

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, HON'BLE CHAIRMAN**

**Dated 8<sup>th</sup> DAY OF DECEMBER 2023**

**COMPLAINT No: CMP/UR/ 200826/0006325**

**COMPLAINANT..**

**RAVI MISHRA  
RELIANCE GENERAL  
INSURANCE CO.LIMITED  
THAPAR HOUSE, 4<sup>TH</sup> FLOOR  
163, S.P. MUKHERJEE ROAD  
KOLKATA  
WEST BENGAL-700026**

**(REP.BY YESHU MISHRA  
HARANAHALLI LAW  
PARTNERS )**

**V/s**

**RESPONDENT....**

**V. PRABHU KUMAR  
DEVELOPER  
M/S VSG DEVELOPERS  
87, 6<sup>TH</sup> CROSS, 25<sup>TH</sup> MAIN  
AGARA 1 SECTOR  
HSR LAYOUT  
BENGALURU URBAN-560102**

**(REP.BY RAMU S, ADVOCATE)**

**JUDGEMENT**

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**VSG LAKE FOREST**" developed by "**M/s VSG DEVELOPERS**" for the relief of refund of amount paid along with interest.



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2. This project is not registered in RERA.
3. The promoter has developed this project in the limits of Sy.No. 15/7, AECS Layout, A-Block, Singasandra Village, Begur Hobli, Bengaluru South Taluk.
4. The gist of the complaint is that the complainant has booked a flat bearing no.305 situated in the third floor in the project "VSG LAKE FOREST" on August 2013 and entered into an sale cum construction agreement dated 16/8/2013 with the respondent for a sale consideration of Rs.37,00,000/- (Rs. Thirty seven lakhs only). The complainant had paid an amount of Rs.25,91,290/- (Rs. Twenty five lakhs nine one thousand two hundred only) as per memo of calculation dated 25/7/2022 to the respondent/promoter which has been duly acknowledged by him. The respondent has agreed to handover the possession of the flat to the complainants within 15 months from the date of execution of the agreement dated 16/8/2013 with a grace period of 3 months i.e. by 16/2/2015. It is contended that he has availed loan of Rs.37,00,000/- from the PNBHFL and that he has been paying EMIs from 31/8/2013 till date. As per the clause 7 of the sale-cum-construction agreement dated 16/8/2013, it was agreed by the respondent that in case if he fails to deliver the flat within the stipulated timeline, then he shall be liable to pay a sum of Rs.10,000/- per month as penalty for the delay period. The respondent has suppressed the fact that the case has been filed by the local society for the breach of the plan and due to this litigation, the work is on hold for many years now. Further,

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the promoter is always sought time for completion of the project and has given false commitments that he will handover possession. The promoter assured that he would settle and refund the amount and bank interest by giving fake options. Despite he has made payments to the respondent as and when demanded, he has failed to deliver the said flat. Therefore, the complainant has approached this forum seeking for the relief of direction to the respondent to refund the amount paid along with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and filed objections as under:
6. The respondent has denied all the allegations made against it by the complainants as false. It is contended that the respondent has started developing the said property as per the terms of agreement. The development of the said property was stalled in view of the order of injunction passed by the Hon'ble City Civil Court in O.S. No.6582/2013 with regard to construction/development of the schedule property. It is pertinent to that the complainant has not paid the balance sale consideration as per agreement and hence there will be no cause of action on the part of the complainant to approach this forum since he has not performed his part as per agreement. Further, he has taken up the matter to the Hon'ble High Court in MFA No.298/2014 and the matter is now remanded back to Civil Court for trial. The respondent is ready to handover the possession of the said flat to the complainant soon after the disposal of the above suit. The respondent in their written

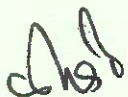
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arguments has contended that this complaint itself is not maintainable on the ground that they have completed the project and applied for obtaining occupation certificate on 10/7/2014 before the coming into force the RERA Act. Hence, prayed to dismiss the complaint.

