

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

Dated 2nd AUGUST 2022

COMPLAINANTS.....

1. CMP/UR/200109/0005161

SUHAS S KULKARNI,

Flat No. 111, First Floor,

JP Nagar 8th Phase,

Jambu Savari Dinne,

1st Cross Road,

South Avenue, Gottigere,

Bengaluru – 560083.

2. CMP/UR/200106/0005148

PADMAVATHI BIRUDURAJU,

Flat No. 207,

Anand Enclave,

Jambu Savari Dinne,

Opposite Sri. Chaitanya Techno

School, J.P. Nagar,

Bengaluru – 560083.

(Rep. by. Advocate G Sridhar)

V/S

RESPONDENTS.....

1. M/S. TR BUILDERS & DEVELOPERS,

Yashodha Regency, No. 3,

5th C Main, Tata Silk Farm, KR Road,

Bengaluru – 560070.

(Rep. by. Advocate S.S. Reddy, B.N.J

Babu & K.V. Sudheer)

2. SRI. VIJAY ANAND KUMAR,

Ashwini, No.33/1,

Aga Ali Abbas Road,

Bengaluru – 560042.

(Rep. by. Advocate Viren Peres)

3. SMT. KARPAGAM ANAND KUMAR,

Ashwini, No.33/1,

Aga Ali Abbas Road,

Bengaluru – 560042.

(Rep. by. Advocate Viren Peres)

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These two complaints are filed under section 31 of the RERA Act against the project "Anand Enclave" for the relief of direction to the respondents to get the project registered and to impose penalty.

Both these matters are taken up together for disposal as they are arising from common project.

Brief facts of the complaint in complaint No.5161 is as under:-

The complainant Suhas S Kulkarni has entered into an agreement of sale for purchase of flat No.111, located on 1st Floor, in Anand Enclave with respondent No. 2 and 3 who are the landowners who are represented by Respondent No. 1 as GPA holder on 04/03/2015 in the project of respondents. It was agreed in the Agreement of sale that the total sale consideration would be Rs.43,69,600/- (Rupees forty three lakhs sixty nine thousand six hundred only) and on the date of agreement of sale the complainant has paid Rs.9,00,000/- (Rupees Nine lakhs only) as advance to the respondents. On the same day they have entered into a construction agreement dated 04/03/2015 for construction of the flat No.111. Further, the respondent No. 1 who is GPA holder for Respondent No. 2 and 3 has executed sale deed in favour of complainant on 30/04/2016 after receiving balance sale consideration. However, the respondent have failed to obtain occupancy certificate at the time of RERA Act coming into the force they ought to have registered the project in RERA which they have failed to do so.

Since this project was ongoing as on the date of commencement of RERA Act, the respondents ought to have got registered the project. But, till date the respondents have never taken steps for registration of the project. Even the respondents have not obtained occupancy certificate.

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The complainant prays to direct the respondent to get the project registered under RERA and to impose penalty of 10% of project cost as per Section 59.

Brief facts of the complaint in complaint No.5148 is as under:-

The complainant Padmavathi Biruduraju has purchased a flat bearing No.009, in the project of Anand Enclave. They have purchased this apartment from Smt. Archana Dayanand and Sri. Dayanand Prabhudev had entered into agreement of sale in the year 2014 with Respondent No. 1 who is GPA holder of respondent No. 2 and 3. A construction agreement was also signed by the purchasers for construction of apartment bearing No.009. A sale deed was also registered on 26/03/2016 in favour of Smt. Archana Dayanand and Sri. Dayanand Prabhudev.

The complainant Padmavathi Biruduraju has purchased the said apartment from Smt. Archana Dayanand and Sri. Dayanand Prabhudev vide registration of sale deed dated 01/03/2019 for Rs. 45,00,000/- (Rupees forty five lakhs only).

The complainant prays to direct the respondent to get the project registered under RERA and to impose penalty of 10% of project cost as per Section 59.

Hence, these complaints.

