

PROCEEDINGS OF THE AUTHORITY

Dated 5th of AUGUST 2021

1. CMP/180106/0000378

....Complainants

HARI S,

No.301, 2nd Floor,
15th Main, MICO Layout,
Hongsandra, Begur Main Road,
Bengaluru - 560068.

2. CMP/181120/0001642

RAJESH K N,

Flat No. U34,
Ground Floor, 14th Cross,
Malleshwaram Swimming Pool Ext,
Bengaluru - 560003.

V/S

PRABHAVATHI BUILDERS &

DEVELOPERS PVT. LTD.,

.....Respondent

No. 27/89, 4th 'B' Cross,
30th Main Road,
BTM Layout 2nd Stage,
Bengaluru - 560076.

These complaints have been filed against an unregistered project
"Prabhavathi Comforts", measuring 1053 sq feet situated at Sy. No. 244 &
235/3 at Begur Village, Begur Hobli, Bengaluru South Taluk.

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

The complainant Mr. Hari. S, complaint bearing No. 378, has stated the following in his written arguments dated 14/11/2018.

1. The complainant and his wife who were working South Africa had booked a flat bearing No. S-13, 2nd Floor, in the project named as Prabhavathi Comforts measuring 1053 sq feet situated at Sy.No.244 and 235/3 at Begur Village, Begur Hobli, Bengaluru South Taluk which is developed and to be constructed by M/s. Prabhavathi Builders & Developers Pvt. Ltd., The complaint had entered into a Sale Agreement and Construction Agreement on 08/02/2016 for total consideration of Rs.34,00,000/-.
2. The complainant had availed bank loan from State Bank of India, Malleshwaram Branch Pursuant to which a Tripartite Agreement dated 29/03/2016 with the respondent and State Bank of India was entered.
3. The complainant has paid a sum of Rs.3,50,000/- as booking amount on 08/01/2016, 21/01/2016 and 13/03/2017.
4. The bank had disbursed of Rs.24,48,000/- to the respondent directly to his account. All the documents for bank verification were given by the builder to the bank. Even the respondent had issued a letter dated 10/03/2016 undertaking that the said property is not subjected to mortgage, loan and no charge has been created on it.
5. In the month of June, 2017 when the complainant approached the Respondent for the registration of sale of the Flat, the respondent sought more time as the construction is not completed. The complainant when secured the Encumbrance certificate for the flat No.S-13, Prabhavathi comforts, it came to his knowledge that the said Flat No.S-13, was already sold by Respondent to one A. Jeevan Reddy on 19/08/2015 and he had mortgaged the said

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property to Corporation bank way of registered Mortgage deed dated 11/09/2015.

6. When the complainant confronted the respondent about the alleged previous sale and mortgage they admitted that the said flat has been sold to Jeevan Reddy. They promised for alternative flat. But the complainant came to know that the respondent has cheated several other purchasers in the same manner and several police complaints have been filed against the Managing Director, promoter and his family members.
7. Further it is pertinent to note that construction has not been completed in the project Prabhavathi Comforts and it is left unfinished.
8. Without other alternative the complainant lodged complaint dated 20/09/2016 before MICO Layout police against the respondent and its promoters which have been registered as Crime No.468/2017 for offences punishable under Section.420 read with Section 32 of Indian Penal Code and case is under investigation.
9. The respondent has now illegally and unfair practice collected an amount of Rs.27,98,000/- from the complainant and his banker. Further the complainant has already paid EMI of Rs.5,60,380/- to his banker. So the complainant has suffered a total loss of Rs.33,58,380/- due to the illegal act of cheating by the Respondent.
10. The complainant submits that because of the fraud played by the respondent, he and his wife left their job in South Africa and came back to India to clear the issues with the respondent and doing odd jobs. Because of the illegal activity of the respondent, complainant and his wife lost their lucrative job and future prospect.

