

**IN THE KARNATAKA REAL ESTATE REGULATORY
AUTHORITY, BENGALURU**

COMPLAINT NO.CMP/201016/0006868

DATED THIS 4TH DAY OF JUNE, 2022

COMPLAINANT

MS.ANITHA, K.S
No.323, 3rd Block, Embassy
Heritage,
8th Main, Malleswaram
Bangalore : 560 003

RESPONDENT/PROMOTER

M/S.PURAVANKARA LIMITED
Reg. Office # 130/1, Ulsoor
Road, Bengaluru : 560 042

**PROJECT NAME &
REGISTRATION NUMBER**

PURVA PALM BEACH
PRM/KA/RERA/1251/446/PR/
170907/000091

PRESENT

HON'BLE CHAIRMAN SHRI.H.C.KISHORE CHANDRA

AND

HON'BLE MEMBER SHRI.D.VISHNUVARDHANA REDDY

AND

HON'BLE MEMBER SMT. NEELAMANI N.RAJU

Asst

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This Complaint is filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority praying for refund of the GST along with interest and compensation.

J U D G M E N T / O R D E R

FACTS OF THE CASE

1. Complainant has filed complaint No. CMP/201016/0006868 on 16-10-2020 u/s 31 of the Act and sought the refund of G.S.T of Rs. 7,31,566/-, with interest and compensation. The complainant had entered into an agreement for sale with the respondent-promoter for purchase of two flats bearing No.PB-WF-1301 and PB-WE-901 and paid a sum of Rs.23,15,918/-. It is the case of the complainant that on account of poor quality of construction and lack of amenities, the complainant had opted for the cancellation of the booking of one of the apartments and had requested for refund of the amount paid. On cancellation of the booking of the apartments, out of the amount of Rs.23,15,918/- paid by the complainant, the respondent refunded a sum of Rs.15,84,352/- only, which is in the form of giving credit to the amount payable towards the retained apartment and the balance amount of Rs.7,31,566/- is neither given credit nor refunded to the







complainant. On the other hand the respondent has taken a stand that the amount of Rs. 7,31,566/- not refunded to the complainant represent the amount of GST which was remitted to the government account and therefore the said amount was not refundable to the complainant. The complainant has stated that as per the receipts dated 28.11.2017, 18.1.2018 and 29.12.2018, the total amount of GST collected, was only Rs.2,48,114/-, while the amount not refunded is Rs. 7,31,566/-. On the basis of the said statement the complainant has submitted that the respondent has not given the correct information as regards the amount of GST collected from the complainants. Further, the complainant has sought for the refund of entire amount of GST of Rs.7,31,566/-, with interest and compensation.

2. The case was heard by the Authority on 4.10.2021, 28.10.2021 and 1.12.2021. The complainant has filed the written submissions together with a copy of the agreement for sale and certain correspondence with the respondent-promoter. The submissions of the complainant are as under:

- i) The complainant has booked a two apartments bearing No.PB-WF-1301 and PB-WE-901 and the same is evidenced by an agreements for sale dated 8.2.2018.







- ii) The complainant had paid sum of Rs. 23,15,918/- towards the consideration of the apartments vide receipt numbers CR2017011089 for Rs.3,00,000/-, CR2017013176 for Rs.5,15,918/- and CR1819014562PPL for Rs.15,00,000/-.
- iii) Due to various reasons including that of the quality of construction, lack of amenities, the complainant cancelled the booking one of the apartments and executed a cancellation deed dated 12.2.2020.
- iv) The respondent refunded only sum of Rs.15,84,352/- and an amount of Rs.7,31,566/- was not refunded by the respondent by stating that the said amount was paid to the government on account of GST payable.
- v) On the advice of the respondent the complainant initially made a representation before the Assistant Commissioner of State Tax, GST Department by letter dated 11.3.2020 requesting for the refund of the GST amount. In response to the said letter the Assistant Commissioner, sent an endorsement dated 18.5.2020 informing the complainant that there is no provision for the complainant to claim refund under the GST Act on account of the status of the complainant being not a registered tax payer. Further efforts made by the complainant to pursue the matter with the joint Commissioner of GST has also not yielded any positive response and relief.
- (vi) The complainant had booked two apartments. Since the complainant had opted to cancel one of the two apartments, complainant had sought for the credit of the



entire amount of Rs.23,15,918/- refundable on account of cancellation to be given in the account of the apartment retained by the complainant.

