

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

FOURTH ADDITIONAL BENCH

Dated 27th APRIL 2021

Member Present:-

Adoni Syed Saleem, Member – 2, K-RERA.

COMPLAINT No. CMP/180322/0000610

AJAY AGARWAL

.....Complainant

No. N – 1502,
Concorde Mannhattans,
Niladri Road, E City Phase – 1,
Bengaluru Urban – 560100.

AND

1. PRESTIGE ESTATES PROJECT LIMITED

.....Respondents

The Falcon House,
No. 1, Main Guard Cross Road, Shivajinagar,
Bengaluru Urban – 560001
(Represented by its managing partner:
Prestige Estates Project Pvt. Ltd., Bangalore)

2. M/s. PRESTIGE SUNRISE INVESTMENTS,

A partnership firm situated at
No. 1, Falcon House,
Main Guard Cross Road,
Shivajinagar,
Bengaluru Urban – 560001.

A complaint was filed by the complainant against the Prestige Estates Project Limited, the Respondent No. 1 herein claiming that there was delayed handing over of the possession and hence to award compensation against the respondent at the rate of 9% per annum on



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the sale value of Rs.71,53,861/- for twelve months and on Rs.77,97,708/- for four months. The complainant also requested for the award of compensation of Rs.5,00,000/- on account of the mental agony and hardship which he faced. Further the respondent should also be ordered to pay Rs.24,000/- per annum with 12% interest for the loss of rental income.

Notices were issued and enquiry conducted on 19/08/2019, 03/09/2019, 18/09/2019, 05/10/2019 and 16/10/2019. On these dates the complainant was present and the respondent was absent. Hence the case was posted for orders on 16/10/2019 and finally on 06/12/2019, a final order was passed allowing the complaint.

Thereafter the respondent on 02/01/2020 has filed an I.A under order 9 Rule 13 of CPC, 1908 read with Rule 37, 38 and 39 of the RERA Act seeking setting aside of the ex-parte order dated 06/12/2019. Along with the I.A respondent also filed the affidavit explaining as to why he is requesting for setting aside the ex-parte order.

Enquiry was conducted on the said I.A and on 05/02/2020, the ex-parte order dated 06/12/2019 was withdrawn.

The case was called on 07/03/2020 for further hearing. The advocate for the respondent No. 1 was present and submits that objections to the complaint were sent to the complainant and has also filed a hard copy to this Authority. Hence the case was posted to 21/03/2020 for arguments.

After the case was adjourned, and after some time Mr. Rahul Chowdri, Abheek Saha, Advocates filed vakalat on behalf of the complainant.



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The case was posted on 19/10/2020. It was ordered to issue notices to both the sides. On 22/10/2020 advocates on both the sides were present on skype. Thereafter the case was posted on 09/11/2020 for further enquiry.

On 02/01/2020, Mohammed Sadiq, Advocate filed vakalat on behalf of the Respondent No. 1. He also filed Memorandum of objections on 07/03/2020.

The Advocate for complainant on the same day i.e., 07/03/2020 filed an I.A. under Section 151 of CPC requesting the court to recall the previous order and allow the complainant to file his objections. An affidavit was also filed along with the I.A.

The Respondent's advocate on 21/03/2020 filed Memorandum of objections to the I.A. In the said objections it is stated by the respondents advocate that the complainant advocate is not specific as to which order he wants to be recalled. Hence the I.A. is frivolous and has to be dismissed.

Both the advocates were heard on the I.A. and an order dated 08/12/2020 was passed rejecting the I.A. to recall the setting aside of the ex-parte order and the case was posted for further hearing over skype on 21/12/2020.

The case was actually heard on merits on 19/03/2021, 22/03/2021, 30/03/2021 and 31/03/2021. Mr. Abheek Saha, Advocate has filed Vakalat on behalf of the complainant.

On 30/03/2021, the advocate for the complainant has filed application under order 1 Rule 10(2) read with Section 151 of the CPC



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seeking permission of this Authority to implead M/s. Prestige Sunrise Investments as the Respondent No. 2. In the affidavit accompanying the said application, the complainant has stated that there was no facility for including more than one respondents in online filings. Further since the executed sale agreement is with M/s. Prestige Sunrise Investments, a partnership firm, hence it has to be impleaded as a party.

The I.A. filed to implead M/s. Prestige Sunrise Investments is allowed as it is a necessary party.

