

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 16th MAY 2022

COMPLAINT No. CMP/190816/0003918

RIZWAN KHAN,

....Complainant

B-106, Samethana Lakefront,
Samethanahalli
Bengaluru- 560067

V/S

KRISHNAN ANNASWAMY,

....Respondent

33-44/1&2, 8th Main, 4th cross,
RAV Ext. Sadashivnagar
Bengaluru – 560071.

This complaint is filed under Section 31 of the RERA Act against the project 'Samethana Lakefront Apartment' for the relief of Registration of the flat or refund.

The brief facts of the complaint are as under:-

That the complainant has purchased a flat in Samethana Lakefront Apartment by Sri Sumeru Housing Ltd., under agreement to sell for Sale consideration of Rs.49,00,000/-. A total of Rs.47,48,000/- was given to the builder from 01/12/2014 till 27/02/2015. (Rs.10,00,000/- initial payment and 37,23,000/- from PNBHFL). In spite of several requests from him, the builder did not execute the sale deed. Hence, he had lodged the complaint No. 398.1811/2017 dated 14/11/2017 before Thirumalashettyhalli police station wherein builder had undertaken in writing that registration process would be completed before 31/03/2018.

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But till date the promoter has not executed the sale deed. In March 2018, the builder has informed the complainant that the owner of said flat is not ready to complete registration and that builder will arrange for an alternate apartment for same cost and conditions. But nothing has been done till date.

Hence, this complaint.

In pursuance of the notice, the respondent has appeared before the Authority through his counsel and filed written submissions and a copy of the Agreement of Sale.

The respondent contends that the purchase of flat by the complainant is not a first sale and it is a second sale from the owner of the flat M/s. K.V. Narayan Builders Pvt. Ltd. Respondent is only developer/confirming party to the sale.

Respondent has also submitted that the possession of the flat has been taken by the purchaser and he is in enjoyment of the same since 2016. The dispute or differences between the vendor and purchaser and consenting party will have to be discussed among them and to sort out the issue. Hence, the RERA Authority does not have jurisdiction to try this matter.

Further submissions of the respondent include that this project was commenced on 30/09/2008; the Hosakote Yojana Authority has issued the initial endorsement on 30/10/2009; the entire building was completed in the year 2014 itself; the occupancy certificate was issued on 25/11/2014; the RERA Act came into force on 01/05/2016; hence, Section 3 of RERA Act 2016 is not applicable to this project. The respondent had sold 4 flats to K. V. Narayana Builders Pvt. Ltd., and executed AOS and construction agreement on 26/11/2014. But M/s. K.V. Narayana Builders Pvt. Ltd., have not paid any consideration for

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these flats and in anticipation of the same Sri. Sumeru Housing Pvt. Ltd., has signed the sale deed and registered in favour of K.V. Narayan Builders Pvt. Ltd., on 28/11/2014.

While the consideration was pending to be received, M/s. Sri. Sumeru Housing Pvt. Ltd., identified on 22/12/2014 the complainant on request of K.V. Narayana Builders Pvt. Ltd., executed a Sale Agreement with the buyer as developer / confirming party and sent to the buyer for signing the agreement and forwarding to M/s. K.V. Narayana Builders Pvt. Ltd., being the holder of sale deed in their favour for signing the Sale Agreement.

The respondent company has received the advance of Rs.10,00,000/- from the complainant. The respondent company on receipt of further amount of Rs.37,23,000/- on 27/02/2015 from the complainant against consideration due, paid an amount of Rs.10,00,000/- to the vendor on 28/02/2015. The balance amount of Rs. 37,23,000/- was retained by M/s. Sri. Sumeru Housing Pvt. Ltd., as booking adjustment against Rs. 39,11,951/- due from K.V. Narayana Builders Pvt. Ltd., and utilized for the construction and other project expenses.

The respondent company has intimated M/s. K. V. Narayana Builders Pvt. Ltd., to execute the sale deed in favour of complainant. But same is not done till date. Any direction to the respondent for registering the property cannot transfer the title to the complainant as the property is already sold to M/s. K. V. Narayana Builders Pvt. Ltd., who is not party to this proceedings. Hence, this case is bad for non-joinder of necessary party and prayed to dismiss the complaint.

In support of his claim, the complainant has produced in all 12 documents such as Copy of affidavit, copy of payment receipts, copy of emails, copy of police complaint dated : 14/11/2017, copy of Occupancy

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certificate dated 25/11/2014, copy of Rejoinder to the written submission, copy of Possession Certificate, copy of account statement, copy of Tripartite agreement, copy of Mortgage NOC dated 18/02/2015, copy of the written reply to Police complaint and copy of email dated 20/04/2016.

On the other hand, the respondent has furnished 2 documents such as written submission and Agreement to Sell.

Complainant has also submitted written submissions.

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

1. Whether complaint is maintainable?
2. What order?

Our Answer to the above points are as under

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

REASONS

Our answer to the point No. 1:- Firstly, as evident from the records, the project was completed on 25/11/2014 i.e., even prior to the enactment of RERA in the year 2016. Therefore, this Authority does not have the jurisdiction to entertain this complaint. Accordingly, point No. 1 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 complaint bearing No. CMP/190816/0003918 is hereby dismissed, in view of the fact that the project which is the subject matter of complaint was not required to be registered with this Authority and consequently this Authority has no jurisdiction to adjudicate on this complaint.

No order as to costs.


(Neelamani N Raju)

Member-2
K-RERA


(D. Vishnuvardhana Reddy)

Member-1
K-RERA


(H.C. Kishore Chandra)

Chairman
K-RERA

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