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

11. The complainant requested the Authority to direct the Respondent to pay Rs.33,58,380/- to the complainant with interest at the rate of 18% p.a. till the date of realization.
12. Compensation of Rs.25,00,000/- for Mental agony, harassment, financial loss, loss of earning (As petitioner and his were working in South Africa and came to India for registration of flat and were not able to go back because of this issue.
13. Any other relief which this Hon'ble Authority deems fit in the interest of justice and equity.

The complainant Mr. Rajesh K N, complaint bearing No. 1642, has stated the following in his written arguments dated 29/07/2019.

1. The complainant and his wife who were working in UAE had booked a flat bearing No. S-10, 2nd Floor, in the project named as Prabhavathi Comforts measuring 1053 sq feet situated at Sy.No.244 and 235/3 at Begur Village, Begur Hobli, Bengaluru South Taluk which is developed and to be constructed by M/s. Prabhavathi Builders & Developers Pvt. Ltd., The complaint had into a Sale Agreement and Construction Agreement on 13/11/2015 for total consideration of Rs.30,50,000/-.
2. The complainant had availed bank loan from Central Bank of India, Sheshadri Road, Gandinagar Branch Pursuant to which a Tripartite Agreement dated 25/11/2015 with the respondent and Central Bank of India was entered.
3. The complainant has paid a sum of Rs.6,00,000/- as booking amount on 13/11/2015 through RTGS Rs.5,90,000/- and Rs.10,000/- from Debit Card.
4. The bank had disbursed of Rs.21,00,000/- to the respondent directly to his account. All the documents for bank verification were given by the builder directly to the bank.

5. In the month of September, 2017 when the complainant approached the Respondent for the registration of sale of the Flat, the respondent sought more time as the construction is not completed. The complainant when secured the Encumbrance certificate for the flat No.S-10, Prabhavathi comforts, it came to his knowledge that the said Flat No.S-10, was already sold by Respondent to one A. Jeevan Reddy on 19/08/2015 and he had mortgaged the said property to Corporation bank way of registered Mortgage deed dated 11/09/2015.
6. When the complainant confronted the respondent about the alleged previous sale and mortgage they admitted that the said flat has been sold to Jeevan Reddy. They promised for alternative flat. But the complainant came to know that the respondent has cheated several other purchasers in the same manner and several police complaints have been filed against the Managing Director, promoter and his family members.
7. Further it is pertinent to note that construction has not been completed in the project Prabhavathi Comforts and it is left unfinished.
8. Without other alternative the complainant lodged complaint dated 20/09/2017 before MICO Layout police against the respondent and its promoters which have been registered as Crime No.467/2017 for offences punishable under Section.420 read with Section 32 of Indian Penal Code and case is under investigation.
9. The respondent has now illegally and unfair practice collected an amount of Rs.27,00,000/- from the complainant and his banker. Further the complainant has already paid EMI of Rs.18,06,392/- to his banker. So the complainant has suffered a total loss of Rs.45,06,392/- due to the illegal act of cheating by the Respondent.

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10. The complainant submits that because of the fraud played by the respondent, he and his wife left their job in UAE and came back to India to clear the issues with the respondent and doing odd jobs. Because of the illegal activity of the respondent, complainant and his wife lost their lucrative job and future prospect.
11. The complainant requested the Authority to direct the Respondent to pay Rs.45,06,392/- to the complainant.
12. Compensation of Rs.25,00,000/- for Mental agony, harassment, financial loss, loss of earning (As petitioner and his were working in UAE and came to India for registration of flat and were not able to go back because of this issue.)
13. Any other relief which this Hon'ble Authority deems fit in the interest of justice and equity.

Notices were issued and an enquiry conducted on 30/07/2019, 20/12/2019, 10/01/2020, 29/01/2020, 05/02/2020, 19/02/2020, 03/03/2020, 25/03/2021, 07/04/2021, 29/06/2021, 02/07/2021 and finally on 08/07/2021 on which date the case was posted for orders.

