

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

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BEFORE ADJUDICATING OFFICER

PRESIDED BY SRI I.F. BIDARI

DATED 13TH OCTOBER 2021

Complaint No.	CMP/171016/0000146
Complainant	Mr. Manjunath Naik, 56, 3 rd main, SBM Layout Anand Nagar, Bengaluru Urban - 560024. (In Person)
Respondent	Karnataka State Government Employees House building Co operative Society No: 142, "Vellalam Nilaya", CHBS Layout, Bengaluru Urban - 560040. (By Sri. V. Krishna Murthy, Advocate)

J U D G M E N T

Mr. Manjunath Naik (here-in-after referred as complainant) has filed this complaint bearing No. CMP/171016/0000146, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent Karnataka State Government Employees House building Co operative Society (here-in-after referred as respondent), for the relief of site allotment and compensation and interest.

2. The brief facts of the case are as under:

The complainant is a member of respondent society. The respondent society is in existence since 2001. The respondent society is headed by Mr. H. N. Sheshegowda as president and



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directors on the board, named in the complaint. The respondent society is developing the residential layouts for its members. The complainant did apply for an allotment of a residential site measuring 40*60 feet's (2400sq.ft.) in Doddaaladamara, 2nd Stage (SLN City) of Mysore Road Bengaluru. The complainant has paid Rs.9,00,000/- entire value of the society on or before 16.04.2008. The respondent had sent an intimation letter dated 10.03.2008, demanding full and final payment and it was mentioned in the said letter that layout is in the final stage of completion and they would allot sites to its members who would make final payment before 16.04.2008. The complainant base on said letter and promised by president and directors of the respondent in that regard he made full payment of the site. The complainant subsequently when approached the respondent society for the allotment of the site but respondent postponed the allotment of site on one or the other pretexts. The president and its directors in the year 2007 had promised that the entire layout is ready with all developmental works and they would allot the site to its members who have paid full payments before 16.04.2008 but subsequently failed to allot the site as promised. The complainant between 2007 to 2016, several times visited respondent office, requested for allotment of site but in vain. The respondent in the year September 2016 sent a letter of allotment stating that a site No. 621 in Tavarekare Block-2 (without mentioning the survey number) has been allotted to him. Thereafter when he visited the said site, he came to know that there was no formation of layout and site was lacking all basic amenities and it was in a different location than promised. This apart it's measurements was 12*15 sq.mts., but he had booked for 12*18 sq.mts., i.e., 2400sq.ft., site. The complainant on



29.07.2016 visited the office requested to allot him the site as promised to him but president and director Mr. G. V. Naik behaved with him rudely. The president and director have made false promises to the complainant all these years, caused him financial loss and mental harassment. The complainant, on 27.07.2017 sent a legal notice to the respondents but as on date of filing of the complaint no reply was given to the said notice. That in July 2017 the complainant received letter dated 16.09.2016 from the society stating that a site No. 621 in Tavarekere Block-2 (without mentioning the survey number) has been allotted to him. The so allotted site is lacking basic amenities and in different location than promised one. Thus the complaint of the complainant praying to register the complaint and initiate necessary legal proceedings as per RERA Act and Karnataka Real Estate (Regulation and development) Rules 2017 (here-in-referred as K-RERA rules) against respondent society president/secretary/directors, officers/staff, members concerned as they have caused him financial loss, mental harassment and suffer for long 10 years. The complainant prays to direct the respondent to allot him promised site free from litigation also to pay him compensation for delay in allotment of site. These main grounds among others urged in the complaint, prayer to grant the reliefs as prayed in the instant complaint.

