

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 4

Dated 16th JUNE 2022

COMPLAINANTS.....

1. **CMP/171121/0000243**
PRIYANKAR BANERJEE AND
SMT.DIPANJANA BHATTACHARYYA,
657, 2nd B Main Road Kormangala,
8th Block Bangalore - 560 095.
2. **CMP/171121/0000245**
MR. VINIT KUMAR,
C/o Laxmikanth K B,
Advocate No.30-38, Shop No 105
Bengaluru - 560004.
3. **CMP/171122/0000250**
SRI VIKAS SAHU,
C/o Laxmikanth K B,
Advocate No.30-38, Shop No 105
Bengaluru - 560004.
4. **CMP/171122/0000251**
MR. DHANANJAY SINGH,
C/o Laxmikanth K B,
Advocate No.30-38, Shop No 105
Bengaluru - 560004.
5. **CMP/171122/0000252**
SRI SUPRATHIK DE AND
SMT. SUJATHA DE MAITRA,
Flat No.203, Mythri Grandeur Apartment,
Bengaluru - 560068.
6. **CMP/171122/0000253**
SRI SHUBHAJIT ROY CHOWDHURY
AND SMT. PURBASHA BANERJEE,
C/o Laxmikanth K B,
Advocate No.30-38, Shop No 105
Bengaluru - 560004.

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7. CMP/171219/0000342

**PRASANTHA KUMAR SANIKOMMU
AND SMT. ANUPAMA REDDY POTH
REDDY,**

G-05, Sri Tirumala Vintage,
Bengaluru – 560100.

8. CMP/171219/0000343

SHAIK NIJAMUDDIN,

H.No. 20-4-160, Kuddus Nagar,
Andhra Pradesh – 524001.

(Rep. by Sri. Laxmikantha K.B. Adv)

V/S

RESPONDENT.....

1. M/s. Skylark Realty Pvt. Ltd.,

Ground Floor, HDIL Tower,
Anant Kanekar Marg, Bandra (E),
Mumbai – 400051.

(Represented by its Director Mr. Rajeev
Sajjankumar Saraogi)

2. G S Megha Construction Pvt. Ltd.,

Flat No. SB 407, Sylvan Block,
Anand Vihar, Old Mumbai High way,
Shaikpet, Towlichowki,
Hyderabad – 560008.

(Represented by its Director Mr. Alok
Kumar)

**3. M/s. Green Shapes Developers
(India) Pvt. Ltd.,**

2nd Floor, SM Tower, #34, Outer Ring
Road, Bellandur, Bengaluru – 560103.

(Represented by its Director Mr. Alok
Kumar)

Alok

4. Mr. ALOK KUMAR

S/o. Late Ramachandra Singh,
Age 43 years,
Residing at: Flat # 802, Block 2,
Hill Ridge Springs ISB Road,
Gachi Bowli,
Hyderabad – 5000302.

5. LIC HOUSING FINANCE LIMITED,

Bombay life Building,
2nd Floor, 45/47, Veer Nariman Road,
Mumbai – 400001.

Also at

No. 15/1, 1st Floor, Hynes Centre,
Hayes Road, Bangalore – 560025.

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These complaints are filed under section 31 of the RERA Act against the project 'Udgam Green Luxury' for the relief of refund of amount and compensation.

All these matters are taken up together for disposal as they are arising from common project and in order to avoid repetition.

The brief facts of all the complaints are as under:-

All the complainants have booked flats in the project of respondent and paid the instalments as per the terms of the sale agreement. The respondent didn't complete the project as agreed in the AOS. Even the project is not registered under RERA. Hence, they sought for the relief of refund of amount and compensation.

In pursuance of the notice, the respondent has appeared before the Authority through its counsel.



During the proceedings, the counsel appearing for the complainants has submitted that complainants herein have moved petitions before Consumer's Forum on the same grounds. Further, he requests this Authority to initiate action against the builder for not registering the project under RERA.

Heard both side.

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

1. Whether the complainants are entitled for the relief claimed?
2. What order?

My answer to the above points are as under:-

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

REASONS

My answer to point No. 1:- In this context, it is relevant to take note of the submissions made by the complainant advocate before the Authority, that the Complainants have filed the petitions before the Karnataka State Consumer Disputes Redressal Forum, Bangalore wherein identical prayers were made under Consumer Protection Act, 1986.

The Complainants have sought identical reliefs before Karnataka State Consumer Disputes Redressal Forum, Bangalore as well as before this Authority.

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.

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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."

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 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. The complainants have right to file complaints before any forum, but they have to choose to exercise the forum before which they have proceed further. Accordingly, point raised above is answered in the Negative.

It is noticed that, the respondent had not registered the project under RERA. Hence, it is just and proper to initiate proceedings against the respondent for not registering the project as required.

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 complaints bearing No. CMP/171121/0000243, CMP/171121/0000245, CMP/171122/0000250, CMP/171122/0000251, CMP/171122/0000252, CMP/171122/0000253, CMP/171219/0000342 and CMP/171219/0000343 are hereby disposed of as not maintainable. In view of the complainants have approached the State Consumer Disputes Redressal Commission on the same issues. Cases are hereby disposed of as not maintainable.

Initiate proceedings against the respondent for not registering the project under RERA.


(H.C. Kishore Chandra)

Chairman
K-RERA