

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, RERA**

**BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Dated: 14<sup>th</sup> September 2020**

|                |  |
|----------------|--|
| Complaint No.  | <b>CMP/191224/0005056</b>  |
| Complainants : | B S Pavan Kumar<br>#1-7, Mount Road, 1 <sup>st</sup> Block,<br>Behind Madhavan Park,<br>Jayanagar East,<br>Bengaluru Urban – 560011<br>and<br>Iyengar and Pai Advocate, No. 253,<br>1 <sup>st</sup> Floor, 6 <sup>th</sup> Main, 36 <sup>th</sup> Cross,<br>4 <sup>th</sup> Block, Jayanagar,<br>Bengaluru - 560011<br>Rep. By:Sri. Sushanth Venkatesh Pai,<br>Advocate. |
| Opponent :     | Adarsh Developers<br>Number 10, Vittal Mallya Road<br>Bengaluru-560001.<br>Rep. By Prakash Hegde, Advocate.  |

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

1. This complaint has been filed by complainant under Section 31 of RERA Act against the project “Adarsha Premia-Phase1” developed by Adarsh Developers. Their complaint reads as under:

*P. S. Sushanth Venkatesh Pai*  
14/09/2020

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*An initial Agreement and a supplemental agreement were entered into by the Complainant and the Developer, which stated that possession of the Apartment will be handed over by 31.12.2018. Despite the expiry of the date for delivery, the Respondent is yet to complete the project and hand over possession to the Complainant. Having no other alternative remedy and receiving no response from the Respondent, the Complainant prefers this Complaint before this Hon'ble Authority. The Detailed Complaint annexed herewith will give insight into the dispute.*

*Relief Sought from RERA : Refund of Sale Consideration along with interest and appropriate compensation and damages.*

2. In pursuance of the summons issued by this authority Sri Sushanth Advocate has appeared on behalf of the complainant. Sri Prakash Hegde Advocate has appeared on behalf of the developer.
3. After filing the objections the matter was posted for arguments. The case was set down for arguments on 17/03/2020, but due to lock down the case was not called on that day. After lock down was lifted the hearing date was fixed on 17/07/2020. But due to clamping of lock down again the case was called on 30/07/2020 and the case was heard through virtual hearing by using Skype and reserved for judgment.
4. The point that arise for my consideration are:
  - a) Whether the complainant proves that he is entitled for refund of his amount along with other reliefs as sought in his complaint?
  - b) If so, what is the order?

*P. S. S. S.*  
*14/09/2020*

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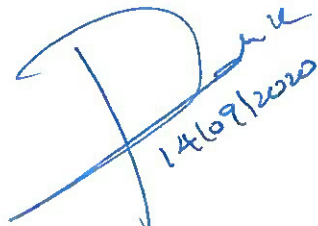
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5. My answer is affirmative in part for the following

**REASONS**

6. The Complainant has entered into an Agreement of Sale dated 12.08.2014 for the purchase of Flat bearing No. C 303 in ADARSH PREMIA at Kadirenahalli Village, Uttarahalli Hobli, Bangalore South Taluk. The Agreement stipulated the time for completion of construction and delivery of possession of Flat was 36+3 months from the date of Agreement.
7. Subsequently, a Supplementary Agreement dated 27.04.2017 was entered into pursuant to the necessary requirements made under the Real Estate (Regulation and Development) Act, 2016; wherein it was agreed that the construction would be completed and possession handed over on or before 31.12.2018. Thus, the Respondent had extended the time by a period of one year and four months.
8. However, notwithstanding such extension of time, the Respondent has failed to complete the construction of the Apartment and also failed to deliver the possession to the Complainant. The Complainant has made payment of all the instalments as per the payment schedule, whenever called upon to do so by the Respondent, without any demur or protest.
9. *Per contra the developer has submitted his arguments by denying the case of the complainant.*
1. *It is his case that the agreement to sell relied upon by the complainant is pertaining to acquire an apartment in the **proposed pending development project** of the larger property; whereas the original documents thereof required*

