

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,  
# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,  
3rd Cross, Mission Road, Bengaluru-560027

**PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4**

**PRESIDED BY SHRI. H.C. KISHORE CHANDRA, CHAIRMAN**

**DATED 18<sup>th</sup> DAY OF OCTOBER 2023**

**COMPLAINT No: CMP/210303/0007734**

**COMPLAINANT....**

**BHAVANA B  
DS MAX SMARTNEST  
FLAT NO; 417, 4<sup>th</sup> FLOOR  
PAPAREDDY PALYA ROAD  
GANIGARAHALLI  
BENGALURU URBAN-560090**

**(BY SRI. RAJKUMAR, ADOVCATE)**

**V/S**

**RESPONDENT.....**

**M/S DS MAX PROPERTIES  
PRIVATE LIMITED  
NO: 1854, 17<sup>th</sup> MAIN  
30<sup>TH</sup> "B" CROSS  
5<sup>TH</sup> BLOCK, HBR LAYOUT  
BENGALURU URBAN-560043**

**(BY SMT. SUJATHA HH  
ADVOCATE)**

**JUDGEMENT**

1. This complaint is filed under section 31 of the RERA against, project "DS MAX SMARTNEST" developed by " M/s DS MAX PROPERTIES PRIVATE LIMITED " for the relief of refund with interest.

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2. This project is registered in RERA bearing registration No. PRM/KA/RERA/1251/309/PR/180516/001703.
3. The builder has developed this project in the limits of Sy.No. 4/2, Ganigarahalli Village, Yeshwanthpur Hobli, Bengaluru North Taluk.
4. The gist of the complaint is that the complainant had purchased a flat bearing no. 417, located on 4<sup>th</sup> Floor in the project known as "DS MAX SMARTNEST" developed by the respondent vide registered sale deed dated 09/5/2018. The complainant is facing lot of issues since the occupation of the flat. The flat is FILLED of air cracks, several structural and non-structural defects, seepage issues, maintenance. It is contended that he has raised the issue of defects with the respondent on multiple occasions. The respondent has also attempted to address the said issues time and again. As the repairs and rectifications of the flat's defects carried out by the respondent were not satisfactory and the same continued to remain despite the respondent tending to such repairs. Therefore, the complainant was constrained to file this present complaint seeking for the relief of refund with interest. Hence, this complaint.
5. After registration of the complaint, in pursuance of notice, the respondent has appeared before this Authority through his counsel and filed statement of objections as under:
6. The respondent has denied all the allegations made against it by the complainant as false. It is contended that as per the choice of the complainant, the agreement of sale was executed on 27/11/2017 between

*Adh*

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both the parties with respect to flat no. 417 in 4<sup>th</sup> floor in the project” DS MAX SMARTNEST” of the developer. The total sale consideration of the said unit was Rs.20,50,800/- (Rs. Twenty lakhs fifty thousand eight hundredonly) wherein the respondent was required to hand over the possession by 27/01/2019. The respondent has completed the project in all aspects and executed the registered sale deed in favour of the complainant on 09/5/2018 and handed over possession on 18/10/2018. Subsequent to sale deed, khatha with respect to the said unit has been transferred to her name and the complainant is in possession and enjoyment of the said property.

7. The respondent has formed an Association and the same was registered as SMART NEXT WELFARE ASSOCIATION and the association is managed by Krish-V-Facility Management Services Private Limited. It contends that the reasons taken by the complainant in the complaint to refund of entire amount with interest is unjustifiable as the complainant herself has signed on the possession letter which reads as “ I have faced a lot of issues before taking the handover of the flat. But happy at last getting the flat handover”. Hence, prayed to dismiss the complaint.
8. In support of her claim, the complainant has produced documents such as (1) copy of sale deed dated 9/5/2018(2) E-mails to DS Max regarding defects (3) Photographs (4) Reply e-mails issued by DS MAX (5) copy of memo of calculation (6) E-mail to DS Max regarding memo of calculation
9. (The respondent in support of his defence has produced documents such as (1) copy of booking form (2) copy of agreement of sale (3) copy of RERA registration certificate (4) copy of sale deed dated 9/5/2018 (5) copy of

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possession letter (6) copy of acknowledgement signed by the complainant for taking possession (7) copy of khatha in the name of the complainant (8) copy of Association Registration Certificate (9) copy of management agreement certificate

**10. On the above averments, the following points would arise for my consideration:-**

1. Whether the complainants are entitled for the relief claimed?
2. What order?

**11. Findings to the above points are as under:-**

1. Partly Affirmative.
2. As per final order for the following

**FINDINGS**

**12. Findings to point No.1:-** The complainant has approached this forum seeking for the relief of refund with interest. The grounds urged are that the complainant's flat had succumb to several structural and non-structural defects. She has raised the issue of defects with the respondent on multiple occasions and the respondent has also attempted to address the said issues time and again. The said defects persisted despite the best efforts of the respondent in clearing the defects. She has also requested the respondent to clear the defects through a third party vendor. However, the respondent has neither repaired the defects nor agreed to handover the said job to a third party vendor.

