

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,  
8TH FLOOR, B.W.S.S.B BUILDING, K.G.ROAD,BANGALORE-09**

**Complaint Case No. CC/236/2022  
( Date of Filing : 14 Oct 2022 )**

1. Raghavendra J

S/o. Jayarama Setty, Aged about 41 Year, R/at No.37,1st Main  
Road,Raghava Nagar,NTY Layout, Bengaluru-560026

.....Complainant(s)

Versus

1. Mr. D K Shiva Kumar

S/o. D.K.Kempegowda, Aged Major, R/at No.252,18th Cross  
Road,Shadashivnagar,Bengaluru-560080

2. Mrs. D K Manjula

W/o Mr.Sharath, Aged Major, R.at No.789,3rd Main,RPC Layout,  
Vijaynagar,Bengaluru-560040

3. Mr.D. K Suresh

S/o. D.K Kempegowda, Aged Major, R/at No.602/A5,18th Cross  
Road,Shadashivanagar,Bengaluru-560080

4. M/s. Salarpuria Properties Pvt Ltd

Bengaluru Branch Office at No.4th Floor,Salarpuria Windsor &  
No.3,Ulsoor Road,Bengaluru-560042. Rep by its Authorized  
Signatory.Mr. Sanjay Kumar Agarwal,Mr. Rajiv Agarwal,Mr. Nirmal  
Kumar Badalia

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MRS. M. SHOBHA PRESIDENT  
HON'BLE MRS. SUMA ANIL KUMAR MEMBER**

**PRESENT:**

**Dated : 09 Oct 2023**

**Final Order / Judgement**

Complaint filed on:06.10.2022

Disposed on:09.10.2023

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION AT  
BANGALORE (URBAN)**

**DATED 09<sup>TH</sup> DAY OF OCTOBER 2023**

**PRESENT:-**

**SMT.M.SHOBHA**

**: PRESIDENT**

**B.Sc., LL.B.**

**SMT.SUMA ANIL KUMAR**

**: MEMBER**

**BA, LL.B., IWIL-IIMB**

## COMPLAINT No.236/2022

COMPLAINANT		Sri.Raghavendra J., S/o. Jayarama Setty, Aged about 41 years, R/at No.37,1 <sup>st</sup> Main Road, Raghava Nagar, NTY Layout, Bangalore 560 026.
		<b>(SRI.Syed Jaffer Mohiyuddin, Advocate)</b>
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OPPOSITE PARTY	1	Mr.D.K.Shiva Kumar, S/o. D.K.Kempegowda, Major, R/at No.252, 18 <sup>th</sup> Cross Road, Shadashivanagar, Bangalore 560 080.
	2	Mrs.D.K.Manjula, w/o. Mr.Sharath, major, R/at No.789, 3 <sup>rd</sup> Main RPC Layout, Vijayanagar, Bangalore 560 040.

	3	Mr.D.K.Suresh, S/o. D.K.Kempegowda, Major, No.602/A5, 18 <sup>th</sup> cross, Shadashivnagar, Bangalore 560 080.
	4	M/s Salarpuria Properties Pvt. Ltd., Bangalore Branch Office, Office at 4 <sup>th</sup> Floor, Salarpuria Windsor & No.3, Ulsoor Road, Bangalore 560 042. Rep. by its authorized signatory. 1. Mr.sanjay Kumar Agarwal, 2. Mr.Rajiv Agarwal, 3. Mr.Nirmal Kumar badalia
		<b>(Ops rep. by Eashwar Prasad B., Advocate)</b>