- (vii) The cause of action arose on 30.07.2020 when the respondent denied the refund of the GST amount to the complainant and consequently the complaint dated 16.10.2020 was filed before the Authority. On the basis of these submissions, the complainant has sought for the refund of an amount of Rs.7,31,566/- with applicable interest and compensation.

3. The submissions of the respondent are as under:

- i) That the respondent had commenced the construction of the project namely 'Purva Palm Beach' in September, 2015. The complainant had applied for two units namely No.PB-WF-1301 and PB-WE-901 and the sale price of the first unit is Rs.74,89,760/- and second unit is Rs.76,68,400/- respectively. The request of the complainant for cancellation of one of the two units namely PB-WE 901 on 4.2.2020 was agreed to by the respondent, together with the request for adjustment of the refundable amount towards the retained apartment.
- ii) Respondent-promoter has furnished the following details:

Particulars	Land	Construct ion	Tax	Total
Amount demanded till the date of request to cancel	31,33,098	29,63,278	7,31,566	68,27,942

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Amount received till the above date	4,79,532	15,88,251	2,48,135	23,15,918
Balance receivable	26,53,566	13,75,027	4,83,431	45,12,024
Amount adjusted to the other unit		14,14,600	1,69,752	15,84,352
Amount refunded				

Further submissions of the respondent are as under:

- iii) It is contended by the Respondent that as could be seen from the table above the respondent has adjusted an amount of Rs.15,84,352/- towards the consideration payable for the retained unit and the dispute was limited to only with regard to the refund of the GST collected from the complainant.
- iv) The complainant was aware that the GST amount was already paid to the government, the time to claim it as the sales return had expired and hence the only remedy available to the complainant was to approach the GST authorities.
- v) The respondent had acted as an agent of the government and collected the taxes which was payable by the respondent to the government.
- vi) The dispute of this nature cannot be adjudicated in this Forum and the complainant can approach the relevant authorities.
- vii) Section 162 of the Karnataka GST Act has barred jurisdiction of the civil courts to deal with or decide any

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question arising from or relating to anything done or purported to be done under the provisions of the GST Act.

- viii) The respondent has also taken a stand that the GST remitted to the government by the respondent cannot be refunded to the complainant as such a provision is not available.

4. Rival contentions of the parties are examined by the Authority. It is the case of the complainant that the respondent ought to have given full credit to the payment of Rs.23,15,918/-, while adjusting the said amount of refund arising on account of cancellation of one of the apartment, towards the sale consideration of another apartment. The respondent, inter alia, has taken a stand that an amount of Rs.7,31,566/- was paid as a GST payable towards the cancelled apartment and therefore the respondent was neither liable to refund the said amount to the complainant nor the respondent was liable to set off the said amount against the consideration of the retained apartment of the complainant. The Authority has also taken note of the fact that the amount not refunded to the complainant is Rs.7,31,566/- is out of the total amount of Rs.23,15,918/- that was received from the complainant towards the cancelled apartment.

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5. The liability to pay GST arises on the recipient of goods and services. Goods and Services Tax (GST) is intended to levy tax on the incremental additions made in the value chain, so as to ensure that the incidence of tax is not repetitive on the whole of the value of the goods and services at various stages of value chain. The mechanism of input tax credit (ITC) is intended to enable the process of collection of GST in accordance with the principle of Value Added Tax. It is in this perspective that the incidence of GST and the refund of the booking amount together with GST to an allottee, in case of cancellation of the booking, has to be examined.