13. The same is resisted by the respondent on the ground that he has completed the project and executed the sale deed in favour of the complainant on 09/05/2018. Subsequent to rectification of the said defects, the complainant has taken the possession of the said flat on 18/10/2018. Subsequent to sale deed, khatha with respect to the said unit has been transferred in the name of the complainant and she is in occupation and enjoyment of the said property. The developer has handed over the possession as agreed during the year 2018 itself. The respondent has also formed an Association and the same was registered as

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SMART NEST WELFARE ASSOCIATION which is managed by Krish-V-Facility Management Services Private Limited.

14. During the proceedings held on 06/03/2023, the Authority has ordered for spot inspection. Accordingly, the engineers of RERA team has conducted spot inspection on 15/03/2023. The inspection report reveal that there are some cracks in some portions between wall and RCC column junction, ceiling/beam, main door frame junction and living room. Further, on the terrace of the flat no.417, the water proofing treatment/plastering is damaged resulting in seepage due to coverings/sloping on the terrace were not provided. The spot inspection team have observed and calculated the rough expenditure cost that may be required to arrest the leakage/seepage, plastering, cracks and other repair works etc., towards the said flat no: 417 and submitted estimated cost approximately amounting to Rs.60 to 70,000/- subject to actual work done after completion the entire defects.

15. On a perusal of the documents filed and oral submissions made before the Authority, as agreed to between both the parties, the respondent was required to hand over the possession of the flat No: 417 in the project " DS MAX SMARTNEST" to the complainant by 27/01/2019. It is pertinent to note that the respondent has completed the project and executed the registered sale deed in favour of the complainant on 09/5/2018. Subsequent to execution of sale deed and also as per the intimation of the complainant, small defects have been rectified by the respondent. After satisfying with the rectification of the said defects, the complainant has taken possession and she is in occupation and enjoyment of the premises since 18/10/2018 which is much before the due date of completion of the project i.e. by 27/01/2019. It is pertinent to note that the complainant herself has acknowledged on the possession letter that she is happy to take over the flat.

16. Further, it may be noted that the complainant has taken the possession of the said unit on 18/10/2018. Upon the request made by the complainant,

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the respondent has rectified the defects before handing possession of the said flat to the complainant. As the complainant is in occupation since 2018 and in full enjoyment of the said property, the question of returning the amount with interest as per Section 18(1) of RERA Act does not arise. Subsequent to taking over of the said unit for possession, it is the bounden duty of the allottee to intimate the promoter-respondent to rectify the defects if any as per section 14(3). Accordingly this Authority has directed the inspection team of KRERA to ascertain the genuineness of the facts. As per the observations made over in the inspection report, it is pointed out by the Authority that, the defects as mentioned by the complainant are minor in nature and the same can be rectified by the respondent/promoter. These being the facts, the claim of the complainant for refund with interest does not arise as the promoter has not defaulted in handing over the possession as agreed between both the parties. After taking into consideration the spot inspection report submitted by the Engineering Team, RERA on 15/3/2023 with respect to flat no. 417 of the complainant, it would be just and appropriate to give direction to the respondent-promoter to carry out remaining structural and non-structural defects of the said flat of the complainant.

17. Having regard to all the above facts and circumstances of the cases, the point raised above is answered as partly Affirmative.

**18. Findings to point no.2.** In view of the above discussion, I conclude that, this complaint deserves to be allowed partly. Accordingly, I proceed to pass the following order:

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**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/210303/0007734** is hereby allowed partly as under:

1. The respondent is hereby directed to carry out the remaining structural and un-structural defects with respect to flat no. 417 in the project "DS MAX SMARTNEST" as per the spot inspection report dated 15/3/2023 of Engineering Team, RERA, within 60 days from the date of this order by giving prior notice to the complainant.
2. The complainant is hereby directed to extend fullest cooperation during the course of rectification of defects
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.

  
(H.C. Kishore Chandra)  
Chairman  
K-RERA

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