## ORDER

### SMT.M.SHOBHA, PRESIDENT

1. The complaint has been filed under Section 35 of C.P.Act (hereinafter referred as an Act) against the OP for the following reliefs against the OP:-
  - a. To direct the respondent to pay 18% rate of interest on 30,81,352/- from the date of agreement 10.04.2017 until the disposal of the complaint.
  - b. To direct the respondent to pay damages of Rs.10,00,000/- for hardship and mental agony.
  - c. To direct the respondent to pay damages of Rs.10,00,000/- for hardship and mental agony.
  - d. To direct the respondent to pay Rs.1,00,000/- towards legal expenses.
  - e. And to pass such other relief.
2. The case set up by the complainant in brief is as under:-

The Ops have entered into sale agreement and construction agreement on 10.04.2017 for the purchase of the suit schedule property i.e., A 3BHK apartment bearing No.1501 on the 15<sup>th</sup> floor in the tower 07 of block No.03A in the project known as Divinity. A project jointly promoted by Salarpuria and Sattva Group. Having super built-up area of 1520 sq.feet. 1086.30 sq. feet of carpet area and 1243 of built-up area with share in all the common area with one covered car park space in the tower for a total sale consideration Rs.40,46,800/- and Rs.45,60,000/- on the construction agreement.

3. The complainant has paid a total amount of Rs.30,81,352/-. Due to unavoidable circumstances and covid 19 pandemic the complainant was unable to pay the balance of Rs.55,25,448/- sale

- consideration on time. The Ops have arbitrarily cancelled the sale agreement and they have sold the property to another buyer without informing the complainant and without giving any opportunity to the complainant. After that the OP have returned only Rs.13,03,930/- by way of cheque which was collected by the complainant on 29.08.2022 as return of advance amount after deducting Rs.17,77,422/- without giving any proper reason or explanation for such deduction.
4. The complainant due to his severe financial difficulty has accepted the amount returned by the OP under protest and he has also documented the said transaction by way of email dated 29.08.2022 and also return acknowledgement while collecting the refund amount.
  5. The OP have sold the flat to another buyer at a higher rate and they have earned profit. In addition to this they have also deducted Rs.17,77,422/- from the complainant and have gained illegally at the expenses of the complainant. This is an unfair trade practice used by big builders to exploit home buyers and gain unlawfully and this practice has been going unchecked and the big builders are enjoying immunity by adding illegal, unfair arbitrary and exploitative conditions in sale agreements which leaves the home buyers completely unprotected and at the mercy of the builders. Hence the complainant has filed this complaint.
  6. In response to the notice, OPs appeared and filed their version. The OP have admitted about the sale construction agreement entered between themselves and the complainant on 10.04.2017 for a total consideration of Rs.40,46,800/- and Rs.45,60,000/-. It is further case of the OP that apart from the above amount the complainant has also agreed to pay additional charges amounting to Rs.8,12,000/- towards amenities facilities etc., the central goods and services tax act 2017 came into force on 01.07.2017 i.e., after execution of the agreement with the complainant. Therefore the statutory charges got revised and the total cost of the apartment agreed by the complainant was enhanced to Rs.1,03,84,695/-. Under these circumstances this court has no pecuniary jurisdiction to try this complaint.
  7. It is further case of the OP that the complainant has failed to pay the balance sale consideration amount of Rs.55,25,448/- within the stipulated period as per the conditions stated in the construction agreement. The last payment made by the complainant was on 06.06.2017 and the complainant failed to remit the balance sale and construction consideration to the OP4. The complainant has violated/breached the terms and conditions contained in the agreement. The complainant is taking an undue advantage of plea of covid 19 pandemic and this has no bearing on the facts of this case.
  8. It is further case of the OPs that they have sent numerous follow up calls and mails to the compliant to pay the balance amount and nothing prevented the complainant to respond to the said mails and calls. In spite of making any number of efforts to reach the complainant demanding payment of balance of sale consideration the complainant failed to receive or answer the said mails and calls. When the complainant failed to make balance payment these Ops have sent finally reminder on 13.12.2019 and cancellation letter and intimating that an amount of Rs.17,98,077/- would be deducted towards cancellation charges and taxes and the cheque is ready and further requested the complainant to receive the cheque. This OP have returned Rs.13,03,930/- on 11.08.2022 through cheque which has been collected by the complainant on 29.08.2022 after deducting Rs.17,77,422/-. The OP has further denied that they have deducted the amount without giving proper reason or explanation. As per the terms and conditions in the sale and construction agreement, it is specifically stipulated as to what shall be the amounts payable at respective stages of construction in the construction agreement. It is specifically mentioned that in the event of there being any delay or default in payment of the balance sale consideration of the due dates for whatsoever reasons it can be construed as breach of this agreement by the purchaser and without prejudice to any of the rights of the developer the purchaser agrees that in the event of there being any delay by the purchaser in the payment of installments under the payment plan on the due dates for whatsoever reasons the purchaser become liable to pay interest on such outstanding amounts from the due date of payment till realization. in the event the purchaser not rectified the breach within 30 days of the notice the developer at his discretion will be entitle to terminate the agreement and treat a some equivalent 25% of the entire sale consideration as forfeited and adjust it as pre-liquidated damages and the balance money shall be paid back or refunded within 12 weeks of the disposal of the flat and the rights of the purchaser under the said agreement stands cancelled/terminated as per the