  
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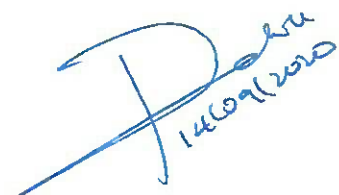
to be handed over to the Apartment Owners Association of the said project.

i) Date of intended Joint development agreement (JDA) is 24-10-2006 and modified JDA is 31-08-2009 and thereby, as per the development scheme thereof, it was intended to be developed with constructing the building complex therein consisting Basement, Ground floor and 25 upper floors, utilizing the available FAR and TDR and thus, possible delay in completing the such project was not unexpected and the said facts have been brought to the notice of the complainant also by specifying the information about the project.

ii) That the date of **original agreement to sell dated 12-08-2014** has been entered into by and between the land owners of the larger property (fifteen in numbers) along with the builder (respondent) and the complainant. According to the said agreement to sell,

- a) Purpose of sale is right to construct the apartment only through developer
- b) The development project thereof was **intended to be completed within 36 with 3 months grace period**, subject to the other terms of the agreement including **Force Majeure**

10. That the development of project in question was initially intended to be completed within September 2017 and accordingly, the respondent became able to complete the construction thereof only to the extent of already approved plan, i.e., up to 15 upper floors only and the respondent became unable to obtain the approval for the modified plan for getting construct the additional upper floors, being capable of transferring the property of the entire project to the apartment owners thereof. The said delay was caused beyond the

  
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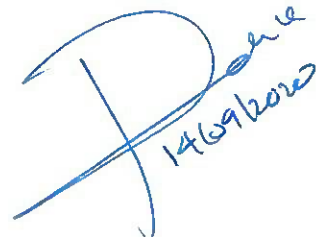
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control of the respondent and thus, the respondent has sought for extension of intended competition period consulting with all the intending acquirer of the apartments including the complainant and accordingly, the complainant was also entered into the supplementary agreement dated 27-04-2017. Execution of supplementary agreement is admitted by the complainant. The complainant is not claiming the compensation from the date mentioned in the original agreement. According to complainant the developer has utterly failed to complete the project even from the date mentioned in the supplementary agreement. Further the stand taken by the developer to the effect that the complainant has entered into the agreement with the developer for the construction of the flat and UDS from the land owner is not acceptable.

11. Further it is the case of the respondent that the clauses contained in the agreements entered into between the parties, i.e., the Sale Agreement and Construction Agreement to be read. In this regard it is submitted on behalf of the developer that the complainant has given agreement to the land owner to purchase UDS and agreement given to the promoter to construct the flat. In view of the same the promoter is only a contractor to build the house in accordance with the plan. The landowner who has received the amount who agreed to give the land is also necessary party. By highlighting this aspect the learned counsel for the developer submits that the present complaint is not maintainable and the same is liable for dismissal. But the same is not acceptable for the simple reason that there is no need to make the land owner as party since the developer as defined in the Act covers the plea taken by the developer. He is bound to answer to the claim of the complainant. There is a provision to file an affidavit in form B while filing the application for registration of project where he sworn to the fact that he will not

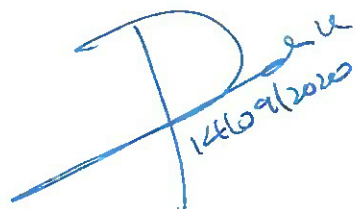
  
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- discriminate between the allottees. When that being the case now the developer cannot contend that the complainant has not given authority to him regarding the land. I would say that there is no concept of construction of agreement itself. Under the above circumstances the developer cannot argue that the complainant has agreed to construct the flat by the developer and agreed to buy the land from the land-owner. I would say that the argument placed before me is fully against to the definition of "promoter" as defined in S.2(zk).
12. It is his further submission that the amount paid by the complainant is not a sale consideration since he has purchased UDS from the land owner and he has given some contract to the developer to build the flat. I have already said that the definition of the word PROMOTER as per S.2(zk) he cannot raise such kind of defence.
13. At the time of argument the learned counsel for the developer has raised some more technical points. According to him the Adjudicating Officer has not recorded plead guilty as envisaged in rule 30(2)(d) and points for determination has not been framed and as such the present complaint is not maintainable. I would say that the Sri Prakash Hegde advocate has put in appearance on behalf of the developer by filing his vakalath. Further he has filed his detailed objections denying his liability towards prayer made by the complainant. Accordingly the developer has placed his intention to contest the same.
14. It is his further argument that the complaint filed by the complainant is not in accordance with the form which is meant for the said purpose. He also submits that in order to know whether

