

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority, Bengaluru
ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI I.F. BIDARI
DATED 04th JULY 2022

Complaint No: CMP/UR/190603/0003187

Complainants :

Sri. G R Shetty,
"Sri Durga" Malemar Road,
Derebail Konchady, Mangalore,
District: Dakshina Kannada
Pin Code:575006
(By: Sri. M Narasimhamurthy & Associates
Advocate.)

VS.

Respondent:

1. Sri. Robert Sanctis
River View House, Near Pergundi,
Elinje Post Via Aikala,
District: Dakshina Kannada
Pin Code: 574141.
2. Sri. Prasanna Bekal
Ambika Nivas, Akkamma Compound,
Market Road, Padubidri
District: Dakshina Kannada
Pin Code: 574111.
3. Sri. Ramesh J Moily,
Girija Nivas, Padubettu Village,
Padubidri Post
District: Dakshina Kannada
Pin Code: 574111.
Ashraya Builders and Promoters

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J U D G M E N T

Complainant Mr. G R Shetty, has filed this complaint bearing No. CMP/UR/190603/0003187, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the land owner Mr. Robert Sanctis and promoters i.e., 1. Prasanna Bekal & 2. Ramesh J Moily of M/s. Ashraya Builders and Promoters., (here-in-after referred as respondents), praying to direct respondent to pay compensation for the damaged losses.

2. The brief facts of the complaint are as under:

As per the agreement the builders were supposed to hand over the apartment by 30.06.2016 but it was not ready as on date of filing of the complaint. The work was stopped since past one year, prior to the filing of the complaint and they have made the payment through Canara Bank loan and cash amount which comes to Rs.95,37,500/- as on 06.12.2015. Therefore the complainant is requesting the respondent to complete the project, if not, to pay the loan amount, to the bank and to pay compensation for his losses. These main grounds among others urged in the complaint prayer to grant the relief as prayed.

3. There-after receipt of the complaint from the complainant, notices were issued to the respondents. The respondents remained absent in- spite of service of notice and not contesting the complaint.

4. I have heard the complainant. The argument of respondents, taken as nil. Perused the records and materials.

5. The points that would arise for my consideration are:

Point No.1: Whether the complainant is entitle for compensation? If so, to what extent?

Point No.2: What order?

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6. My findings on the above points are as under:

Point No. 1: Yes, to the extent as shown in the final order.

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

REASONS

7. Point No.1: The records disclose that the M/s Ashraya Builders and Promoters are developing and constructing apartments in building known as "PETUNIA" on a non-agricultural converted immovable property bearing RS.No. 93/2 (as per RTC 93/2P2-P1) measuring 0 Acer 16.13 guntas, situated in Padavu Village of Mangaluru Taluk, within Mangaluru city corporation of Dakshina Kannada district. Mr. Robert Sanctis is the owner of the aforesaid converted land and 1. Mr. Prasanna Bekal & 2. Mr. Ramesh J Moily are the promoters of M/s Ashraya Builders and Promoters. The aforesaid land owner and promoters of M/s Ashraya Builders and Promoters have entered in to an agreement for sale dated: 06.12.2015 with the complainant Mr. G. R Shetty to sell the 2BHK residential apartment No. 303, in 3rd floor measuring 1360 Sq.ft., in the commercial cum residential apartment with a car parking in basement floor No. 303 in "PETUNIA" along with undivided 5.65% right, title and interest in the aforesaid converted immovable property for a sum of Rs. 47,70,700/-. The aforesaid non-agricultural immovable property in RS.No.93/2 has been described as Schedule "A" property in the agreement dated: 06.12.2016 and whereas aforesaid apartment agreed to be constructed has been described as Schedule "B" property in the agreement. The aforesaid land owner and promoters of M/s Ashraya Builders and Promoters have entered into another separate agreement for sale dated: 06.12.2015 with Mrs. Geetha R Shetty, W/o Mr. G.R. Shetty to sell 1BHK residential apartment No. 101 and apartment No.104, in the 1st floor measuring 875Sq.ft. & 745 Sq.ft., in the commercial cum residential apartment with a car

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parking slot No. 101 & 104 in basement floor in "PETUNIA" along with undivided 6.05% right, title and interest in the aforesaid converted immovable property (to be constructed on Schedule "A" property) for a sum of Rs. 59,44,400/- which is described as Schedule "B" property in the agreement. (The copies of 2 separate agreements for sale both dated: 06.12.2015, standing separately in the name of Mr. G.R. Shetty and Mrs. Geetha R Shetty are produced).