construction agreement. When such being the case since the complainant failed to make any payment subsequent to 06.06.2017 this OP has cancelled the agreement and refund the amount on 28.12.2019 after having waited for more than two years. Hence there is no merit in the allegations made by the complainant against this OP. In view of the cancellation of the apartment by the complainant this OP could not market the said flat for more than three years and he suffered loss due to blocking by this complainant. The complainant has filed this complaint without disclosing the true facts. The complainant is a serious defaulter under the terms of the agreement and he is not entitle for any relief. Hence the OPs prayed for dismissal of the complaint.

9. The complainant has filed his affidavit evidence and relies on 06 documents. Affidavit evidence of official of OP has been filed and OP relies on 31 documents.
10. Heard the arguments of advocate for both the parties. Perused the written arguments.
11. The following points arise for our consideration as are:-
  1. Whether the complainant proves deficiency of service on the part of OP?
  2. Whether the complainant is entitled to relief mentioned in the complaint?
  3. What order?
12. **Our answers to the above points are as under:**

**Point No.1:** Affirmative

**Point No.2:** Affirmative in part

**Point No.3:** As per final orders

### **REASONS**

13. **Point No.1 AND 2:** These two points are inter related and hence they have taken for common discussion. We have perused the allegations made in the complaint, version, evidence, written arguments and documents filed by both the parties.
14. It is undisputed fact that the complainant and the OP have entered into sale agreement construction agreement on 10.04.2017 for purchase of the schedule property bearing A3 BHK apartment bearing No.1501, on the 15<sup>th</sup> Floor, in the tower 07 of Block No.03A in the project known as Divinity Project, jointly promoted by Salarpuria and Sattva Group having super built up area of 1520 sq. feet and 1086.30 sq. feet of carpet area and 1243 of built up area with proportionate share in all common area with one covered car park space in the tower for a sale consideration of Rs.40,46,800/- and Rs.45,60,000/- on the construction agreement.
15. In support of his contention the complainant has relied on the sale agreement and construction agreement dated 10.04.2017 as Ex.P1 and P2.
16. The main grievance of the complainant is that he has paid a total amount of Rs.30,81,352/- by way of bank transfer as Ex.P3 and P4, the bank account statements. Due to unavoidable circumstances and covid pandemic he was unable to pay the balance amount of Rs.55,25,448/-.
17. It is further grievance of the complainant that the Ops have arbitrarily cancelled the sale agreement and have sold the property to another buyer. This complainant was not informed of the sale and has not given any opportunity to be heard.