  
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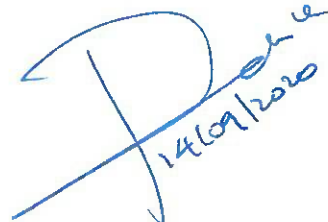
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the complaint is filed covering the violation of S.12, 14,18 and 19 or not it should be in the same manner. In this regard it is submitted that the complaint is as per the rules laid down by Karnataka Real Estate Rules 2017 and contents of the complaint gives a definite picture about the violation of specific provision of law. Further he submitted that entire complaint when read together clearly reveals that the same has been filed for contravention of Section 12,14,18 and 19 of the Act. Further I say that the contention taken by the developer is not correct since the complainant has applied his complaint through online to take action against the erred developer for the appropriate relief. By reading the complaint it is understood that what kind of violation has been committed the respondent. Therefore I would say that the developer tried to discard the case of the complainant by raising some technical grounds but his submission cannot be accepted in view of intention of this act. In this regard I would like to take the assistance of some observation made by **HARYANA REAL ESTATE APPELLATE TRIBUNAL** which reads as under:

*As per preamble the enactment of the Act was required to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building or the sale of the real estate project in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector and to establish an adjudicating mechanism for the speedy dispute redressal between the promoters/developers and the home buyers. The basic purpose for enactment of the Act was to provide the special platform to the consumers for redressal of their grievances against the defaults and malpractices of the promoters/builders. It was felt that several promoters had defaulted and the consumers who had spent their hard*

  
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*earned money had no specialized forum to approach to get the speedy remedy. Thus, in a way the Act is a beneficial legislation to the consumers but at the same time it also provides certain remedies to the promoters for the recovery of the dues and other matters.*

15. In view of the above observation and also it is said that the civil procedure code and Indian Evidence Act are not strictly applicable and as such complaint filed by the complainant without the assistance of legal background cannot be dismissed on some technical defects which will defeat the purpose of the Act.
16. Further it is the case of the developer that the delay was caused is beyond his control and as such it is the main contention of the developer that the complainant is not entitled for relief.
17. In this regard it is the case of the developer that on account of the execution of supplementary agreement and getting permission from the other authority caused for the delay. Further it was also specifically described about the new set of rules came to be effected under the Karnataka Town and country Planning Act, which was main factor in causing delay beyond the control of the respondent and the same has been admitted by all the intending acquirer of the apartments, including the complainant.
18. In accordance with the said supplementary agreement the project was intended to be completed within the end of **December, 2018** and however, due to the newly enforced RERA Act, the respondent was constrained to getting register the pending project before the RERA, fact of which also brought to the notice of all the intending acquirer of the apartments that the said date of complaining the project, i.e, December, 2018, is subjected to the time to be taken for

*[Handwritten Signature]*  
14/09/2010



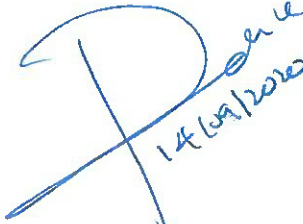
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securing permissions to be taken in accordance with newly enacted RERA.

