

ಕರ್ನಾಟಕರಿಯಲ್ 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 16th MAY 2022

CMP/UR/201229/0007341

.....Complainant

M C KUMARASWAMY,

A-022, Beary's Lake Side Habita,
No. 18, Shathivana, Kodigehalli,
Bengaluru - 560092.

V/S

MR. ADI GODREJ & MOHIT MALHOTRA

.....Respondent

Godrej Properties Ltd., Lavelle Road,
Near Bangalore Club,
Bengaluru - 560025.

The complainant has filed the complaint against the builder for alleged unfair trade practice, cheating and fraud. In that flat sold for higher price breach of contract and forfeiting the booking amount, making undue profit on account of complainant not giving the possession of flat.

The matter was heard on 01/10/2021, 14/12/2021, 02/02/2022, 03/03/2022 and 31/03/2022.

The facts of the case are:-

That the promoter M/s. Godrej Properties Ltd., launched the residential project of apartment called Godrej Platinum, Bellary Road, Hebbal, Bengaluru- 560024.

168

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ಕರ್ನಾಟಕರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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The complainant entered into a contract with the developer for purchase of a flat and also has paid Rs.3,00,000/- as booking amount vide cheque dated 26/02/2017. According to the complainant, he received a copy of agreement for sale. His request for title deeds and documents met with no response. It is the case of the complainant that various attempts made by him to the employees of the developer went unanswered.

However, the complainant received a notice from the developer terminating allotment through their letter dated 10/08/2017 as claimed by the developer. The complainant insists that he never received a copy of such a notice. The complainant states that the scheduled property was offered to him at Rs.2,23,07,438/- (Rupees Two Crore Twenty three lakhs seven Thousand Four Hundred Thirty Eight only). However, it is the stand of the complainant that the said property was sold and registered by the respondent to one Vikram Raj Manohar for Rs.28,653,500/- (Rupees Two Crores Eighty Six Lakhs Fifty three thousand Five Hundred) thereby the developer has illegally gained Rs.63,46,062/-. The respondent has submitted that the complainant entered into a contract with them and had paid Rs.3,00,000/- as booking amount. As per the contract the complainant was to pay a sum of Rs.43,75,922/- within 45 days of booking i.e., on or before 15/04/2017 and was obligated to enter into the agreement to sell and construction agreement with the developer. On compliance of the payment schedule and on payment of balance sale consideration within 8 months from the

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date of booking, an absolute sale deed was to be executed in favour of the complainant.

It is the case of the promoter that the complainant failed to abide by the payment terms. He defaulted in payment of the very first instalment of Rs.43,75,922/- that was required to be paid within 45 days of booking. As the complainant failed to make any further payment in spite of several reminders the contract was terminated owing to the default of complainant vide letter dated 10/10/2017.

In this context, it is relevant to take note of the submissions made by the Respondent before the Authority, in its written submissions dated 8.4.2022, that the Complainant had filed a complaint before the Karnataka State Consumer Disputes Redressal Forum, Bangalore vide consumer complaint No.117/2018 wherein identical prayers were made under Consumer Protection Act, 1986. The relief sought by the Complainant, as per page No.6 and 7 of the paper book submitted before the Authority on 14.09.2021, are as under:

- a) To direct the Respondent to execute the agreement for sale for the undivided interest in the land as well as the construction agreement in favour of the Complainant;
- b) To direct the Respondent to repay/refund the entire amount of Rs.3.0 lakhs together with interest at 24% per annum from 26.2.2017 to till the date of realization of the refund.

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- c) To direct the Respondent to pay a compensation of Rs.50.0 lakhs to the Complainant.

On perusal of the orders of the Karnataka State Consumer Disputes Redressal Forum, Bangalore it is found that the contentions of the Respondent are supported by the prayers as noted by the Karnataka State Consumer Disputes Redressal Forum, Bangalore, in its order. It is evident from the materials placed on record that the Complainant has sought identical reliefs from Karnataka State Consumer Disputes Redressal Forum, Bangalore as well as before this Authority.

The respondent has further drawn the attention to the Authority of the order of Karnataka State Consumer Disputes Redressal Commission at Bengaluru directing the developer to refund Rs. 3,00,000/- along with interest at the rate of 9% P.A. from 26/02/2017 till realisation.

Pursuant the said order, a Demand Draft dated 03/09/2021 amounting to Rs.4,22,825/- was drawn in the name of the complainant. The complainant refused the demand draft. The complainant filed review application 43/2021 which was dismissed as devoid of merits with no order as to costs vide order dated 02/12/2021.