18. In addition to this the OP have returned only Rs.13,03,930/- by way of cheque dated 11.08.2022 which was collected by this complainant on 29.08.2022 as return of the advance amount after deducting Rs.17,77,422/- without giving any proper reason and explanation for such deduction. This complainant due to severe financial difficulties had accepted the return of the deposit amount under protest and also as a return acknowledgement he has send an email dated 29.08.2022.
19. It is further grievance of the complainant that the OP has sold the flat which was allotted to this complainant to another buyer at a higher rate and have earned profit and they have also deducted Rs.17,77,422/- from the complainant advance amount and they have gained illegally at the expenses of this complainant. This is an unfair trade practice used by big builders to exploit home buyers and gain unlawful and this practice has been going unchecked and the big builders are enjoying immunity by adding illegal unfair, arbitrary and exploitative conditions in the sale agreements which leaves the home buyers completely unprotected and at the mercy of the builders.
20. The complainant in support of his contention has also produced the copy of the sale deed executed by the OP in favour of other buyer namely Mr.A.Surendra Shetty as per Ex.P5, the copy of the registered sale deed. It clearly discloses that the Ops have sold the property in favour of the purchaser for a total amount of Rs.1,04,70,000/-. The complainant has also produced the form No.15 EC to show the details of the transaction as per Ex.P6. As per Ex.P5 and 6 the Ops have sold the schedule property on 13.10.2021 in favour of the purchaser after receiving the entire consideration amount.
21. On the other hand the contention taken by the OP is that even though they have agreed to sell the property in favour of the complainant for Rs.40,46,800/- and Rs.45,60,000/- the complainant has also agreed to pay additional charges amounting to Rs.8,12,000/- towards amenities facilities etc., the central goods and services tax act 2017 came into force on 01.07.2017 i.e., after execution of agreements with the complainants and hence the statutory charges got revised and hence the total cost of the apartment agreed by the complainant was Rs.1,03,84,695/-. Apart from the other charges and hence this commission has no pecuniary jurisdiction to try this complaint.
22. It is also the contention taken by the OP is that the complainant has paid an amount of Rs.30,81,352/- and he could not pay the balance sale/construction consideration of Rs.55,25,448/- within the time. The last payment made by the complainant was on 06.06.2017 and complainant failed to remit the balance sale and construction consideration amount to this OP as stipulated in the sale and construction agreement. The complainant failed to keep up the assurances and pre requisites as per the sale and construction agreement. The complainant has violated/breached the terms and conditions of the agreement. The complainant has booked the flat by undertaking to pay the consideration set forth in the agreements and the complainant himself has violated the terms and conditions of the agreement.
23. It is further contention taken by the Ops that inspite of sending intimation and emails the complainant failed to answer the mails or calls for the payments of balance sale consideration amount. finally this Ops on 13.12.2019 has sent the cancellation letter intimating that an amount of Rs.17,98,077/- would be deducted towards cancellation charges and taxes and the cheque is ready for refund of balance amount of Rs.12,83,275/- and these Ops have also requested the complainant to collect the same from their office. The complainant has not approached with clean hands. There is a clear terms and conditions in the agreement as in clause 5.1.1 if the purchaser defaults in payment of installments along with interest and in the event of purchaser not rectifying the breach within 30 days of notice to rectify the breach the developer at its discretion/option will be entitle to terminate this agreement and treat a sum equivalent to 25% of the entire sale consideration as forfeited and adjust it as pre-liquidated damages and the balance money shall be paid back/refunded within 12 weeks of disposal of the flat and the rights of the purchaser under the agreement stands cancelled/terminated and the similar averments is contending para No.6.1.1 and 6.1.2 of construction agreement. As per the said clause when the complainant failed to make the payment inspite of sending numerous mails, calls, letters the complainant having failed to make good the defaulted installments and also interest charged thereon after giving lots of opportunity these Ops have terminated the agreement and they have issued the refund cheque on 28.12.2019 after waited for more than two years.