3. The respondent has filed the statement objections admitting the fact that complainant is it's member and has paid Rs.9,00,000/- for allotment of site. It is contended that reliefs sought in the complaint against the respondent society are all ill- motive, illegal, same cannot be granted. The claim of the complainant against respondent society does not survive for consideration. This authority has no jurisdiction to entrain the complaint. The



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site No.621 measuring 12*18 meters was allotted to complainant on 16.09.2016. The said site has been formed out of converted land in Sy. Nos. 153/6, 153/7, 153/10, 153/11, 153/15 totally measuring 57 acres 39 guntas by obtains permission from the Magadi Development Authority dated: 28.05.2010. The respondent society is not a business forms which does business with profit motive. Sri. Priya Krishna a promoter of the project, as required, released the sites in the year 2010 and relinquish deed has been registered in the year 2010. The K-RERA Act and K-RERA Rules came into force with effect from 11.07.2017. As required under rule 4 of K-RERA Rule 2017 in-respect of layout where site No.621 has been formed and allotted in favour of complainant, the streets and civic amenities sites and other services have been handed over to local authority and planning authority for maintenance through registered relinquish deed dated: 24.05.2010. The promoter has not been made as party. The respondent society is not the promoter or owner of the site bearing No. 621. The respondent merely allotted said site in favour of the complainant. Therefore in view of settled possession of law applicability of RERA Act and K-RERA Rules to the present complaint filed by the complainant does not arise at all. The complainant for the identical relief as sought in this complaint, has already approached the registrar of co-operative society and raised a dispute under section 70 of Co-operative society Act, wherein respondent is contesting the matter. The complainant has also filed a complaint No. 2844/2017 for identical reliefs in the Hon'ble Bengaluru Urban II Additional District Consumer Disputes Redresal Commission Bengaluru (here-in referred as ADCDRC Bengaluru) thus matter is sub judies. All the members of the society are collectively responsible



for all actions and decisions to which the complainant is also a party. The respondent has procured sites from its developer and all the sites have been distributed among the members, wherein above said site No.621 has been allotted to the complainant. The complainant during the pendency of the complaint filed a memo and sought total compensation of Rs.2,56,44,208.61/- on different heads mentioned therein without any basis. The complainant had sought compensation of Rs.3,00,000/- before the ADCDRC Bengaluru. The respondent is always ready and willing to register the site in favour of the complainant. The complaint No.2844/2017 before the ADCDRC Bengaluru has been dismissed on 12.11.2020. During the pendency of this complaint respondent have allotted 3 different sites and offered the complainant to get the same registered through the society but complainant refused. These main grounds among others contended in the statement objections, prayer to dismiss the complaint with exemplary cost.

4. The Hon'ble Karnataka Real Estate Regulatory Authority Bengaluru, on hearing both side, appreciating materials and documents on record through order dated: 07.03.2020, did dismiss the complaint bearing No. CMP/171016/0000416, as not maintainable under section 31 of RERA Act, against which complainant had preferred appeal before the Hon'ble Karnataka Real Estate Appellate Tribunal Bengaluru(here-in-after-referred as Appellate Tribunal) in appeal (K-REAT) No. 253/2020. The Hon'ble Appellate Tribunal through its judgment and order dated 24.03.2021, allowed the appeal, set aside order dated 07.03.2020 passed by the Hon'ble K-RERA Authority, and matter is relegated to the learned Adjudicating Officer (here-in-after

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referred as AO) for fresh disposal in accordance with law in the light of the observation made in Para No. 4.3 of the order after affording opportunity for the parties as directed therein. Thus the instant case has been taken up for fresh disposal as directed by the Hon'ble Appellate Tribunal. There-after receipt of the records from the Hon'ble Appellate Tribunal, notices were issued to the parties. Pursuant to services of notice the complainant appeared in person and the respondent appeared through its counsel.

5. I have heard the complainant and heard Sri. V.K.M. learned Advocate for the respondent, through Skype. The written arguments are filed both on behalf of complainant and the respondent. Perused the records, materials and written arguments.

6. The points that would arise for consideration are:

- (1)Whether the instant complaint filed by the complainant is maintainable before the Adjudicating Officer?
- (2)Whether the complainant is entitled for the relief as sought in the complaint?
- (3)What order?

7. My findings on the above points are as under:

Point No.1: In the affirmative.

