

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-6

DATED: 3rd JUNE, 2022

COMPLAINT NO: CMP/210729/0008169

IMPLEADING APPLICANTS:

1. SMT.SHARADA S SHETTY
W/o Late A.Sadananda Shetty,
Aged about 71 years,
Residing at No.45, 8th Cross,
Bhuvaneshwari Nagar,
Dasarahalli, Bangalore-560024

2. SRI. K. NAGARAJ SHETTY
S/o S.Mahabala Shetty,
Aged about 55 years,
Residing at No.45,
Srushuti Nivas,
2nd Main, 6th Cross,
Ashram Colony, Sanjaynagar,
Bangalore-560094

3. SMT. GEETHA J. MALLI
W/o Jithendra Mohan Malli,
Aged about 52 years,
Residing at No.F-404, 4th Floor,
Raheja Park, Magadi Road,
Bangalore-560079

4. SMT. N.SUDHA NAIK,
S/o N.Shashidhar Naik,
aged about 59 years,
Residing at C1-103,
RMV Clusters,
Phase I, Devinagar,
Bangalore-560094

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Karnataka Real Estate Regulatory Authority,

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

5. SRI. SHASHANK SHETTY N
S/o Late H.Suresh Shetty and
Late N.Swathi Rai
Aged about 28 years,
Residing at C1-103,
RMV Clusters,
Phase I, Devinagar,
Bangalore-560094

6. SMT. PRIYANKA SHETTY H,
D/o Late H.Suresh Shetty and
Late N.Swathi Rai
Aged about 28 years,
Residing at C1-103,
RMV Clusters,
Phase I, Devinagar,
Bangalore-560094

(BY SRI.B.S. RADHANANDAN,
ADVOCATE)

V/s

RESPONDENTS:

1. M/s CENTURY SHELTERS
DEVELOPERS PVT LTD

2. CENTURY REAL ESTATE
HOLDINGS PVT LTD.

No. 3/1, 4th Floor,
JP Techno Park,
Millers Road, Vasanth Nagar,
Bangalore-560052

(BY SRI. CHANDAN,
ADVOCATE)

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ORDERS ON IMPLEADING APPLICATION

This interlocutory application is filed by the proposed impleading applicants U/s 1 R 10 of CPC.

The grounds urged in the application are that they are the purchasers of sites formed by one D. Yogeshwar Varma. In the entire area, roads are formed for the access and therefore these impleading applicants have an interest in the subject matter of this complaint. When once the layout is already formed and the sites are also sold, the purchasers of the sites would have access to the whole layout. Hence, the impleading applicants will have right, title, and interest as well as easement rights, the common area rights and amenities in the said entire extent of area. Therefore, when the right is already created in favour of third party, said D. Yogeshwara Varma could not have executed any sale deed with respect to the said land in which the layout is formed.

There are several sites and various purchasers have purchased the sites, khatas also entered and BBMP has confirmed the same by allowing the purchasers to pay the tax. Said layout was formed and sold during the year 2002-03, there cannot be any fresh conveyance that can be made by D.Yogeshwara Varma in favour of the M/s Century Sheltors as claimed by them. The first sale deed will always prevail over the subsequent sale deed as per sec.48 of Transfer of Property Act. Therefore, D. Yogeshwar Varma had no right to convey the title to anyone. Therefore, no right, title or interest is acquired by Century Sheltors Pvt. Ltd. In fact, the sale deeds executed in the year 2002-03 mention about the formation of layout in the entire land. The title deed of the purchasers in the said layout is earlier and valid. Therefore, the subsequent purchaser will not acquire any title.

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Karnataka Real Estate Regulatory Authority,

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

The litigation is already pending before the Hon'ble High Court of Karnataka in RFA No.956/2018 and impleading applicants herein have approached in said RFA to implead them. The present promoter is also party in the said RFA as respondent No.30. Hence, prayed to allow the application.