24. In support of their contention the Ops have relied on 31 documents. Ex.R1, 2, 4 to 6, 11, 13 to 17 and 20, 25, are all the demand notes generated on various dates by the Ops, ExP3 is a covering letter with sale and development agreement on 13.04.2017 and Ex.R.7, 9, 19, 21,22, 24 and 29 are the email communications, ExR8, 10,12, 23 are the letters sent by the Ops to the complainant, Ex.R.18, 26 and 27 are the cancellation letter sent to the complainant, Ex.R.28 is the cheque dated 28.12.2019 issued by the Ops in favour of the complainant.
25. On these back ground we have gone through the Ex.P1 and P2 the sale and construction agreement and also the terms and conditions in the said sale and construction agreements. On perusal of the clause 7 of the construction agreement it is clear that ***“if the completion of the schedule property is delayed beyond the completion period and the delay is not due to any force majeure event or any default of the second party of this agreement or the agreement to sell then the developer shall pay the second party interest at the rate equivalent to the prevailing SBI MCLR + 2% p.a., calculated from the expiry of the completion period on the amounts actually received by the developer in pursuance of this agreement till the completion of the schedule property if achieved being the monthly compensation that could be suffered by the second party due to such delay in handing over the schedule property.”*** We have also gone through the clause 13 of the Construction Agreement. It is clear that ***“the developer after sending the notice of completion of the schedule property the second party shall within 30 days of such intimation make all payments under the agreement and shall come forward to take possession of the schedule property as well as conveyance of the schedule B property in the event of the second party failing to make payments under the agreement is liable to pay/bare all the consequential expenses and power demand charges from the date of connection taxes levies charges increase in income tax payable by the second party due to delay in taking conveyance. The second party shall also become liable to pay to the developer monthly or party thereof holding charges of Rs.10/- per sq. feet of the schedule C property after expiry of the said period of 30 days from the date of developer notifying the schedule C property is ready for possession and the possession is not taken by the second party.”***
26. We have also gone through the clause 6.1.1 and 6.1.2 of the agreement. It is clear from this clause that ***“if the purchaser failed to pay the balance amount and committed default the developer at its discretion or option will be entitle to terminate this agreement and treat a sum equivalent to 25% of the entire cost of construction as forfeited and adjust it as pre-estimated liquidated damages”.***
27. As per the above clause 6.1.2 of the agreement the OP has deducted 25% of the entire cost of construction from the complainant from the advance amount paid by the complainant and refunded only Rs.13,03,930/-. It is also clear from the very contentions taken by the OP that the last payment made by the complainant on 06.06.2017 itself and after that the complainant failed to remit the balance amount. As per Ex.P1 and P2 the OP has agreed to complete the project and hand over the possession in the year June 2020.
28. The OP have not at all completed the construction in the year 2017. The OP has sold the schedule property as per Ex.P5 in favour of another purchaser namely A Surendra Shetty for an amount of Rs.1,04,70,000/- on 13.10.2021. The OP have offered to sell the schedule property as per Ex.P1 and P2 for an amount of Rs.86,06,800/-. They have sold the flat agreed in favour of the complainant for more than Rs.1,04,70,000/-. In view of this the Ops have not at all suffered any loss even though the complainant has left the project after giving intimation in the year 2017 itself when the schedule property was under construction. After considering the terms and conditions of the agreement it is clear that the terms and conditions of the agreement referred above are one sided clauses and unreasonable and unfair terms. The complainant cannot be made to bound to the terms of the agreement which are unreasonable and unfair. The terms of the contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line on a contract framed by the builder(National Commission, New Delhi page No.144).
29. The contractual terms of the agreement Ex.P1 and P2 are the ex-facie one sided unfair and unreasonable. The incorporation of such one sided clauses in an agreement constitutes an unfair trade practice as per sec 2(47) of the C.P.Act, since it adopts unfair methods or practices for the purpose of selling the flats by the builder. The amount deducted by the OP Rs.17,77,422/- out of the advance paid by the complainant Rs.30,81,352/- is highly exorbitant and illegal. Under these

circumstances the OP is liable to return the entire amount deducted by them Rs.17,77,422/- to the complainant with interest @ 10% p.a., from the date of agreement till realization. The complainant has clearly established the unfair trade practice on the part of the OP.

