

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 6th MAY 2022

COMPLAINT No. CMP/210402/0007857

SHAILESH B. CHARATI,

....Complainant

5P105, ARYA HAMSA APARTMENTS,
J P Nagar 8th Phase,
Bengaluru – 560083.

VERSUS

ARYA GRUHA PRIVATE LIMITED,

....Respondent

No. 181, Ground Floor,
Amarjyothi Layout,
Intermediate Ring Road, Domlur,
Bengaluru – 560071.

This complaint is filed under Section 31 of the RERA Act for the relief of revocation of registration granted to the project of respondent and to impose penalty as per Section 60 and 61 of the Act for contravention of Section 4 and 14 of the Act.

The brief facts of the complaint are as under:-

"That the Complainant is the owner of the apartment bearing no. 5P105 on the ground floor of the Block no. 5 in the project "Arya Hamsa". The project of the respondent is developed as joint development between the Respondent No.1 and the owners of the

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land bearing Sy. no 28/1. The Respondent No.1 has also entered into an Joint Development Agreement with another set of land owners in respect of land bearing Sy. No 28/2 which is situated adjacent to the "Arya Hamsa" project. This project is named as "Arya Hamsa Grande" and is registered with this Authority. The Respondents are advertising the project "Arya Hamsa Grande" as a project which has shared amenities with an unrelated project viz., "Arya Hamsa" which is in contravention of the RERA Act. The respondents are also claiming a single body registered under KSRA 1960 as the Association for both projects which is again a violation of the RERA Act." Accordingly, he prayed to revoke the registration and to impose penalty.

Hence, this complaint.

In pursuance of the notice, the respondents have appeared before the Authority through their counsels and filed statement of objections as under:-

That the complainant is a homebuyer with respect to 'Arya Hamsa' Apartments (Phase-1) which has not been registered under RERA and it has obtained the occupancy certificate on 22/04/2015. Hence, said project is exempted from registration under RERA. The complainant is the allottee with respect to a completed project.

Further, they contend that they have completed the said project in the year 2015. They have entered into a Joint Development Agreement of 30/03/2009 with the landowners of

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schedule A property (2 acres 38 guntas) to an extent of 2 acres for the development of "Arya Hamsa" Apartment (phase-1) on the same day the respondents entered into another registered JDA dated 30/03/2009 with the owners of Schedule B property for development of "Arya Hamsa Grande" Apartment (Phase-2).

After obtaining the requisite statutory sanction and permissions and sanctioned plan they have developed schedule A property. Subsequently the owners of Schedule A property desired of getting the entire extent of 2 acres 38 guntas to be developed and accordingly they have entered into another registered JDA dated 09/08/2010 for development of remaining 38 guntas by obtaining modified sanction plan which included the additional block to be constructed. Further the respondents have also obtained a sanction plan for Arya Hamsa Grande Apartments phase -2 to be developed on Schedule B property.

In addition the respondents were also to develop a club house and common amenities for both the phases. In fact these two phases adjacent to Sy. No.29 which would be available for use by apartment owners of both the phases in the project. Accordingly, the respondents have acquired the property bearing Sy. No. 29 Schedule C Property. The respondents have intentionally developed the club house on a separate property for the benefit of both the phases. The apartment owners of both the phases were well aware of this fact and had consented to use the club house, roads and other common amenities by owners of both the phases.

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The respondents have helped to form an Association of allottees registered under Karnataka Societies Registration Act on 17/07/2014. Accordingly, Memorandum of Association and Byelaws clearly state that the Association is being formed for owners of both the phases in the project.

These being the facts, the complaint started causing nuisance sometime in the year 2019 claiming "Arya Hamsa" Apartments (i.e., Phase -1) of the project to be a separate project and thereby demanding that respondent to demarcate the boundaries separating both the phases. The complainant has sent a E-mail dated 09/06/2019 to the respondent to take steps to prevent the said illegal entry and trespass by the owners of Phase-2 into Phase-1. The respondent replied vide E-mail dated 01/07/2019 clarifying that the apartments of both the phases of the same project and that easementary rights and usage rights have been created for both the phases by the developer as per the scheme and they cannot be modified without the consent of all the owners.

Further the complainant has himself and through associated persons filed multiple false complaints as below:-

1. O.S. No. 5080/2019 before City Civil Court (CCH-76)
2. Complaint Before Karnataka State Pollution Control Board, bearing No. PCB 358 CNP 20/3562.
3. Complaint before the State Level Environment Impact Assessment Authority (SEIAA) bearing No. SEIAA 13 CON 2011.

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4. Complaint before the Registrar of companies bearing ROCB/COMPLAINT/ARYA/S454/2020/3003.
5. Complaint before the Karnataka Real Estate Regulatory Authority bearing CMP/210402/0007857.