On the other hand, the respondent has filed objections as under:

He contends that impleadings applicants are not allottees and they are not aggrieved persons. They are not buyers or representing any buyers in this project. They appear to be purchasers from Yogeshwar Varma wherein respondents does not have any agreement with these impleading applicants. The respondent is the absolute owner and in possession of entire land in Sy.No.107/3 and 108/1 of Amruthahalli village under sale deed dated 13/2/2007 for valuable consideration from Yogeshwar Varma and M.S. Mahadevaiah.

The erstwhile owner Mahadevaiah has filed suit in OS No. 15998/2003 against Yogeshwar Varma which ended in compromise on 07/04/2007. Based on terms of compromise, the respondent obtained right and title over the said property. As per compromise Yogeshwar Varma has retained an extent of 6 guntas in Sy.No.116/3 and 1 acre 6 ½ guntas in Sy.No.108/1. Said Yogeshwar Varma might have formed an illegal and unapproved residential layout in the land retained by him.

M/s Century Shelters being absolute owner of said property had entered into a Joint Development Agreement dated 18/1/2001 with Century Real Estate Holdings Pvt. Ltd., to develop the said property. The respondents have constructed multi-storied residential buildings and applied to various authorities to obtain permission for construction. The impleading applicants are no way concerned to this project. The plea of impleading applicants deliberately misleading that there is a stay on 3/10/2018 in RFA No. 956/2008 in respect of execution of compromise decree dated 25/3/2017 in OS 450/2008 which is no



way concerned to these respondents. There are two compromise decrees dated 2/8/2014 and 25/3/2017 in OS No.450/2008. The property owned by the respondent is in respect of compromise decree dated 2/8/2014 and no way related to compromise decree 25/3/2017. The said RFA 956/2018 has been disposed of vide judgment dated 7/2/2022 holding that the appellants have no right to file an appeal challenging the compromise petition. Hence, prayed to dismiss the application with costs.

Complainant has filed rejoinder to the objections of respondent as under:

He has denied the entire contentions of respondents as false. He contends that he is an aggrieved person and his site is in the project of respondents. Respondent has to explain as to what locus standi did Yogeshwar Varma and Mahadevaiah have entered into a compromise in OS No. 15998/2003. Yogeshwar Varma had already formed a DC converted layout and sold sites to purchasers including his lessor. The respondent has to explain how he relied on Mahadevaiah, who had a sale deed filled with agricultural land extents of the Government. His lessor had a better title. The compromise in OS No.15998/2003 is not binding on his lessor. The proposed respondents to be impleaded who have interest in the said property. The compromise decree is binding only between the parties to the compromise. The complainant is the lessee of said property site No.1 in which respondents have allegedly constructed their flats. His lessor was not a party to any compromise since 2002 till date. Hence, prayed to allow the application of impleading applicants.

Heard both side.

On the above averments, the following points would arise for my consideration.

Point No.1: Whether this IA deserves to be allowed?

Point No.2: What order?

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Karnataka Real Estate Regulatory Authority,

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

My answer to the above points are as under:

Point No.1: In the Negative

Point No.2: As per final order for the following

REASONS


My Answer to Point No.1: This matter relates to dispute between the complainant and the builder and this Authority is supposed to decide the dispute between the parties. What was the transaction between Yogeshwar Varma and the respondent herein, whether Yogeshwar Varma was competent to execute sale deed in favour of respondent herein are not the question before this Authority. This is not a civil court to declare title of anybody. Therefore, the impleading applicants are not necessary parties to decide the real controversy between the parties. Merely because they have purchased sites from Yogeshwar Varma with whom respondent company entered into JDA cannot entitle the impleading applicants to come on the record. Therefore, in the considered opinion of this Authority, this interim application has no locus standi to participate in this proceeding. Accordingly this point is answered in the Negative.

My Answer to Point No.2:- In view of the above discussion, I proceed to pass the following

ORDER

Interim application dated 10-01-2022 filed by the impleading applicants is hereby rejected.

No order as to costs.