8. The contents of aforesaid two separate agreements for sale makes it clear that complainant Mr. G.R. Shetty has entered into an agreement with respondents to purchase apartment No.303 and whereas Mrs. Geetha R. Shetty W/o Mr. G.R. Shetty has entered into another separate agreement with respondents to purchase apartment Nos. 101 & 104 in "Petunia", but the complainant in this complaint Mr. G. R. Shetty has produced copies of both the agreements and seeking relief on both the agreements. Admittedly Mrs. Geetha R. Shetty being an allottee of apartment Nos. 101 & 104 is not a complainant in this complaint and if at all Mrs. Geetha R Shetty is an aggrieved person in-respect of agreement entered by her with the respondents with regard to apartment Nos. 101 & 104 against the respondents, she ought have filed a separate complaint U/Sec. 31 of RERA Act, against the respondents or Mr. G.R. Shetty with her written authority or consent would have filed a separate complaint on her behalf as the cause of action in both the agreements are separate and independent. Therefore the complainant Mr. G.R. Shetty cannot seek relief in this complaint in respect of the agreement entered by his wife with regard to apartment Nos. 101 & 104 as no cause of action has arisen in his favour under that agreement. Under the circumstances the relief sought by the complainant Mr. G.R. Shetty in this complaint is

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considered only to the extent of agreement for sale entered between him and the respondents in respect of apartment No. 303 only.

9. Admittedly the agreement in-respect of apartment No. 303 has been entered between the complainant Mr. G.R. Shetty and the respondents, prior (i.e., dated: 06.12.2015) to coming into force of RERA Act. Therefore it is just to consider as to whether the provisions of RERA Act 2016 and K-RERA Rules 2017, are applicable in the present case or not. The Hon'ble Haryana Real Estate Appellate Tribunal in appeal Nos. 52 & 64 of 2018 decided on 03.11.2020, in appeal No 52/2018, in the case of Emaar MGF Land Limited Vs. Ms. Simmi Sikka and another and in appeal No. 64/2018 in the case of Ms. Simmi Sikka Vs. M/s. Emaar MGF land Limited, among others observed that provisions of the Act shall become applicable even to an unregistered project or projects which do not require registration with respect of the fulfilment of the obligations as per the provisions of the Act, Rules & Regulations framed there-under. Therefore, it is made clear that in the present case though the agreement is entered prior to coming into force of RERA Act and project is not registered with RERA but as on date of coming into force of RERA Act, the project was an ongoing project, so, required to be registered with K-RERA, as an ongoing project, as such, the provisions of the RERA Act and K-RERA Rules are made applicable in the present case, though the agreement has been entered between complainant and the respondents, much prior to coming into force of the RERA Act.

10. The complainant in the facts of the complaint among others has requested the respondents to complete the project, if not, to pay the loan amount to the bank and ultimate relief sought in the complaint is to direct the respondents to pay compensation for the damaged losses. In view of the judgment dated: 11.11.2021 passed by the

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Hon'ble Supreme Court of India, in Civil Appeal Nos. 6745-6749 of 2021, in the case of M/s Newtech Promoters and Developers Pvt. Ltd., Vs State of UP & ORS.ETC., With Civil Appeal Nos. 6750/21, 6751/21, 6752/21, 6753/21, 6754/21, 6755/21, 6756/21 and 6757/21, the Adjudicating Officer is only empowered to adjudicate the compensation and interest thereon U/Secs.12, 14, 18 & 19 RERA Act, as contemplated U/Sec. 71 taking into account the factors enumerated U/Sec.72 of the RERA Act. The relevant portion in Para No. 86 which reads as under:

"From the scheme of the Act of which a detailed reference has been made and taking not of power of Adjudication delineated with the regulatory Authority and adjudicating officer , what finally culls, out is that although the Act indicate the distinct expressions like "refund", "interest", "penalty", "compensation", a conjoint reading of Section 18 and 19 clearly manifests that when it come to refund of amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon it is regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudicating compensation and interest thereon under Section 12,14,18 and 19 the adjudicating officer executively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Section 12,14, 18 and 19 other than compensation as envisage, if the extending to the adjudicating officer as prayed that, in our view, may interested to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of Act 2016".

