. Only because the complainants have deposited their amount with the respondents, it does not mean that they become the Investor Interested in earning profits. The respondents have not produced any evidence to prove that the complainants do not appear to be investors but they are allottees".*

15. So far as principle is concerned there is no quarrel. The landowner is also equally responsible to the buyer. Here the transaction took place between the buyer and the landowner where the promoter is not a party and he pleads ignorance about the same. This is not correct since the promoter shall have the account of each and every flat transaction. As per S.4 of the Act, the promoter shall deposit 70% of the sale consideration in separate account and it shall be realised by him in accordance with the percentage of development work done by him subject to certification of Chartered Accountant, Engineer and Architect. I don't know whether the

*Devi*  
*Subbarao*

promoter has accounted this amount to the separate account or not. The project is not yet completed means the promoter has to give information regarding the sale of any flats or plot or building as the case may be to the authority as per rule 15. Of course the flats which have been agreed to sell to the complainant might fell to the share of respondent/landowner, but the promoter is still responsible to the same also. In view of the same there is no substance in the stand taken by the promoter. However the present transaction has been taken behind the developer and it appears that the landowner had received the amount from the complainant with an assurance to give flats to him which is attracting the provisions of this act and as such he is answerable to the claim of the complainant.

16. 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 09/08/2019. The parties have appeared on 20/09/2019 and the matter was waiting for report of settlement. But it was not materialized and it was posted to 17/03/2020. In the meanwhile on account of natural calamity COVID 19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2010 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.

*Done*  
*14/09/2020*

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**ORDER**

- The Complaint filed by the complainant bearing No. CMP/190809/0003859 is hereby allowed.
- The developer shall return the amount of Rs. 1,00,00,000/-to the complainant.
- The developer shall pay the simple interest on the respective amount paid @ 9% till 30/04/2017 and @ 2% above the MCLR of SBI from May 2017 till the realisation of entire amount.
- Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 14/09/2020).

  
**K. PALAKSHAPPA**  
Adjudicating Officer