(NEELMANI N RAJU)
MEMBER-2, KRERA

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 6

Dated 3RD JUNE 2022

COMPLAINT NO.: CMP/210729/0008169

IMPLEADING APPLICANTS:

1. **SMT.R. VASANTHI**
Aged 68 years,
w/o Sri.P.S. Ranganathan
1030, 4th Main Road,
2nd Stage, Rajajinagar,
BANGALORE-560010.
2. **DR. BALAKRISHNAN**
Aged 75 years,
s/o late M.R. Narayanan
No.G-95, 7th Main,
G Block, Sahakaranagar
BANGALORE-560095
3. **SRI. KRISHNAGIRI**
Aged 45 years,
s/o J. Vaidyanathan Iyer
No.984, 1 A Main,
HAL 3rd Stage,
New Thippasandra
BANGALORE-560075.
4. **SRI. SUGANTHANATHAN**
No.1207/660, 12th Cross,
Girinagar,
Bangalore-560085.

(BY SRI.P.S. RANGANATHAN
ADVOCATE)

V/s

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Karnataka Real Estate Regulatory Authority,

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

RESPONDENTS:

1. M/s CENTURY SHELTERS
DEVELOPERS PVT LTD

2. CENTURY REAL ESTATE
HOLDINGS PVT LTD.

No. 3/1, 4th Floor, JP Techno
Park, Millers Road,
Vasanth Nagar,
Bangalore-560052

(BY SRI. CHANDAN,
ADVOCATE)

ORDERS ON IMPEADING APPLICATION

This interlocutory application is filed by the proposed impleading applicant.

One Vasanthi has filed objection by way of Affidavit stating that she has filed an application to implead her in RFA 956/2018 before Hon'ble High Court of Karnataka. The grounds urged in the objection is that she is the purchaser of Sites formed by one Yogeshwar Varma. In the entire area roads are formed for the access and therefore she has an interest in the subject matter of this complaint. She has a right title and interest as well as easement right in the entire extent of area. Hence, she prayed to implead her in this proceedings.

On the other hand the respondent has filed objection contending that the impleading applicant is not an allottee or a real estate agent. Neither she is a buyer nor she represents any buyers in this project. The impleading applicant appears to be a purchaser from Yogeshwar Varma wherein this respondent does not have any agreement with this impleading applicant. Hence, prayed to reject the application.

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Karnataka Real Estate Regulatory Authority,

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

Impleading applicant has filed rejoinder contending that any aggrieved person may file a complaint before the authority. The complainant and the 70 site owners have a right, title and interest over S.No. 108/1, 116/3, 107/3 and the respondent are well aware of title of such site owners. One Yogeshwar Varma has sold the sites in aforesaid survey numbers. Hence, prayed to implead her in this proceedings.

Heard arguments.

On the above averments, the following points would arise for my consideration.

Point No.1: Whether this IA deserves to be allowed?

Point No.2: What order?

My answer to the above points are as under:

Point No.1: In the Negative

Point No.2: As per final order for the following

REASONS

My Answer to Point No.1: This matter relates to dispute between the complainant and the builder and this Authority is supposed to decide the dispute between the parties. What was the transaction between Yogeshwar Varma and the respondent herein, whether Yogeshwar Varma was competent to execute sale deed in favour of respondent herein are not the question before this Authority. This is not a civil court to declare title of anybody. Therefore, the impleading applicants are not necessary parties to decide the real controversy between the parties. Merely because they have purchased sites from Yogeshwar Varma with whom respondent company entered into JDA cannot entitle the

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
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impleading applicant to come on the record. Therefore, in the considered opinion of this Authority, this interim application has no locus standi to participate in this proceeding. Further, the respondent has produced order copy in RFA No.956/2018 in which claim of impleading applicant is not considered. Accordingly, this point is answered in Negative.

My Answer to Point No.2: In view of the above discussion, I proceed to pass the following

ORDER

Objection filed by applicant Vasanthi dated 10/3/2022 is hereby rejected.

No order as to costs.


(NEELMANI N RAJU)
MEMBER-2, KRERA

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 6

Dated 3RD JUNE 2022

COMPLAINT NO.: CMP/210729/0008169

COMPLAINANT.....

S. GOPALAKRISHNA

No.10/1, First Floor,
Jyothinagar, Doddabettahalli,
Bangalore-560097.

(By Sri.P.S. Ranganathan, Advocate)

V/S

RESPONDENTS.....