6. An allottee of a unit in a project has an option to exit from the project by seeking cancellation of the booking made. As per the terms of the Agreement for Sale, the promoter of the project is required to refund the amount payable to the allottee on cancellation. While the project is under implementation, the allottee who has booked the apartment is called upon by the promoter to make timely payments as per the agreed schedule of payments linked to the milestones of progress / construction linked payment plan and accordingly invoices / demand notices are issued to the allottee. Such invoices / demand notices also indicate the GST amounts payable by the allottee. The GST paid by the allottee is remitted to the

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Government Account from time to time. This procedure is followed from the inception of the housing project implementation / construction of the apartments and upto the date of completion of the project. On completion of the project, further liability to pay GST on any of the apartments would not arise due to the fact that the entire work in progress has reached the status of finished real estate product or immovable property ready for sale. The GST payable at various stages of work in progress during the construction of the apartments would have been already paid by the Allottees in the case of the apartments booked by them and by the promoter in respect of the apartments, which remain in the inventory belonging to the promoter.

It is for this reason that the GST is not payable on the apartments available for sale after the completion of the project.

7. The above methodology followed in respect of construction projects in the housing sector makes it abundantly clear that the incidence of GST on a real estate product shall not be multiple times on account of change of allottees. In case there is a change of Allottees at different stages of work in progress, the cost derived upto that stage, inclusive of GST, is collected from the subsequent allottee. As a logical corollary, the allottee exiting from the project is entitled to receive the refund arising as per the terms of the Agreement for Sale





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and the GST collected from such allottee shall also be refundable. Either the subsequent allottee or the promoter of the project is not required to pay the GST upto that stage of work in progress once again. It is not intended that Allottees are required to pay GST multiple times upto the same stage of the work in progress. Needless to say that further additions to the work in progress would trigger the requirement of raising GST invoices and the liability to pay the same by the subsequent Allottees. In case a cancelled unit remains in the inventory of the promoter of the project till the project completion, the GST liability arising on the further additions to the work in progress and upto the stage of completion has to be discharged by the promoter of the project. The pricing of the finished real estate product forming a part of the inventory of the promoter would subsume the GST component and accordingly the promoter is free to sell the finished real estate product without any implication of GST. In other words, even in case the finished apartment commands much higher price in the market than what was realized for a similar unit prior to completion, there is no additional GST implication for the promoter. On a consideration of various aspects pertaining to the issue, it is hereby held that the complainant is entitled for refund of entire GST amount of Rs.7,31,566/-.

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8. The contention of the respondent-promoter that this Authority does not have jurisdiction to adjudicate on a complaint of this nature is examined. The Authority is of the view that in cases where the amounts refundable to the allottee by the promoter have not been fully refunded, the Authority is vested with a jurisdiction to look into such complaints. While examining such complaints, the justification offered for not refunding the refundable amount by the promoter has to be subjected to scrutiny and adjudication. In this case, the respondent-promoter has adopted an interpretation of law, which is favourable to him, but has caused hardship to the allottee. As analysed in the foregoing paragraphs, it is evident from the applicable procedure for compliance with GST laws that the refund of GST amount to the allottee does not cause any financial hardship to the respondent-promoter for the reason that the GST component is included in the pricing of the product/unit purchased by the person and it is not intended that GST shall be paid multiple times on account of the change of Allottees.

9. On cancellation of the booking of the apartment, the complainant is not the recipient of goods and services and therefore GST is refundable to the complainant. As regards the interest on the GST refund demanded by the complainant, the same is regulated by Rule







16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017. As regards the compensation claim of the complainant, the complainant is at liberty to file a separate complaint before the Adjudicating Officer, who is empowered to deal with compensation issues under the Act.

ORDER

In terms of the powers vested with the Authority under Sec.37 of the Act, the respondent-promoter is hereby directed to refund an amount of Rs.7,31,566/- with the applicable interest in accordance with Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017, for the period commencing from 12-02-2020 to the actual date of refund.


(Neelmani N Raju)
Member-2


(D. Vishnuvardhana Reddy)
Member-1


(H.C. Kishore Chandra)
Chairman