Further the complainant has created nuisance by preventing owners of other apartments from using usage of roads, pathways, club house, entrance / exit gates and other common amenities. The respondent has requested the complainant for several times not to do so. Few apartment owners of Phase-2 aggrieved by this nuisance have filed a suit in O.S. No.537/2019 before City Civil Court (CCH-19) for the relief of permanent injunction.

Hence, complaint is not maintainable and prayed to dismiss the same with costs.

In support of his claim, the complainant has produced in all 28 documents such as detailed complaint, details of respondent company, copies final sanction plan, sale agreement, construction agreement, broacher of the project of Phase-1, Sale deed, Cost break down sheet, receipts, occupancy certificate, RERA Registration Certificate for development of Schedule B property, project promoters information as per RERA website, Sanction plan dated 24/10/2013 from BBMP uploaded on RERA website, fire NOC, OC for development of Schedule B property, Broacher of Schedule B property, E-mail response dated 01/07/2019 from Respondent No. 2 to the complainant, showcause notice issued by BBMP and SEIAA, reply furnished to SEIAA by Respondent No. 2,

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Show cause notice from SEIAA to respondent No. 1, response of RERA on a query on the phases of project on B Schedule, sanction plan for club house structure from BBMP, PCR 376/2020 dated 06/11/2020, order dated 05/02/2021 by the Hon'ble High Court of Karnataka in CRLP 7222/2020, NOC submitted by Respondent No.2, complaint to RERA by complainant and other owners and response from RERA.

In response the respondents have furnished 7 documents such as copies of Occupancy Certificate dated 22/04/2015 in respect of Phase-1, RERA registration certificate in respect of Phase-2, Occupancy Certificate dated 31/01/2019 in respect of Phase-2, E-mail dated 09/06/2019, 01/07/2019, reply dated 04/09/2020 to the SEIAA and order copy dated 29/09/2021 by II ACJM.

Both the parties have submitted their written submissions.

Heard both side.

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

1. Whether the Complainant proves that the respondent had agreed to provide the club house and other common amenities exclusively to Phase -1?
2. Whether the respondents further prove that they have obtained the consent of the allottees of both the phases for joint enjoyment of club house and other common amenities?
3. What order?

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Our Answer to the above points are as under:-

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

REASONS

Our answer to the point No. 1 and 2:- Both these points are taken up together for discussion as they are inter related.

The claim of the complainant is that the club house and other common amenities are exclusively meant for the use and enjoyment of purchasers/ allottees under Phase – 1.

As against this, claim of the respondent is that these amenities are meant for use and enjoyment of purchasers/ allottees under Phase 1 and 2 and they have appraised the purchasers under phase 1 about this situation before hand and they have also taken their consent before hand.

Let us look into the relevant document namely registered Sale deed dated 03/11/2015 executed by the respondent in favor of complainant at page No. 09 which contains the terms of sale deed entered into between the parties so as to ascertain whose claim is in consonance with these terms.

Clause/reads as under:-

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"1.11. The developer are providing a club house and entertainment facility outside the schedule A property and common facilities, etc., inside the Schedule A Property including roads, STP, transformer yards, electrical infrastructures, etc.,

1.12. The common facilities, club house and entertainment facility shall be managed and maintained by the Association of apartment owners and be made available to the Apartment owners to manage it on such terms as they find fit, with no charges payable to the Developers.

1.13. The purchaser/s hereby consents to use of the space, as may be identified by the Developers for this purpose and consents to the same being provided for all owners of units in the project, which may consist of different phases which may be located within or outside the Schedule A property and expressly consents to the use of common amenities including the roads, club house and entertainment facility in any phase by any of the owners of units in the project."

On perusal of these clauses, it is apparent that the club house and other common amenities provided by the respondent is meant for the use and enjoyment of purchasers/allottees under both the phases and the purchasers / allottees under phase 1 are aware of these clauses since the date of their execution of sale deed with the respondent. Therefore, having agreed/ consented to use these amenities along with purchasers/ allottees of phase 2 as well, complainant cannot claim that they are meant for phase 1 alone. The demand of complainant for providing these amenities

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exclusively is apparently unreasonable and contrary to the agreed terms.

Therefore, this Authority is of the considered view that complainant has not been able to establish his claim. On the other hand, the clauses of the sale deed between the parties show that contention of the respondent is in consonance with the clauses of sale deed. Accordingly, point No. 1 is answered in the Negative and point No. 2 in the Affirmative.

Our Answer to Point No.3:- In view of the above discussion on Point No. 1 and 2, complaint deserves to be dismissed. Hence, 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 bearing No. CMP/210402/0007857 is hereby dismissed.
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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