**1. M/s CENTURY SHELTERS
DEVELOPERS PVT LTD**

**2. CENTURY REAL ESTATE HOLDINGS
PVT LTD.**

No. 3/1, 4th Floor, JP Techno Park,
Millers Road, Vasanth Nagar,
Bangalore-560052

(BY SRI. CHANDAN, ADVOCATE)

This complaint is filed under section 31 of the RERA Act against the project "CENTURY ETHOS" for the relief of revocation of permission given to the Respondents.

Brief facts of the complaint are as under:-

The complainant is impleading appellant in RFA No.956/2018 and he has filed an I.A. No.1/2021 on 9/4/2021. According to the complainant, DC Bangalore District has converted the land which was sold to 70 individuals in the year 2002-03 itself. He is the site holder along with 70 other individuals in the said land. There is a High Court stay on 3/10/2018 in respect of 3 acres in



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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
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S.No. 108/1, 107/3 and 116/3. Therefore he has right in the sale of said site in the year 2002-03 itself which preceeds the 2007 title of Century Sheltors or Century Real Estate Holding or M/s Century Sheltors Developers Private Limited. Hence, this complaint.

After registering of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through their counsel and filed objection as under.

They have denied all the allegations made against them by the complainant as false. They contend that complainant is not an allottee and he is also not an association of allottees. He is not an aggrieved person as neither he is a buyer nor represents any buyer in this project. There is no contract/agreement between the complainant and respondents in respect of the said project.

Complainant appears to be a tenant under one N. Subramanian through a purported lease deed dated 7/4/2021 for an area of 2400 Sq.Ft. of land used for the purpose of repair of cars and workshop and he is paying rent of Rs.1,000 per month. The said property which is under lease is in no way connected to the project of the respondents.

The respondent is the absolute owner and is in peaceful possession of land S.No.107/3 measuring 36½ guntas, S.No.116/3 measuring 22 guntas and S.No.108/1 measuring 1 acre 21½ guntas of Amruthahalli village under registered sale deed dated 13/2/2007 for a valuable consideration from one Yogeshwar Varma and M.S.Mahadevaiah. The erstwhile owner M.S. Mahadevaiah has filed a suit in O.S.No.15998/2003 against said Yogeshwar Varma which ended in compromise dated 7/4/2007. Based on the terms of

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compromise, the respondent herein had obtained right and title over the said property. As per the said compromise decree, Yogeshwar Varma has retained an extent of 6 guntas in S.No.116/3 and 1 acre and 6½ guntas in S.No.108/1. It appears that said Yogeshwar Varma might have formed an illegal and unapproved residential layout in the said land retained by him and might have sold the same in favour of various purchasers who are in no way concerned with the property of Respondents. Respondents have never sold any land out of said project in favour of complainant. The land purchased by the complainant is completely different transaction for which respondents are in no way concerned. M/s Century Shelters being the absolute owner had entered into a JDA dated 18/1/2011 with Century Real Estate Holding Private Limited to develop the said property.

The Respondents got all necessary permission and approvals from the competent authorities. The respondents are in no way concerned with RFA No.956/2018 and O.S. No.450/2008. Further, said RFA No.956/2018 has been disposed of vide Judgement dated 7/2/2022 holding that appellants have no rights to file an appeal challenging the compromise petition. Hence, prayed to dismiss the complaint with costs.

The complainant has filed rejoinder to the objection of Respondents as under.

He has denied the entire contentions of respondents as false. He contends that he has rights in lease hold property of one N Subramanian and it is his duty to represent the interest of site owner N. Subramanian in whose site along with other site purchasers, the respondents are trying to put up construction. His site in which the lease holds rights comes within a purview of construction of flats

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by the respondents. Any aggrieved person may file a complaint with Authority or Adjudicating Officer as per section 31 of RERA Act. One Yogeshwar Varma and Mahadevaiah had no right to enter into a compromise in O.S.No.15998/2003. Yogeshwar Varma had already formed a DC converted layout and sold sites to purchasers including his lessor. The respondent has to explain how he relied on Mahadevaiah, who had a sale deed filled with agricultural land extents of the Government. His lessor had a better title. The compromise in OS No.15998/2003 is not binding on his lessor. The proposed respondents to be impleaded who have interest in the said property. The compromise decree is binding only between the parties to the compromise. The complainant is the lessee of said property site No.1 in which respondents have allegedly constructed their flats. His lessor was not a party to any compromise since 2002 till date.