During the hearing the complainant has relied upon a judgement of Hon'ble Supreme Court in M/s. Imperia Structures Ltd., Realty v/s. Anil Patni in CA. No. 3581-3590 of 2020.







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It is the stand of the complainant that approaching the Consumer Court is no bar to approach for relief before RERA.

In this case, M/s. Imperia Structures Ltd., had filed an application against the order passed by the National Consumer Disputes Redressal Commission, New Delhi.

The Hon'ble Supreme Court had held as under:-

"It has consistently been held by this Court that the remedies available under the provisions of the CP Act are additional remedies over and above the other remedies including those made available under any special statutes; and that the availability of an alternate remedy is no bar entertaining a complaint under the CP Act."

It is argued that, the complainant has the right to file a complaint under RERA Act.

Further, it is submitted by the complainant that he has the right to file the complaint for relief under RERA or CP Act to this effect he has reproduced para 25 of the Hon'ble Supreme Court judgement quoted above.

Relevant portion of para 25 reads as under:-

"Section 79 of the RERA Act bars jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine. Section 88 specifies that the provisions of the RERA Act would be in addition to and not in derogation of the provisions of any other law,

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while in terms of Section 89, the provisions of the RERA Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force."

In his objections the developer relied upon the Hon'ble Supreme Court Judgement in Ireo Grace Realtech Pvt. Ltd., vs. Abhishek Khanna & Ors. The Hon'ble Supreme Court while delivering this judgement have interpreted the judgement in Imperia Structures Ltd., Vs. Anil Patni & Another.

"In our considered view, respectfully, the learned counsel for the complainant is not correct in her interpretation of the judgement of Hon'ble Supreme Court given in Imperia Structures Ltd., vs. Anil Patni & Anr. (2020) 10 SCC 783. To our mind, the sum of and substance of judgement is that a choice of discretion is available to the consumer / complainant, whether it wishes to initiate proceedings under the CP Act or under the RERA Act. When two remedies are available for the same relief, the party to whom such remedies are available has the option to elect either of them, but it cannot exercise both options simultaneously. We cannot loose sight of the word "or" used by the Hon'ble Apex Court when it observed in para 32 of Imperia Structures Ltd. Case 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." It straightaway cannates that the choice is to elect 'either' and not 'both'.

Concurrent jurisdiction in no manner implies that the party to whom such remedies are available in

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two competent fora can, after initiating proceedings on the same matter in issue on the same cause of action between the same parties in one competent forum, then concomitantly also initiate proceedings in a second competent forum. It also in no manner implies that if the matter in issue on the same cause of action between the same parties has been heard and finally decided by one competent forum it can still be proceeded with in a second competent forum just because an appeal against such final decision of the one competent forum has been filed.

Reason and logic dictate that if the matter in issue between the same parties is directly and substantially in issue in one competent forum, similar proceedings in a second forum of competent jurisdiction are unreasonable, illogical and untenable."

Section 88 of RERA reads as:-

The Hon'ble Supreme Court in the case of Ireo Grace Realtech Private Ltd., vs. Abhishek Khanna and others referred have opined that,

"An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action."

In the said case, various other pronouncements given by Hon'ble Apex Court were discussed and the concept of 'doctrine of

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election' was cogitated upon and affirmed. The case of National Insurance Co. Ltd., vs. Mastan was also referred to in para 40 and relevant extracts from this case were quoted. The relevant portion of para 40 of Ireo Grace Realtech Pvt. Ltd., vs. Abhishek Khanna's judgement that is quoted herein:

"23. The "doctrine of election" is a branch of "rule of estoppel", in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case."

The view espoused by Hon'ble Supreme Court in Ireo Grace Realtech Pvt. Ltd., vs. Abhishek Khanna is conclusive on the point under consideration and does not admit of any ambiguity or controversy.

In view of the above, the following order is passed.

ORDER

The complainant has litigated before the National Consumer Disputes Redressal Commission on the same issue for redressal and thereby estopped from litigating before this Authority.

Issue

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Case is hereby disposed of as not
maintainable.

Vishnuvardhan

(D. Vishnuvardhana Reddy)

Member-1

K-RERA

N. Raju

(Neelamani N Raju)

Member-2

K-RERA

H.C. Kishore Chandra

(H.C. Kishore Chandra)

Chairman

K-RERA

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