Thus in this complaint the ultimate prayer of the complainant for compensation for damaged losses is only liable to be considered.

11. The complainant among others has produced (1) Copy of sanctioned memorandum issued by the Canara Bank senior manager Magalore

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to the Canara Bank Kadri Road Branch Mangalore, intimating about permission to grant housing loan of Rs. 38.16 Lakhs to the complainant to purchase apartment No. 303 of the complainant subject to conditions mentioned therein. (2) Copy of letter dated: 26.06.2018 of Canara Bank wherein, among others, the disbursement of housing loan amount in the name of the complainant is also mentioned. (3) Copy of demand notice from the builders addressed to the complainant with regard to payment of consideration amount of apartment No. 303. (4) Copies of Canara Bank Loan account statements standing in the name of complainant for the years 2015-16 and 2017-18. These documents coupled with complaint averments corroborates the arguments of the complainants and his counsel that the complainant has paid major portion of agreed consideration amount to the respondents in respect of apartment No. 303 even availing the housing loan from the Canara Bank, despite that till this date the respondents have not completed construction of the building including apartment No. 303 and not handed over possession of the same to the complainant. Therefore the possibility of financial loss caused to the complainant cannot be over ruled apart from loss of opportunity of investment of paid amount in other profitable investment. The date of handing over possession of apartment No. 303 mentioned in agreement of sale is 30.06.2016 with 6 months grace period but till this date possession of said apartment has not been handed over to the complainant as discussed above. These materials on record evidences that the complainant has underwent mental harassment because of the aforesaid act of respondents not completing construction of apartment No. 303 and giving it for use and occupation of complainants and his family members for which complainant is entitle for compensation. Admittedly version of the complainant with regard to apartment No. 303 in the project is remained unchallenged and supported by materials on records. Under the circumstances it

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is just and proper to direct the respondents to pay compensation to the complainant by way of interest @ 9% per annum on respective amounts from the respective dates of receipt of such amounts towards financial loss/loss of investment opportunity. At the same time it is just to award an amount of Rs.1,00,000/- as compensation to the complainant towards mental pain and agony. Thus I hold point No.1, accordingly for consideration.

12. As per the provisions contemplated U/sec. 71(2) RERA Act, the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. This complaint has been filed on 03.06.2019, thereafter notices issued directing the parties to appear for hearing also COVID 19 Pandemic intervened in 2020-21. The parties given the reasonable opportunities to contest the case, as such, the judgment is being passed on merits, with some delay.

13. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

ORDER

(i) The complaint filed by the complainant bearing No.: CMP/UR/190603/0003187 is partly allowed against the respondents.

(ii) The respondents are hereby directed to pay compensation to the complainant Mr. G. R. Shetty in respect of Apartment No.303 mentioned in agreement dated: 06.12.2015 by way of interest @ 9% per annum on respective amounts from the respective dates of receipt of such amounts till payment of entire amount towards financial loss/loss of investment opportunity.

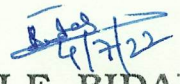
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- (iii) The respondents are directed to pay compensation of Rs. 1,00,000/- (Rupees One Lakh Only) to the complainant towards mental pain and agony.
- (iv) The respondents shall have to pay an amount of Rs.5,000/- (Rupees fifty thousand only) to the complainant towards cost of litigation.
- (v) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with the order and to enforce this order.
- (vi) Mr. Geetha R. Shetty W/o Mr. G.R. Shetty is at liberty to file a complaint under the provisions of RERA Act, for the relief in-respect of apartment Nos. 101 & 104 mentioned in agreement entered between her and the respondents, if so advised.
- (vii) Intimate the parties regarding this order.
(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 04.07.2022)


I.F. BIDARI

Adjudicating Officer-1
K-RERA