19. If caused further, the delay compensation shall be paid to the intending acquirer of the apartments at the rate of Rs.2/- per sq. feet per month of such delayed period.
20. Under the aforesaid facts, having no other better alternative, the Respondent has got registered said pending project before the Hon'ble Authority as an ongoing project, being completed by the month June, 2020 as per the RERA Registration certificate issued by the Hon'ble Authority for the reasons caused to the non-completion of the project, as well as, the fact of registering the project before the RERA has been also communicated to the complainant also, vide letter dated 18-08-2018 which was not denied by the complainant.
21. In this connection I would say that the developer has not taken so many reasons to bail out from the present situation. I would say that this authority has decided in so many cases holding that the due date mentioned in the agreement of sale is the only criteria to determine the due date. Whatever the reasons given by the developer under the umbrella of delay in sanctioning by competent authority all are not sustainable and therefore a right will accrue to the complainant when the developer has failed to complete the project on or before December 2018. A right is accrued to the complainant either to continue with the project or to seek compensation. Here the complainant has sought for refund of the amount paid by him. I would say that even at the time of argument also it is not the case of the developer that he has received the occupancy certificate. As on today the one and half year is over

  
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from the due date even then the developer is not able to complete his project and thereby he must refund the amount which was paid by the complainant towards the purchase of the flat in question.

22. It is the say of the Complainant that he has tried to get in touch with the respondent on several occasions to determine the date of completion and delivery of possession of the Apartment to him. These attempts have been futile as the respondents have at best given vague and evasive replies. The Complainant had issued a letter in November 2019, asking for assurance on the date of handing over of possession of the Apartment to him. The Respondent's representatives, though contacted the Complainant, did not give him any assurance or undertaking and continued with vague and evasive replies and further urged him not to worry.
23. The Complainant has waited long enough and is not in a position to tolerate any further delay on the Respondent's part as he has suffered financial hardship on account of repaying the home loan without any hope of the project being completed anytime in the foreseeable future, making it a dead/bad investment for him. In support of the same he has given citations which have been passed by this authority. I would say that the present complaint is entirely different from the case referred by the respondent. When there is violation of terms of agreement then a right will accrue to the buyer as per S.18 of the Act either to seek delay compensation or for refund of the amount. Further the developer has not received the Occupancy Certificate means he has no any defence and as such his arguments cannot be accepted.

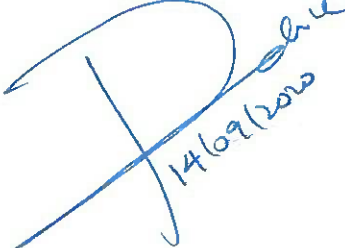
*Devi*  
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24. The developer has referred to extension of completion period in so for as affected with Covid-19. The same will not take away the right accrued to the complainant in filing this complaint or demanding for the refund since the time given by the developer for completion of his project came to an end as 31/12/2018. The date given to authority for completion of the project is only for his convenience but not affect on the right of the buyer and hence it is not helpful to the developer.
25. In view of the same coupled with my discussion I say that the whatever the defence taken by the developer will not prevent the complainant from seeking the relief as claimed by him and as such I have no any hesitation to say that the present complaint is deserves to be allowed in part.
26. As per Section 71(2) of the Act the complaint shall be disposed of within 60 days. This complaint was filed on 24/12/2019 where the parties have appeared 19/02/2020. The case was posted to 17/03/2020 for filing 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 17/05/2010. In view of the office order the case was called through Skype and finally heard the parties and as such this judgment could not be passed within the due time and as such it is with some delay. With this observation, I proceed to pass the following.

  
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ಬೆಂಗಳೂರು-560027

**ORDER**

- a) The complaint filed in CMP/191224/0005056 is hereby allowed.
- b) The developer is hereby directed to refund Rs. 6,00,000/- to the complainant.
- c) The developer is directed to pay simple interest @ 9% on the respective amount paid on the respective date till 30/04/2017 and @ 2% above the MCLR of SBI commencing from May 2017 till the realization of entire amount.
- d) The developer is also liable to discharge the bank loan with its interest, EMI if any, EMI if paid by the complainant on behalf of the developer with any other statutory charges.
- e) The developer is also directed to pay Rs. 5,000/- as cost of this case.
- f) Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 14/09/2020).

  
(K.PALAKSHAPPA)  
Adjudicating Officer.