

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
**Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಪಾರ್ಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್,  
ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮುಷನ್‌ಟೌನ್, ಬೆಂಗಳೂರು-560027

**KARNATAKA REAL ESTATE REGULATORY**  
**AUTHORITY BENGALURU**  
**BEFORE ADJUDICATING OFFICER**  
**PRESIDED BY SRI K. PALAKSHAPPA**  
**DATED 20<sup>th</sup> MAY 2020**

<b>Complaint No.</b>	<b>CMP/191121/0003948</b>
Complainant	Om Prakash Singh Bilekahalli Bengaluru-560076. Rep.by: Shri R. Prasanna Rao Advocate.
Respondent	Frontier Shelters Pvt., Ltd., No. 422, 80 feet road, 6 <sup>th</sup> Block, Koramnagala Bangalore - 560095 Rep. by Sri S.V. Srinivasa Murthy Advocate

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

1. Om Prakash Singh, the complainant has filed this complaint bearing Complaint no. CMP/191121/0003948 under Section 31 of RERA Act against the respondent seeking relief of refund of his amount which was paid by him towards purchase of flat bearing NO. 4082 in 8<sup>th</sup> floor frontier heights measuring 1143 square feet. The facts of the complaint is as follows:

*Builder is doing lot of deviations for this project without proper approval from BBMP and RERA. When I raised a complaint they have cancelled my allotment. Now it almost 2 months they did not share refund details and refund not all initiated.*

*Relief: Refund of full amount with interest to me and bank.*

*Devi*  
25/05/2020

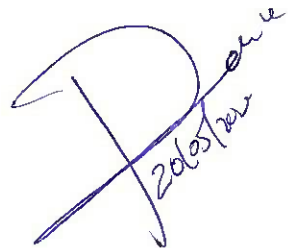
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2. In pursuance of the notice issued by the authority, the Complainant has appeared through his advocate Sri R. Prasanna and respondent has appeared through his advocate Sri S.V. Srinivasa Murthy. The developer being the respondent has filed his objection statement along with necessary documents.
3. Heard the arguments of the parties.
4. The points that arise for my consideration are:
  - a) Whether the complainant is entitled for relief as prayed in the compliant?
  - b) If so, what is the order?
5. My answer to the above points are in the affirmative for the following

**REASONS**

6. This complaint is filed by the complainant seeking for the refund of his amount. I would say that the transaction is admitted by the developer. The developer though admitted the transaction but denied the case of the complainant with regard refund of the amount. According to complainant he is seeking the refund of his amount on the ground that the developer has cancelled the booking. As per the argument of the complainant the developer has cancelled the booking because the complainant has questioned the illegal construction. Of course the developer has denied the case and said that he was forced to cancel the booking just because the complainant is a defaulter in making the payment of instalments. -

  
20/05/2018

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7. The developer has given explanation in his objection statement which is worth reproduce here-----

- a. *The complainant shall pay the instalment regularly.*
- b. *Any default in payment of the cost of construction of the apartment or any instalment thereof on the due dates shall be construed as a breach of contract.*
- c. *Charge compound interest on the defaulted instalment as per SBI norms.*
- d. *The developer may terminate the agreement and rescind the agreement and allot the same to any person.*
- e. *In the event of termination developer shall pay the amount received till such date by it in pursuance of the agreement without interest and after deducting a sum equal to 10% of the total land price and apartment price as liquidated damages.*

8. I would say that the issuance of notice demanding the instalment is not denied by the complainant. I would say that it is the duty of the complainant to pay the instalment regularly which is covered by Section 19(6) of the Act. Based upon the same the developer has contended that he was forced to cancel the booking on the ground of non-payment of instalment. It may be accepted but has the developer was right in cancelling the booking? Answer is no since the complainant has made some allegation with respect to non-completion of his tower. Importantly the complainant has made the allegation regarding the construction of illegal floors. It is the say of the complainant that the developer has cancelled the booking when he questioned about his illegal construction. When that being the case, it was the prime duty of the developer to convince the complainant regarding the alleged extra floors. I

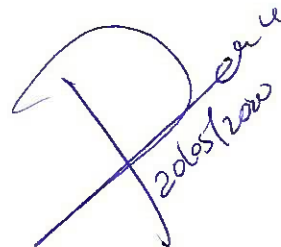
*D. Peru*  
22/05/2020

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would say that the objection statement filed by him is very much silent about the same. Non-answering to the important question keeps the developer away from the benefit of Section 19(6) of the act. Moreover the terms of agreement are dead opposite to the model agreement of sale released by the Central Government. He said that the complainant has to pay compound interest for the delayed payment where as refund of residue was without interest which leads to one sided agreement. In view of the same I say that the developer has no any legal ground to cancel the booking and as such the defence taken by him in this case holds no water. When I hold that the cancellation of the booking has no legal sanctity then the developer has to return the amount to the complainant with interest.

9. Of course the developer has said that he is going to deduct 10% of the amount under the name of forfeiture since the complainant is a defaulter. I am not going to accept as per the discussion made as above. In case the complainant has defaulted without any proper reason then only the question of forfeiture does arise. Here as per the discussion made by me he cannot exercise the same.
10. On 1<sup>st</sup> of October 2019 the developer has issued cancellation letter where it is said that he will process the refund as per agreement. Unfortunately the developer has failed to comply the same also. Even for a moment the case of the developer is admitted then he was obliged to refund the amount but failed to do so and it has no explanation. By this way the developer has a chain of default and thereby he cannot show his finger against the complainant.

  
20/05/2019

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11. As per Section 71(2) of the Act the complaint has to be disposed within 60 days from the date of its filing. However 60 days be computed from the date of appearance of the parties. In this case the complaint was filed on 21//11/2019 and the parties have appeared on 01/10/2019. In the meanwhile on account of natural calamity COVID 19 whole nation was locked down completely from 15/03/2020 till 16/05/2020 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**

- The complaint No. CMP/191121/0003948 is hereby allowed.
- The developer is hereby directed to pay return the whole amount of Rs. 5,66,644/-.
- The developer is hereby directed to pay interest @ 2% above the MCLR of SBI from the date of payment till realization. (MCLR be calculated at the rate prevailing as on today)
- The developer shall discharge the loan amount with interest, shall pay the amount which is paid by the complainant on behalf of the developer along with any other legal charges.
- The developer shall pay Rs. 5,000/- as cost of this petition.
- Intimate the parties regarding the Order.

(Typed as per Dictates, Verified, Corrected and Pronounced  
on 20<sup>th</sup> MAY 2020)

  
(K.PALAKSHAPPA)  
Adjudicating Officer

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