

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,

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

**PROCEEDINGS OF THE AUTHORITY**

Dated 25<sup>th</sup> of November 2021

**COMPLAINT No. CMP/UR/201231/007366**

**SUBROTO CHAKRABORTY &**

**....Complainant**

**VIJAYA CHAKRABORTY**

K-641, Sena Vihar,  
Kamanahalli Main Road,  
Bengaluru - 560043.

**VERSUS**

**SOBHA LIMITED,**

**....Respondent**

Sarjapur - Marathahalli Outer Ring Road,  
Devarabeesanahalli, Bellandur Post,  
Bengaluru - 560103.

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This complaint is filed by the complainants against the respondent for registering the Agreement of Sale and sale deed without incurring any additional costs to the allottees.

**Brief facts of the complaint are as under: -**

That the complainants had entered into an Agreement of Sale dated 21/08/2012 with respondent to purchase the flat in the project Sobha City - Casa Paradiso. It is alleged that the respondent had cheated them by handing over an incomplete property and amenities are not provided as agreed to in the Agreement of Sale. Moreover, said Agreement of Sale is not registered though the 1% of the land value was charged by the Promoter towards the registration fees. Even BWSSB water connection has not been provided as on date, which is a







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contravention of Section 11(4)(d) of the RERA Act. Hence, this complaint.

In pursuance of the notice, the Respondent has appeared before this Authority through his counsel and filed **objections** as under: -

All the allegations made by the complainant are denied. It is contended that the complainant is a habitual litigant. One more complaint No. 4376 is pending before the National commission in which the present complainant is also one of the complainants. It is a basic principle of law that a party cannot approach two courts simultaneously for same or similar reliefs. So, the purchaser has to choose only one forum to put forth his grievances. The purchaser has to select either consumer forum or this Authority and not both. Even the complainant along with other purchasers have sought for the relief of declaration that the Deed of Declaration dated 08/09/2016 is null and void and for other ancillary reliefs by filing a civil suit which is pending before City Civil Court, Bengaluru.

It is submitted by the respondent that the City Civil Court has already heard one of the applications filed by the plaintiff in O.S.No. 4872 of 2020 and dismissed the same. In the said suit Respondent is the defended No. 2. It is a matter on record that the block in which the complainant has his unit was granted an Occupancy Certificate on 15/04/2016 itself after which the respondent called upon the complainant for registration and shared the draft Sale deed. The complainant was called upon for registration of sale deed after obtaining the registration date from concerned sub-registrar. But the complainant himself postponed the registration dates for the reasons best known to him.

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It is further submitted that the registration of the unit was scheduled on 17/01/2017, 20/01/2017, 03/02/2017, 14/02/2017, 21/03/2017, 25/03/2017, 08/08/2017 and 22/08/2017, but the complainant has failed to confirm the dates for registration and failed to come forward to register the sale deed.

According to the respondent, the complainant firstly filed the case before the Consumer Forum seeking for cancellation of booking and refund of the entire money. Despite the respondent fixing eight dates for registration of the Sale deed in the year 2017 and 2018, the complainant has refused to register the said sale deed. Complainant is also pursuing before the National Commission for seeking the cancelation of his agreement of sale and for seeking of refund, which has not reached finality as on date.

While these are the facts of the case, the complainant has also been demanding the execution of sale deed. It is alleged by the respondent that the complainant has now come up with various unfounded and vexatious objections in a malafide manner. As per the respondent, this Authority has no jurisdiction to grant the relief sought by the complainant. Further the complainant has also sought for modification of the clauses of the sale deed. It is not the case of complainant that the sale deed is not being executed in his favour under the provisions of RERA, and therefore there could be a direction issued to execute a sale deed. However, there can be no order passed to modify the standard clauses or terms of the sale deed which is being executed by one and all the owners of the apartments in entire Sobha City. Till date 122 number of sale deeds have been executed out of 148 units in his block namely Casa Paradiso-1 which all contain the same clauses. Therefore, there can be no special or

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separate sale deed which can be executed as per the demand of complainant.

According to the respondent, the Agreement to Sale is not a compulsory registerable document since no possession was handed over to the complainant as on the date of execution of Agreement to Sale. The plan was modified in the year 2013 which is four years before the Act came into force. There was no modification done to the block in which the unit of the complainant is situated. The complainant has also agreed in his agreement that Sobha City is developed in phases and has also agreed that the respondent is at liberty to modify the plan since the same was informed to all the purchasers in their respective agreements. The relevant clauses of the agreement cannot be disputed after more than eight years of the complainant executing the same. The clauses of the agreement are binding on both the parties.

It is also submitted by the respondent that, the complainant who has taken the possession of unit has given it on rent and is enjoying profits out of the same. The complainant is intending to evade payment of property tax which is due from him.

Further contention of the respondent include the complainant has already agreed for Agreement of sale and construction agreement both dated 21/08/2012 which is reiterated in the sale deed and now it cannot be called into question. As per one of the clauses of sale deed, the respondent is at liberty to carry out future development in the remaining area of schedule - "A" property. This was made clear in the scheme of development in the agreements signed by the complainant in the year 2012 itself. The purchasers in the project will have

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undivided share in the common areas which are common to the entire project.

Moreover, the access, enjoyment of the amenities and other factors are regulated by the Bye-Laws and the decisions of the Association as the Club house and all the amenities are already handed over to the association. The complainant has to abide by the bye-laws of the association. Hence prayed to dismiss the complaint with costs.

In support of his complaint, the complainant has produced the documents such as:-

- (i) Sale Agreement
- (ii) Allotment letter
- (iii) Possession certificate

On the other hand, the respondent has produced the documents such as

- (i) Copies of Agreement of Sale and Construction Agreement,
- (ii) Copies of Amended form N,
- (iii) Copies of plaint and written statement of O.S. No. 4872 of 2020
- (iv) Copy of order on I.A. No. 4 in O.S. No. 4872 of 2020
- (v) Copies of mails dated 23/04/2021, 21/06/2021, 21/07/2021 and 28/07/2021
- (vi) Copy of order dated 12/02/2021 in W.P. No. 172 of 2021.

**Heard both sides.**

On consideration of the submissions of both the parties, only the following arises for our consideration.



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Whether this Authority has jurisdiction to entertain the complaint?

Our findings:- Admittedly, the complainant has taken possession of the flat in the year 2016 itself. Even the completion certificate has been issued prior to the enactment of the Act.

Though Rule 4(1)(v) of Karnataka Real Estate (Regulation and Development) Rules, 2017 provides for registration of the project under the Act, as per the said provision itself, it is applicable to the ongoing project which have not yet received completion certificate. Section 3(2)(b) of the Real Estate (Regulation and Development) Act makes it clear that registration of a project shall not be necessary in cases where the completion certificate is issued by the Competent Authority.

In view of the above, this Authority has no jurisdiction to entertain this complaint. In view of lack of jurisdiction, the other issues raised in the complaint are not adjudicated upon.

**ORDER**

Complaint is hereby dismissed for want of jurisdiction.

  
(Neelamani N Raju)

Member-2  
K-RERA

  
(D. Vishnuvardhana Reddy)

Member-1  
K-RERA

  
(H.C. Kishore Chandra)

Chairman  
K-RERA