Point No.2: In the negative.

Point No.3: As per final order, for following:-

REASONS



8. Point No.1: The respondent in statement of abjections as also Sri. V.K.M. learned counsel for the respondent and in the written argument of the respondent, in many words submitted that the provisions of RERA Act and K-RERA Rules are not applicable in the present case as same came in to force with effect from 11.07.2017 and the complainant for the identical relief sought in this complaint has raised a dispute U/Sec. 70 of co-operative society Act and also had file complaint No. 2844/2017 before the ADCDRC Bengaluru and after contest same came to be dismissed on 12.11.2020, as such, this complaint is not maintainable and this Authority has no jurisdiction to entrain this complaint. The one more contention of the respondent is that the respondent society is not the promoter but only allotted the site No.621 procuring it from the developer and the developer has not been made as a party in this case and on that ground also present complaint is not maintainable. Per contra the complainant during argument also in written argument submits that as per the promise of the president and directors of the respondent society, also based on intimation letter dated 10.03.2008, he has paid full amount prior to 16.04.2008, requesting to allot him 40*60 feet site (plot) in Doddaaldamara of 2nd stage of Mysore Road Bengaluru but till this day the respondent has not allotted him such site and on the contrary respondent have allotted site No.621 in different location which has no basic amenities, hence prayed to grant relief in his favour as sought. The complainant has produced copy of the receipt 16475 dated 19.12.2007 issued by the respondent in his name for a sum of Rs. 6,01,250/- out of which Rs.1,250/- shown as paid by cash and Rs.3,00,000/- each paid by 2 separate cheque bearing Nos. 487224 and 487225. The complainant filed another



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copy of the receipt 19846 dated: 15.04.2008 issued by the respondent in his name for a sum of Rs. 3,00,000/- paid by cheque bearing No. 487238. In both the receipts it has been mentioned as "AM II Stage". The admitted fact is that complainant is a member of respondent society with membership No.1507 and has paid Rs. 9,00,000/- to the society prior to 16.04.2008 for allotment of site. The complainant has also produced copy of the final intimation letter dated: 10.03.2008 circulated by the respondent between its members. The copy of allotment letter dated: 16.09.2016 discloses that the respondent society allotted site bearing No. 621 measuring 12*15 meters, in Block No.2 of Tavarekere, formed in SLN City, Township Layout, Bengaluru in favour of complainant. The copy of another site allotment letter of the same date: 16.09.2016 discloses that the respondent society allotted site bearing No. 621 measuring 12*18 meters, in Block No.2 of Tavarekere, formed in SLN City, Township layout Bengaluru in favour of complainant. The copy of final intimation letter issued by the respondent to the complainant dated: 23.07.2018 discloses that respondent finally directed the complainant to get register the site allotted to him within the period stipulated therein. The complainant through his letter dated: 27.09.2016 also in legal notice dated: 19.07.2017 informed the respondent society that site allotted to him through aforesaid allotment letter is situated in different location without basic amenities and said site is not asked by him and promised by the respondent. These documents and attending circumstances in the case makes it clear that respondent society has received Rs.9,00,000/- from the complainant agreeing to sell him a residential house site. The respondent society to show that it is not a promoter but only

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allotted site to the complainant procuring site from the developer, has produced copy of the agreement dated: 31.08.2006 entered between the respondent society as first party and Sri. Priya Kirishna proprietor of Sri. Lakshmi Narasimha Enterprises Bengaluru as second party, wherein it is agreed to provide 1,000 residential house sites of dimensions i.e., 30*40 feet 500 sites, 30*50 feet 200 sites, 40*60 feet 50 sites and 50*80 feet 50 sites. The relevant portion in the copy of agreement dated: 31.03.2006 reads as under:

"WHEREAS the first party is the Karnataka State Government Employees House Building Co-Operative Society Limited, Cubbon Park, Bengaluru-560001 registration No. HSF/203/27153/HHS/2000-2001, Dated: 03.03.2001, registered under the provision of Karnataka Co-operative Society's Act, interallia carrying of the business of acquiring the lands, forming the layout, distributing the sites to its member and having identified suitable land for developing them in to layouts, approached to the secondary party with a proposal as to layout formation.