The matter was heard over SKYPE. Complainants and Advocate for Respondent were present.

On 25/03/2021, Advocate for Respondent filed Statement of Explanation offered by the Respondent, which is as follows:-

1. The Respondent served with notice for hearing dated 30/12/2019 and called upon to appear for hearing before this Hon'ble Authority, either to register the project or give explanation as to the non-registration of the project by the name "Prabhavathi Comforts".

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Ans

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
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2. It is stated that the respondent is a company incorporated under the provision of Indian Companies Act, 1956 involving in the business of Development and construction. The respondent entered into a Joint Development Agreement with Sri. Raghu Ram Reddy in order to take up construction of Residential Apartment known as 'Prabhavathi Comforts' in the properties bearing Sy. No. 244, measuring 28 guntas Sy. No.235/3 measuring 10 guntas situated at Begur Village, Bangalore. The said agreement entered on 11/05/2012, i.e., prior to the Real Estate (Regulation and Development) Act came into force and obtained building sanction plan on 08/11/2013. The project started by the respondent prior to above Act came into force and therefore the provisions of said Act are not applicable for this project.
3. It appears that the complainant made a complaint to this authority falsely alleging that he had entered into sale agreement and construction agreement dated 06/08/2016 with the respondent total consideration of Rs.34 Lakhs and out of the said amount maximum sale consideration paid by him and despite the same the respondent allegedly sold the flat to third party for which agreement of sale entered with him, and thereby cheated etc., him that on the basis of above said complaint, the Hon'ble Authority was pleased to issue aforesaid person against the respondent in order to harass and claim more amount from the respondent. That apart the complaint filed by above said person does not attract the provisions of RERA Act and therefore the alleged claim of the said person is of Civil consequences and therefore this authority has no jurisdiction to act on basis of complaint given by him and therefore also notice issued by this Authority does not survive in the eyes of law.

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4. It is further stated that the respondent is unable to complete the said project due to administrative reasons and therefore the respondent entered into a Memorandum of Understanding with "Prabhavathi Comforts Owners Welfare Association" on 21/05/2017. The Prabhavathi Comforts Owners Welfare Association agreed to complete the pending works of Prabhavathi Comforts project and to give possession of each flat to purchasers accordingly. The respondent handed over the entire project to the Prabhavathi Comforts Owners' Welfare Association and therefore it is for Prabhavathi Comforts Owners Welfare Association to register the project with this Authority.
5. In view of the aforesaid facts and circumstances the respondent has not registered the project and it is not in the picture of said project after entering into an Memorandum of Understanding with above said Association. Therefore it is just and necessary to accept the explanation offered by the respondent and drop the proceedings against the respondent.

Heard both sides and perused the documents.

The claim made by the Respondent, that the jurisdiction of RERA does not apply in this case is not correct. The liability of the promoter does not cease to exist merely because he entered into MOU with the Prabhavathi Comforts Owners Welfare Association on May 21, 2017. It is pertinent to note that the building was incomplete as on that date and the MOU was for the purpose of completion of the project. Hence for the purpose of RERA, it was an ongoing project as on June 1, 2017 when RERA came into existence. It may also be noted that Para 6(j) of the MOU holds the builder developer answerable in the court of law or any other Authority / persons in case of any dispute during completion of project till possession by the purchasers.

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Karnataka Real Estate Regulatory Authority,

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The list of allottees which is enclosed along with the MOU by the Prabhavathi Builders and Developers Pvt. Ltd., mentions at serial No. 16, Flat No. S-13 booked in the name of Hari. S, and Flat No. S-10 in the name of Rajesh K.N at serial No. 32. The complainant (complaint bearing No. 378) Mr. Hari. S paid a total sum of principal amount Rs.27,98,000/- and the complainant (complaint bearing No. 1642) Mr. Rajesh K.N paid a total sum of principal amount Rs.27,00,000/- to Prabhavathi Builders and Developers Pvt. Ltd., The Agreement for Sale between the two parties is also produced by the complainants.