7. In support of his claim, the complainant has produced documents such as (1) copy of agreement of sale cum construction agreement dated 16/8/2013 (2) memo of calculation.
8. The respondent in support of his defence has produced documents such as (1) copy of agreement of sale cum construction agreement dated 16/8/2013 (2) copy of letter addressed to BBMP, Bommanahalli Zone, Bengaluru dated: 10/7/2014 for grant of OC (3) copy of endorsement dated 21/7/2014 given to the complainant by the BBMP
9. Heard arguments of both the parties. The written arguments submitted by both the complainants and respondent is taken note of by this Authority.
10. This matter was heard on 5/8/2022, 23/9/2022, 2/12/2022, 9/01/2023, 13/2/2023, 13/3/2023, 21/4/2023, 26/6/2023, 18/8/2023, 22/9/2023, 9/10/2023 and 17/11/2023.
11. On the above averments, the following points would arise for my consideration:-
  1. Whether this complaint is maintainable?
  2. Whether the complainant is entitled for the relief claimed?
  3. What Order?



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12. **Findings on the above points are as under:-**

1. In the Negative
2. Does not survive for consideration
3. As per final order for the following:

**FINDINGS**

**13. Findings on point No.1:-** The complainant has approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainant has booked a unit/ flat no.305 situated on the 3<sup>rd</sup> floor in the project "VSG LAKE FOREST" of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale cum construction agreement dated 16/8/2013 for a total sale consideration of Rs.37,00,000/- (Rs. Thirty seven lakhs only) out of which the complainant has paid an amount of Rs.25,91,290/- (Rs. Twenty five lakhs ninety one thousand two hundred ninety only. The respondent had promised to hand over the possession of the said flat within 15 months with a grace period of 6 months i.e. by February 2015. It is contended that though he has made payments to the respondent as and when demanded, in spite of which the respondent has failed to handover the said flat to the complainant. The respondent did not disclose with regard order passed by the Hon'ble Civil and Sessions Court in OS No:6582/2013.

14. The same is resisted by the respondent on the ground that the complainant is a defaulter in paying the balance sale consideration as agreed under the agreement of sale cum construction dated 16/8/2013. It is contended that the project was clear with all respect including its clear title. But the Air Force Society had filed a false case before the Hon'ble Civil Court stating that the respondent had encroached Court in OS No: 6582/2013 on



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4/12/2013 and due to this interim order, the respondent was unable to deliver the flat. The above project does not come under RERA as the agreement was done before the commencement of RERA and the project could not be registered under RERA as the project was stayed due to status quo order of the Hon'ble Court.

15. From the materials placed on record, it is apparent that both the parties have entered into an agreement of sale cum construction agreement dated 16/8/2013. The contention of the complainant is that due to delay in completion of the project and the respondent has not handed over the possession of his flat no. 305 as agreed and hence he is seeking for refund of his entire amount paid along with interest by the respondent.

16. Herein this case, after completion of the project, the respondent has applied for obtaining occupancy certificate before the BBMP, Bommanahalli Zone, Bengaluru on 10/7/2014. For this, the BBMP, Bommanahalli Zone have issued an endorsement on 21/7/2014 stating that they have inspected the said project on 18/7/2014 and found that the construction of the said project is under the completion stage. But they have noticed that one original suit in OS No: 6582/2013 is registered before the Hon'ble City Civil Court in which the respondent herein is a defendant and that there is status quo order in the said suit vide order dated 4/12/2013. For these reasons, they cannot issue occupancy certificate.

17. As this juncture, my attention is drawn towards the decision of our Hon'ble High Court of Karnataka in case of W.P. No: 18843/2022 M/s Cambrian Technologies Private Limited V/s Karnataka Real Estate Regulatory Authority and Miraya Rose by UKN residents welfare association in which it is held that the projects already completed or to which the completion certificate has been granted are not under its fold

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and therefore vested or accrued rights if any, in no manner are affected. In terms of sub Rule(iv) of rule 4 of the rules those properties to which the applications are filed before the competent authority seeking occupancy certificate either partial or complete need not be registered with RERA. If no registration is required with RERA, the RERA would not get authority to entertain any complaint against any property to which occupancy certificate is sought for either partial or complete.

18. The principle laid down in the aforesaid judgement is aptly applicable to the present case on hand. Herein this case, after completion of the project, the respondent has applied for occupancy certificate on 10/7/2014 for the project "VSG LAKE FOREST" developed by M/s VSG Developers.

Accordingly, the point raised above is answered in the Negative.

19. **Findings on point no.2:** When the complaint itself is not maintainable, I am of the considered opinion that it is not necessary to discuss about the merits of the case. Hence, this point does not survive for consideration.

20. **Findings on point no.3:** In view of the discussion held in finding no.1, this complaint deserves to be dismissed. Hence, I proceed to pass the following:



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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/UR/200826/0006325** is hereby dismissed as not maintainable.

No order as to costs

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

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