AND WHEREAS the SECOND PARTY is an estate agent contractor carrying on the business of doing private layout house sites around Bengaluru city, accepted the proposal which interallia, purchase of the identified lands, more fully described in the schedule hereunder and hereafter and referred to as the schedule property, conversion of schedule property in to residential property; and the development of the same into a layout, after obtaining required permissions and clearance from the concerned department of Government, and also Board and corporations.



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AND WHEREAS the SECOND PARTY will get the layout plan approved by the competent authority.

WHEREAS the FIRST PARTY after the negotiations with the SECOND PARTY agreed for the proposal on the following terms and conditions."

(under line is supplied by me)

The contents of this agreement makes it clear that respondent society is carrying on business of acquiring the lands, forming layout, distributing the sites to it's members and identifying lands for developing them into layouts. Under the circumstances there is no hesitation to hold that respondent society is a promoter as defined under section 2(zk) of RERA Act, and the complainant is an allottee as defined U/Sec. 2(d) of the RERA Act. The Section 2(d), 2(zk) and 2(zn) of RERA Act defines "Allottee", "Promoter" and "Real Estate Project" respectively which reads as under:

Section 2(d): "Allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person whose subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building as the case may be is given on rent.

Section 2(zk): "Promoter" means,

- (i) A person who constructs or caused to be constructed an independent building or a building consisting of an apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or*

some of the apartments to other persons and includes his assignees; or

(ii) A person who develops land into a project, whether or not the person also constructs structures on any of the plot, for the purpose of selling to other persons all or some of the plot in the said project, whether with or without structures thereon; or

(iii) Any development authority or any other public body in respect of –

(a) Building or apartments, as the case may be constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) Plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) An apex state level co-operative housing finance society and a primary co-operative housing society which construct apartments or buildings for its member or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly

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liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made there under;

Section 2(zn): "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

The above discussed reasons makes it clear that there is no substance in the contention of the respondent that it is not a promoter and it has only allotted site to the complainant procuring site from the developer. Per contra materials on record proves that the respondent society is a promoter and the complainant is an allottee as the respondent has agreed to sell/allot site to the complainant for having received site sale consideration amount from the complainant as discussed above.

9. As per the provisions of Section 13 of the RERA Act, promoter cannot accept or take a sum more than 10% of the plot (site), building, apartment, as the case may be as an advance or an application fee from the purchaser without entering into agreement of sale. As contended by the respondents the K-RERA Act and K-RERA Rules came into force with effect from 11.07.2017 but the transactions with regard to site in question between the complainant and the respondent has been entered much prior to coming into force for provisions of RERA Act and

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K-RERA Rules. In the judgment, in civil appeal No. 6197 of 2000, in the case of Aloka Bose vs Parmatma Devi & Ors, decided by the Hon'ble Supreme Court of India, among others their lordships observed that agreement may also be oral. The documents, materials on record and attending circumstances of the case disclose that the oral agreement has been entered between the complainant and the respondent with regard to sell the site to the complainant. Admittedly till this date site has not been allotted to the complainant and project has not been registered with K-RERA. The Hon'ble Haryana Real Estate Appellate Tribunal in appeal Nos. 52 & 64 of 2018 decided on 03.11.2020, in appeal No. 52/2018 in the case of Emaar MGF Land Limited Vs. Ms. Simmi Sikka and another and in appeal No. 64/2018 in the case of Ms. Simmi Sikka Vs. M/s. Emaar MGF Land Limited, among others observed that provisions of the Act shall become applicable even to an unregistered project or projects which do not require registration with respect to the fulfilment of the obligations as per the provisions of the Act, Rules & Regulations framed there-under. Therefore, it is made clear that in the instant case the project in question though not registered, the provisions of the RERA Act and Rules are made applicable to the present case though the oral agreement has been entered between the parties in the year 2008 much before coming to the force of RERA Act. Under the circumstance there is no substance in the contention of the respondent that provisions of the RERA Act and the K-RERA Rules not made up applicable in this case.