However the Corporation Bank vide their letter dated 18/07/2017 took possession of Flat No. S-13 in lieu of non-payment of a loan of Rs.63,31,227/- taken by the borrower No. 1 Jeevan Reddy A and Borrower No. 2 Lokeshwar Reddy Byni (guarantor) on the basis of a demand notice dated 05/10/2016 issued to the said borrower. The mortgage notice mentions that Flat No. S-13 had an Agreement for Sale in respect of borrower Jeevan Reddy dated 19/08/2015 and Agreement for Construction on the same date.

However, the Agreement of Sale between Prabhavathi Builders and the complainant Hari. S for Flat No. S-13 is dated 08/03/2016. Obviously, the builder had knowingly done a fraud on the complainant Hari. S and have cheated him into parting with Rs. Rs.27,98,000/-.

Similarly, the Corporation Bank also took possession of Flat No. S-10 on 04/08/2017 in lieu of non-payment of loan taken by the same borrower Jeevan Reddy and Lokeshwar Reddy Byni (guarantor) to the extent of Rs.61,14,044/-. The demand notice was issued to the borrowers on 06/02/2017. The Agreement for Sale as mentioned by the Bank document in this case was 19/08/2015. Here again the builder knowingly sold an

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already sold property to the complainant Rajesh K.N as per Agreement of Sale dated 13/11/2015 and willfully cheated him of Rs.27,00,000/-.

In view of the above, it is clear that Prabhavati Builders and Developers Pvt. Ltd., deliberately cheated complainant Sri. S. Hari and complainant Sri. Rajesh K. N, and have caused them financial loss as well as mental harassment.

In view of the above, following order is passed.

ORDER

The project 'Prabhavathi Comforts' comes into the purview of RERA as it was an ongoing project as on June 1, 2017.

The complaints bearing No. CMP/180106/0000378 and CMP/181120/0001642 are allowed under Section 18(3) of the Real Estate (Regulation and Development) Act, 2016.

In the interest of justice and equity the respondent the Prabhavathi Builders is hereby directed as under:-

- (i) To offer its explanation on the issue of non-registration of this project, as an ongoing project, since the project was not completed in all respects as on the date of commencement of the Act. An opportunity is hereby given to show cause as to why penalty @ 5% of the project cost should not be levied under Section 59(1) of the Real Estate (Regulation and Development) Act,

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14/11/2017

Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

2016 for failure to register the ongoing project within three months from the date of commencement of the Act.

- (ii) In respect of the CMP/18016/0000378, filed by complainant, Mr. Hari S, respondent – promoter shall refund the following:

Principal amount of Rs.27,98,000/-, together with interest computed @9% from the dates on which the payments have been made by the allottee Mr. Hari S upto 30/04/2017. Further, the said principal amount of Rs.27,98,000/- shall carry interest @ 10.75% from 01/05/2017 to the date of actual payment of principal and interest so accrued.

- (iii) In respect of the CMP/181120/0001642, filed by complainant, Mr. Rajesh K.N., respondent – promoter shall refund the following:

Principal amount of Rs.27,00,000/-, together with interest computed @ 9% from the dates on which the payments have been made by the allottee Mr. Rajesh K.N., upto 30/04/2017. Further, the said principal amount of Rs.27,00,000/- shall carry interest @10.75% from 01/05/2017 to the date of actual payment of principal and interest so accrued.

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Karnataka Real Estate Regulatory Authority,

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- (iv) As regards the compensation payable to the complainant – allottees, by the promoter – respondent, the complainants are at liberty to file separate complaints before the Adjudicating Officer of K-RERA.


(Neelamani N Raju)

Member
K-RERA


(D. Vishnuvardhana Reddy)

Member
K-RERA


(H.C. Kishore Chandra)

Chairman
K-RERA