Mr. Mohammed Sadiq, Advocate appearing for Respondent No. 1 has filed Vakalat on behalf of M/s. Prestige Sunrise Investments which has been impleaded as Respondent No.2. The advocate for respondent No. 1 has also stated that the statement of objections filed on behalf of respondent No. 1 may also be treated as the statement of objections on behalf of the respondent No. 2 namely M/s. Prestige Sunrise Investments.

Mr. Abheek Saha, Advocate addressing his arguments on behalf of the complainant on 22/03/2021 has submitted that the date of delivery of possession as per the construction agreement was June 2017. The respondents failed to deliver the possession on the said date. There is delay of 16 months in handing over possession by the respondent. Though the possession was given it was for effecting interiors. Till he got active possession of the apartment, he was forced to pay rentals for his building which was purely due to the respondent not adhering to the date of delivery of possession. The advocate also submitted that the said project was ongoing on the date of coming into force of the Real



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Estate (Regulation and Development) Act, 2016. Hence it required registration before this Authority.

Disputing the claims of the complainant, the respondent submitted that the complaint is not maintainable since the complainant had not paid the instalments on time. He has to pay interest on the delayed payment of installment. Secondly the advocate for the respondent submits that the project is exempted from registration in view of Rule (1)(iv).

Heard both the sides and perused the records. In order to arrive at a decision with respect to the complaint on hand, it is necessary to answer the following issues.

Issue No. 1:- Whether the complaint so filed can be allowed and if so whether any reliefs could be granted to the complainant?

Issue No. 2:- Whether the project Prestige Sunrise (Birchwood) requires to be registered under the provisions of the Act and the Rules thereunder.

My answer to both the issues are in the negative for the following reasons.

The complainant in his complaint has stated that he booked an apartment bearing No. B-5133 on 5th January 2016 in the Prestige Sunrise Park (Birchwood), Electronic City Phase-1. He has been paying installments on time and the Respondents were to deliver possession before June 2017. The delay in getting the possession of the apartment squarely lies on the respondents. Hence the complainant has requested



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that a direction has to be issued to the respondents to deliver possession and to pay compensation

The respondent has stated that the complainant failed to pay installments on the due date as per annexure – ii to the construction agreement and as per annexure – ii of the agreement to sell. Clause 4(c) of the construction agreement dated 04/01/2016 reads as under:-

“In the event there being any delay/default by the purchaser to pay the balance cost of construction as per the payment schedule agreed about, the purchaser shall be liable to pay the same with interest at 15% per annum for the delay in making the payment.”

At clause 4(b) of the construction agreement it is stated that “The payment by the purchaser to the developer as per the agreed schedule being the essence of this contract.”

The submission of the respondent is that though the agreed date of delivery was June 2017, the complainant had not paid the installments in time. But after several reminders the complainant finally paid a sum of Rs.4,14,770/- on 30/07/2018 and Rs.7,75,408/- on 29/09/2018 through NEFT. Soon after receipt of the payments from the purchaser, the possession was handed over on 25/10/2018.

The complainant has not produced any evidence to show the payment of installments to the respondent on time.

With respect to registration of the project under provisions of the Act, the contention of the respondent is that the competent agency had on 27/04/2017 certified that all development works were completed.



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The said certificate has been issued by the RSP Design Consultants (India) Pvt. Ltd., a registered engineer.

An application dated 19/05/2017 was filed with the BDA for the issue of occupancy certificate. Accordingly occupancy certificate was issued by the BDA on 07/03/2017.

Hence the contention of the respondent is that the project is exempted from registration under Rule 4(iv) of the Real Estate (Regulation and Development) Rules, 2017.

Rule 4(1)(iv) of the Real Estate (Regulation and Development) Rules, 2017, which grants exemption from registration under the following condition.

“Where all development works have been completed as per the Act and certified by the competent agency and an application has been filed with the competent authority for issue of completion certificate / occupancy certificate;”

The said rules were notified on 10/07/2017. Therefore it is apparent that the project is eligible for exemption.

Considering all the above aspects, the following order is passed.

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint is rejected as devoid of merit.



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In exercise of powers conferred under Section 3 of the Real Estate (Regulation and Development) Act, 2016, and Rule 4(1)(iv) of the Real Estate (Regulation and Development) Rules, 2017, the project Prestige Sunrise (Birchwood) situated in Electronic City Phase -1 is deemed to be exempted from registration.

(Adoni Syed Saleem)

Member - 2

KRERA