10. The records disclose that the complainant No. 2844/2017 filed by the complainant against the respondents before the Hon'ble

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ADCDRC Bengaluru, has been dismissed on 12.11.2020. This apart one more contention of the respondent is that complainant has raised dispute U/Sec.70 of the Co-operative Society Act. Therefore the instant complaint is not maintainable. No relief of compensation was sought in the complaint No. 2844/2017 before the ADCDRC Bengaluru. The complainant in this complaint among others is seeking delay compensation as contemplated U/Sec.18 of the RERA Act, apart from claiming reliefs U/Sec. 12, 14 and 19 of the RERA Act. As per the provisions contemplated U/Sec.88 of the RERA Act, the remedy available under the RERA Act, is in addition to and not in derogation of the provisions of any other law for the time being in force. The Hon'ble Supreme Court in a ruling reported in AIR 2021 Supreme Court 437, in the case of Ireo Grace Realtech Pvt. Ltd. vs Abhishek Khanna & others, among others in Para 20.11, observed as under:

“20.11. In a recent judgment delivered by this Court in M/s. Imperia Structure Ltd. Vs Anil Patni & Anr, it was held that remedies under the Consumer Protection Act were in addition to the remedies available under special structure.

15. (2020)10 SCC783: (AIR 2021 SC 70)”

The absence of a bar under Section 79 of the RERA Act to the initiation of proceedings before a for a which is not a civil court, read with Section 88 of the RERA Act makes the position clear. Section 18 of the RERA Act specifies that the remedies are — ‘without prejudice to any other remedy available’. We place reliance on this judgment, wherein it has been held that:

“31. Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP



Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or Commission and file an appropriate application before the adjudicating officer under the RERA Act. The proviso thus gives a right or an option to the complainant concerned but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such pending proceedings to authorities under the RERA Act. As against that the mandate in Section 12(4) of the CP Act to the contrary is quite significant.

32. Again, insofar as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a for a which cannot be called a civil court and express saving under Section 88 of the RERA Act, make the position quite clear. Further, Section 18 itself specifies that the remedy under the said section is – “without prejudice to any other remedy available”. Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act.”

Therefore for the reasons discussed above and in view of the ratio and the principles laid down by their lordships in the ruling cited supra reported in AIR 2021 SC 437 the instant complaint of the complainant is maintainable before the AO. Thus this point No.1 is answered in the affirmative for consideration.

11. Point No.2: The complainant has not adduced/produced enough, cogent materials to show that respondent society has agreed to sell him residential site measuring 40*60 feet (2400 sq.fts.), in



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Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

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Doddaaladamara, 2nd Stage (SLN City) of Mysore Road, Bengaluru, much less, as contended by the complainant. In the receipt No. 16475 dated: 19.12.2007 and another receipt No. 19846 dated 15.04.2008 issued by respondent society though it is mentioned as "AM II Stage" but same is not sufficient to hold that respondent has agreed to sell, to the complainant the residential site in Doddaaladamara 2nd Stage (SLN City) of Mysore Road, Bengaluru, much less, as contended by the complainant. This apart the complainant for his entitlement for delay compensation has to prove as to the exact commitment date within which respondent has agreed to sell/allot him site. The complainant has not produced any materials to show that he having paid Rs. 9,00,000/- to the respondent, subsequently he visited the respondent office and demanded to the respondent to allot him site, till 2016. The record disclose that after payment of Rs.9,00,000/-in 2007-2008 in respect of site the complainant visited respondent office 29.07.2016 requested to allot him site and subsequently got issued legal Notice dated:19.07.2017 to the respondent much less as contended by the complainant but no materials produced why he had kept quiet such a long time after payment. Admittedly there is no exact commitment date within which period the respondent to allot/sell and hand over possession of the site to the complainant after payment. Under the circumstance viewed from any angle complainant is not entitled for the delay compensation. The complainant during pendency of complaint has sought compensation to the extent of Rs. 2,56,44,208.61/- on different heads by filing the memo but no cogent materials produced for his entitlement of the said amount or any amount as compensation. At the same time the complainant is also not entitle for any of the reliefs much less,

as prayed in this complaint. Thus point No.2 is answered in the negative for consideration.