30. It is the main contention taken by the OP that this Commission has no pecuniary jurisdiction to try this complaint, since the complainant has agreed to purchase the schedule property for Rs.86,06,800/- and after that the said sale price was revised for Rs.1,03,84,695/-. It is pertinent to note here that the complainant is claiming only the part of the advance sale consideration amount paid by him and the claim of the complainant is only Rs.17,77,422/- with interest and damages and legal expenses. When the claim made by the complainant is only Rs.17,77,422/- and even with interest and other compensation it will not exceed the pecuniary jurisdiction of this commission. Under these circumstances this commission has got pecuniary jurisdiction to try this complaint. Hence we answer point No.1 in affirmative and point No.2 partly in affirmative.
31. **Point No.3:-** In view the discussion referred above we proceed to pass the following;

### **ORDER**

1. The complaint is allowed in part.
2. Ops are hereby directed to return Rs.17,77,422/- to the complainant with interest at 10% p.a., from the date of agreement i.e., 10.04.2017 till realization.
3. Ops are further directed to pay litigation expenses of Rs.10,000/- to the complainant.
4. The OP shall comply this order within 60 days from this date, failing which the OP shall pay interest at 12% p.a. after expiry of 60 days on Rs.17,77,422/- till final payment.
5. Furnish the copy of this order and return the extra pleadings and documents to the parties.

*(Dictated to the Stenographer, got it transcribed and corrected, pronounced in the Open Commission on this 09<sup>th</sup> day of OCTOBER, 2023)*

(SUMA ANIL KUMAR)

(M.SHOBHA)

MEMBER

PRESIDENT

### **Documents produced by the Complainant-P.W.1 are as follows:**

1.	Ex.P.1	Copy of the sale agreement
2.	Ex.P.2	Copy of the construction agreement



3.	Ex.P.3 & 4	Copy of the two bank statements
4.	Ex.P.5	Copy of the sale deed
5.	Ex.P.6	Copy of EC
6.	Ex.P.7	Certificate u/s 65B of the Indian Evidence Act

**Documents produced by the representative of opposite party – R.W.1;**

1.	Ex.R.1	Extract of minutes of the meeting
2.	Ex.R.2 & 3	Demand notes
3.	Ex.R.4	Covering letter
4.	Ex.R.5 to R7	Demand notes
5.	Ex.R.8	Email communications
6.	Ex.R.9	Letter dated 20.11.2017
7.	Ex.R.10	Email communications
8.	Ex.R.11	Letter dated 20.01.2017
9.	Ex.R.12	Demand note
10.	Ex.R.13	Letter dated 25.02.2018
11.	Ex.R.14 to 18	Demand notes
12.	Ex.R.19	Cancellation letter dated 13.06.2018
13.	Ex.R.20	Email sent by OP4
14.	Ex.R.21	Demand note
15.	Ex R.22 & 23	Email sent by OP4
16.	Ex.R.24	Letter dated 09.10.2018
17.	Ex.R.25	Email sent by OP4
18.	Ex.R.26	Demand note
19.	Ex.R.27 & 28	Cancellation letter
20.	Ex.R.29	Cheque
21.	Ex.R.30	Email dated 02.08.2022
22.	Ex.R.31	Certificate u/s 65B of Indian Evidence Act

**(SUMA ANIL KUMAR)**

**MEMBER**

**(M.SHOBHA)**

**PRESIDENT**

**[HON'BLE MRS. M. SHOBHA]  
PRESIDENT**

**[HON'BLE MRS. SUMA ANIL KUMAR]**