After registering the complaints, the respondents have appeared before the Authority through their counsel and filed objections as under:-

They have denied all the allegations made against them by the complainants as false. This project was completed way back in 2016 and all the apartments fallen to the share of Respondent No. 1 were sold earlier to 01/05/2017 i.e., before the enactment of RERA Act. The

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project "Anand Enclave" was completed on 24/04/2016 and the architect has issued work completion certificate. All the apartments which were fallen to the share of these respondents were sold between 2016 and 2017. The complainant in 5148 has purchased the apartment during 2019 from first purchaser of 2016. Hence, prayed to dismiss the complaints with costs.

Respondent No. 2 and 3 have filed objections in complaint No. 5161 as under:-

The complainant has not purchased the apartment from these respondents and they have not received any consideration from him. Complainant didn't raise any claim against them so far. This complaint is barred by limitation as the complainant took possession of the flat since 30/04/2016. Said project Anand Enclave was not ongoing project as on the date of commencement of RERA Act. The development work was completed on 01/09/2015 and the building was completed. Hence, prayed to dismiss the complaint with costs.

Respondent No.2 and 3 have filed objections in Cmp. No. 5148 stating that one Archana and Dayanand have purchased a flat earlier from respondent No. 1 under Sale deed dated 23/06/2016 from the share of respondent No.1. Subsequently, they have sold the flat for cancellation of Rs.45,00,000/- (Rupees Forty five lakhs only) to the complainant under sale deed dated 01/03/2019 which is a second sale. These respondents have not executed said sale deed dated 01/03/2019 and not received any consideration from the complainant. Said Archana and Dayanand vendors of the complainant are necessary parties. This complaint is barred by limitation.

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Respondent No. 2 and 3 have filed objections in complaint No. 5148 as under:-

The complainant has purchased a flat under sale deed dated 30/04/2016 from the share of Respondent No.1 for consideration of Rs. 47,80,600/- (Rupees Forty seven lakhs eighty thousand six hundred only). This complaint is barred by limitation.

These respondents have not executed any documents in favour of complainant. As on 30/04/2016 this project was not ongoing project on the date of commencement of RERA Act. The project was completed on 01/09/2015 and RERA Act came into force on 01/05/2017. Hence, prayed to dismiss the complaint with costs.

In support of their claim, the complainants have produced in all 3 documents such as copy of agreement of sale, construction agreement and sale deed.

On the other hand, the Respondents have produced in all 3 documents in support of their defence such as copy of broacher, plan sanctioned by BBMP, tax payment receipt.

Both sides have submitted written arguments.

On the above averments, the following points would arise for our consideration:-

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

Our Answer to the above points are as under:-

1. In the Negative.
2. As per final order for the following

Ans.

Ans.

Ans.

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REASONS

Our Answer to point No. 1:- The facts of these complaints reveal that the project was completed and sale deed has been executed in the year 2016 i.e., before RERA came into effect. The prayer in both the above complaints are only for registration of project as occupancy certificate is not obtained.

From the above, it is clear that two conditions have to be satisfied for registration of project. Firstly, that the project should be ongoing and secondly, the completion certificate has not been issued. Both the conditions should be satisfied for the developer to register the project in RERA.

The plain reading of above two complaints clearly shows that those sale deeds have been executed in 2016. No material has been placed on record to show that the project was ongoing as on 01/05/2017 when the RERA came into effect. Not obtaining occupancy certificate in itself becomes a deficiency of service for which the complainants can explore alternative remedy for compensation.

So, far as complaint in 5161 and 5148 there is no direct contact between the developer and complainant. It was the duty of complainant to do due diligence when he purchased the apartment from Smt. Archana Dayanand and Sri. Dayanand Prabhudev having failed to do so it is not legally tenable to approach this forum for relief. In any case, for not obtaining OC, alternative remedy can be explored as observed above.

In that view of the matter, the complainants would not be entitled for the relief claimed in the complaints. Accordingly, this point is answered in the Negative.

Our answer to the point No. 2:- In view of the above discussion, complaint deserves to be dismissed. Hence, the following order is passed.

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ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaints bearing No. CMP/UR/200109/0005161 and CMP/UR/200106/0005148 are hereby disposed of as under:-

Respondent is directed to take steps to obtain OC from competent Authority.


(Neelamani N Raju)
Member-2
K-RERA


(D. Vishnuvardhana Reddy)
Member-1
K-RERA


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

02/08/22

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