12. As per the provisions contemplated U/sec. 71(2) RERA Act the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 16.10.2017, thereafter notices issued directing the parties to appear through Skype for hearing as because of COVID-19 pandemic the personal hearing before the Adjudicating Officer not yet commenced. The case was once decided by the Hon'ble K-RERA Authority on 07.03.2020, against which appeal was preferred. The parties given the reasonable opportunities to contest the case, as such, the judgment is being passed on merits, with some delay.

13. Point No.3: In view of my findings on point Nos. 1 & 2, I proceed to pass the following:-

ORDER

(i) The complaint filed by the complainant bearing No.: CMP/171016/0000146 is hereby dismissed.

(ii) The parties are directed to bear their own expenses in this petition.

(iii) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 13.10.2021)


I.F. BIDARI

Adjudicating Officer-1

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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

PROCEEDINGS OF THE AUTHORITY

Dated 7th of March 2020

COMPLAINT No. CMP/171016/0000146

MANJUANATH NAIK,

....Complainant

No. 56, 3rd Main, SBM Layout,
Anand Nagar, Hebbal Post,
Bengaluru – 560024.

VERSUS

KARNATAKA STATE GOVERNMENT EMPLOYEES

HOUSE BUILDING CO-OPERATIVE SOCIETY,

....Respondent

No. 142, Vellalm Nilaya,
CHBS Layout, 8th Main,
18th Cross, Vijayanagar,
Bengaluru – 560040.

This complaint is filed by Manjuanath Naik against the “**Karnataka State Government Employees House Building Co-Operative Society**” Bengaluru, alleging as follows.

- i. That he had paid Rs. 9,00,000/- as total sale consideration for an allotment of residential site measuring 40*60 feet (2400 sqft), situated in 2nd stage, Doddaladamara (SLN City), Mysore Road, Bengaluru, during 2007.
- ii. Whereas after gap of 10 years, i.e., 2017 the respondent society allotted him a site No. 621 in Tavarekere Block 2, which is lacking in basic amenities like electricity and water.

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- iii. RERA should order the respondent to provide the site in Doddaladamara 2nd Stage as was promised, and also for payment of interest for delayed possession.
- iv. To direct the respondent to pay Rs. 2,56,44,208.61/- (Rupees Two Crores Fifty Six Lakhs Fourty Four Thousand Two Hundred And Eight And Sixty Paise).
- v. It is a fact that he had filed the complaint Bearing No. 2844/2017 before the consumer forum. The RERA Act, does not bar filing of complaint before the consumer Act. This has been upheld by the Supreme Court in the case of "AFTAB SINGH v/s EMAAR MGF LAND LIMITED AND ANOTHER" in consumer case No. 701/2015.

Notices were issued and proceedings conducted.

Sri. V Krishna Murthy, Advocate appeared on behalf of the respondent society and filed written objections on 16/10/2019. The objections in brief are as under:-

- i. The registration of the project under the provisions of the RERA Act, in view of the fact that street and civic amenity sites were handed over to the local planning authority vide relinquishment deed registered on 24/05/2010.
- ii. That site bearing No. 621, has been allotted in favour of the complainant on 16/09/2016.
- iii. That the complainant has filed a complaint before the Bangalore district II, Additional Consumer Disputes, Redressal Forum in Complaint No. 2844/2017 under the Consumer Protection Act. Hence this Authority has no jurisdiction to entertain a complaint and the same is also not maintainable.

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- iv. Before the consumer forum the same complainant had claimed Rs. 3,00,000/- for mental agony. The same complainant is now claiming Rs. 2,56,44,208.61/-, which is malafide and hence the complaint may be rejected.