The alleged compromise in OS No.15998/2003 by respondents in S.No.108/1, 116/3, 107/3 in 2007-08 is not binding on his lessor or for that matter 70 such site owners who are not parties to the compromise. The title of the complainant along with 70 site owners in the very same survey number is contrary to the own submission of respondents. That the respondents are in no way concerned with the subject matter in respect of RFA No.956/2018 is not correct. Hence, prayed to revoke the permission given to the respondents.

In support of his claim, the complainant has produced in all 20 documents such as sale deed of Doddamuniyappa, DC Order dated 28/9/2002, copy of approved plan, sale deeds of impleading parties, Form 15 details, RTI reply dated 28/7/2021, Compromise Petition in OS No.15998/2003, copy of sale deed of Yogeshwar Varma and the Respondent, copy of order, plaint copy in OS No.450/2008, Affidavit dated 28/7/2017, copy of registration certificate dated

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Karnataka Real Estate Regulatory Authority,

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14/10/2017, Registration certificate dated 18/8/2020, copy of RFA No.956/2018, stay order dated 3/10/2018, copies of details of incorporation certificate of respondent and affidavit, registration certificate of respondent, copy of I.A. order 1/2021, copy of FIR and lease deed agreement.

On the other hand, the respondents have produced in all 11 documents in support of their response such as copies of certificates of incorporation of Respondent No.1 & 2, sale deed dated 13/2/2007, JDA dated 18/1/2011, sanction plan, work order, commencement certificate, certificate of registration of project under RERA, compromise order dated 2/8/2014 and another compromise order dated 25/3/2017, order copy of Hon'ble High Court of Karnataka dated 3/10/2018 and order copy in RFA No.956/2018.

Heard arguments.

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

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

My answer to the above points is as under:-

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

REASONS

My answer to point No. 1:- On perusal of the materials available on record, stand taken by the complainant in his main complaint and rejoinder are self-contradictory. In the main complaint, his claim seems to be that of a purchaser of one of the 70 plots. On that basis,

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he claims his purchase of site prevails over the transaction in the year 2007 between Century Sheltors or Century Real Estate Holding or M/s Century Sheltors Developer Private Limited.

As against this, subsequent to filing of objections by Respondents, the complainant alters his stand in the rejoinder conceding that he is having right in the lease hold property of one N.Subramanian. However, no iota of evidence is produced to infer that said N. Subramanian was one among the purchasers of 70 plots referred to above. When the respondents have totally denied any transactions between themselves and the complainant or his land lord, burden is on the complainant to show his locus standi to approach this forum.

In addition to that, his attempts to implead himself as appellant in RFA No.956/2018 has been thwarted since Hon'ble High Court apart from dismissing the impleading application, dismissed the main appeal itself holding that complainants have no right to challenge compromise petition between Mahadevaiah and Yogeshwar Varma in OS No.15998/2003. Said decision upholding the validity of compromise petition is binding not only on appellants therein but also on everyone whoever seeks to assign its validity in future as it amounts to judgement in rem. Therefore, issue as to the validity of the compromise petition attained finality.

On the same analogy, complainant cannot be allowed to indirectly challenge the validity of compromise petition under the guise of section 31 of RERA Act. It is settled principle of law that what cannot be done directly cannot also be done indirectly. In short, once the Hon'ble High Court upholds the validity of compromise petition



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and it has attained finality, it cannot allowed to be challenged before any forum in any form.

For these reasons, this Authority concludes that complainant cannot maintain this complaint since he is not coming under the definition of the word "aggrieved" used in section 31 of RERA Act. Accordingly, point raised above is answered in the Negative.

My answer to point No.2:- In view of the above discussion, I proceed to pass the following

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.CMP/210729/0008169 is hereby dismissed as not maintainable.

No order as to costs.



(NEELMANI N RAJU)
MEMBER-2, KRERA

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