Heard the arguments of both the complainant and the Respondent, and perused the documents.

Following issues arise for consideration of this Authority.

- i. Whether the complaint filed under Section 19 read with Section 31 of the Real Estate (Regulation and Development) Act, 2016 is maintainable in view of the fact of a pending complaint bearing No. 2844/2017 before the Additional Consumer Dispute Redressal Forum, Bengaluru.
- ii. Whether a direction can be issued to the respondent for allotment of a site as alleged to have been promised in 2nd stage, Doddaladamara (SLN City), Mysore Road, Bengaluru.
- iii. Whether to issue a direction to respondent to pay compensation as prayed.

My answer to these issues is as under: -

- i. No
- ii. Does not arise
- iii. Does not arise

The detailed reasons are as under : -

Issue No. 1 : -

Section 71 (1) of the Real Estate (Regulation and Development) Act, 2016 reads as under:-

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“For the purpose of adjudging compensation under Section 12, 14, 18 and 19, the Authority shall appoint in consultation with the appropriate Government one or more Judicial officer as deemed necessary who is or has been a district judge to be an adjudicating officer for holding an enquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard;

Provided that any person whose complaint in respect of matters covered under Section 12, 14, 18 and 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commissions or the National Consumer Redressal Commission, established under Section 9 of the Consumer Protection Act, 1936, on or before the commencement of this Act, he may with the permission of such forum or commission as the case may be, withdraw the complaint pending before it and file an application before the Adjudicating officer under this Act.”

According to the complainant's own submission, he has filed a complaint Bearing No. 2844/2017 on 11/12/2017 before the Hon'ble District Consumer Dispute Redressal Forum at Bengaluru.

Section 20 of the Real Estate (Regulation and Development) Act, 2016 came into force with effect from 01/05/2016 and rest of the provisions came into force from 01/05/2017.

The complainant has filed a complaint under the provisions of the Real Estate (Regulation and Development) Act, 2016 on 16/10/2017 and has once again voluntarily chosen to file a complaint before the Hon'ble District Consumer Dispute Redressal Forum at Bengaluru on 11/12/2017.

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It is seen that the subject of complaint both before the consumer redressal forum and also this Authority is one and the same. The relief sought before both the Authorities is the same.

In para 55 of the judgement of the Hon'ble Supreme Court in review petition No. 2629-2630 of 2018 in the case of M/s Emaar MGF Land Limited v/s Aftab Singh, it has been held "we may, however, hasten to add that in the event a person entitled to seek an additional special remedy provided under the statutes does not opt for the additional / special remedy and he is a party to an arbitration agreement, there is no inhibition in disputes be proceeded in arbitration. It is only the case where specific / special remedies are provided for and which are opted by an aggrieved person that judicial Authority can refuse to relegate the parties to the arbitration."

In the above said review petition the question was invoking the arbitration clause existing in an agreement which was a subject matter pending before the consumer forum. Therefore the facts and circumstances of the above case is different from what is being agitated. The question here is whether complaints on the same subject could be filed and reliefs claimed at the same time before to different Authorities.

Section 71 of the Real Estate (Regulation and Development) Act, 2016 permits a person to withdraw his pending complaint before the consumer forums filed before the commencement of this Act. A complainant has to make a choice of the Authorities from whom he can claim reliefs. The intention of the legislation in providing for withdrawal of the application appears to be to avoid multiplicity of proceedings on the same subject. Therefore in this case the complainant cannot pursue his claim before this Authority when he has sought remedy before a parallel forum.


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Karnataka Real Estate Regulatory Authority,


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Issue No. 2 and 3: - Since the complaint is not maintainable before this Authority, there is no question of providing reasons for these issues.

In view of the above, following order is passed.

ORDER

The complaint bearing No. **CMP/171016/0000146** is hereby dismissed as not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016.


(Adoni Syed Saleem)
Member-2
KRERA