

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: 5<sup>th</sup> AUGUST 2022**

**COMPLAINT NO.: CMP/UR/200106/0005149**

### **COMPLAINANT**

**KANCHAN VIRMANI,**  
No.13, 1<sup>st</sup> Floor Park Road,  
Tasker Town,  
Bengaluru - 560068.

**(Rep. by. Sri. Naman Saraswat,  
Advocate)**

**V/S**

### **RESPONDENT**

**BRIGADE ENTERPRISES LIMITED.,**  
29<sup>th</sup> & 30<sup>th</sup> Floors,  
World Trade Center,  
Brigade Gateway Campus,  
26/1, Dr. Rajkumar Road,  
Malleswaram - Rajajinagar,  
Bengaluru - 560055.

**(Rep. by its Authorized Signatory)**

\* \* \* \* \*

The complainant Kanchan Virmani has filed this complaint bearing No. CMP/UR/200106/0005149 against the project "Brigade Lakefront" under section 31 of the RERA Act for the relief of interest on delay and completion.

### **Brief facts of both the complaint is as under:-**

The grounds urged in the complaint are that the complainant had entered into an agreement for sale and construction agreement with the respondent on 07/10/2013 and respondent was supposed to handover the possession of the flat on or before 30/06/2016 as agreed with 6 months

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grace period. The complainant has paid the entire sale consideration amount as per the terms of agreement. But, the respondent has not completed the project and handover the apartment as agreed. Hence, this complaint.

After registration of the complaint, in pursuance of the notice the respondent has appeared before the Authority through its counsel and filed objections as under:-

It has denied all the allegations made against it by the complainant as false. It contends that the delay caused is due to force majeure and NGT order. Blue block was fully completed in the first quarter of 2017. Accordingly, they had applied for OC for the said block on 04/05/2017. Hence, the project was exempted from RERA Registration as application for OC was filed prior to enforcement of KRERA Rules. As per agreement for sale, project was supposed to be completed on 30/03/2016 with six months grace period. Entire blue block was completed in the first quarter of 2017. Their company faced few months of delay due to heavy rains, lorry strike, state band due to kaveri and mahadayi water disputes. The order of NGT passed in O.A. 222 of 2014 dated 04/05/2016 was challenged before Hon'ble Supreme Court in C.A. No.5016/2016. Hence, citing the said order BBMP delayed in issuing the OC for the blue block. The NGT order affected the many builders. Their company challenged the non issuance of OC in respect of blue block and club house in W.P.No. 1720/2018 before Hon'ble High Court of Karnataka and said petition was clubbed along with other connected petitions. In the mean while the State of Karnataka filed SLP (civil appeal) No. 6288/2017 before Hon'ble Supreme Court challenging the conditions of NGT. Hence, Hon'ble High Court of Karnataka stayed all the connected cases including W.P. No. 1720/2018.

The respondent informed all the customers including complainant vide e-mail dated 16/03/2018 that, due to NGT order there would be a delay

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in obtaining OC for blue block. Subsequently, BBMP issued OC on 28/12/2018 for blue block except H and I wing in blue block which were affected by NGT order. The Hon'ble Supreme Court vide its order dated 05/03/2019 set aside the NGT order. Based on this order the respondent has filed fresh application for issuance of OC dated 30/03/2019 for H and I wings of blue block. Accordingly, OC was issued on 25/06/2019 and it was informed to all the customers including complainant by the respondent vide e-mail dated 28/06/2019. After the OC the complainant took possession of the apartment on 18/07/2019.

Hence, company has charged maintenance from August 2019. Further, the respondent has rectified the things wherever necessary and prayed to dismiss the complaint.

In support of his claim, the complainant has produced in all 9 documents such as copies of sale agreement, construction agreement, sale deed, feedback letter, progress report, statement of account, G-mail conversations, allotment notice and correspondence letter.

The respondent has produced in all 2 documents in support of its defence such as copies of partial occupancy certificate and structural stability certificate.

This matter was heard on 01/07/2022 and 12 /07/2022.

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

1. Whether the complainant is entitled for the relief claimed?
2. What order?

**My answer to the above points are as under:-**

1. In the Negative





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2. As per final order.

### REASONS


**My answer to point No.1:-** The complainants has approached this Authority for the relief of interest on delay and completion of the project on the grounds that the complainant has paid the entire sale consideration amount as per agreement. But, the respondent has not completed the project and handover the apartment.

Same is resisted by the respondent mainly on the ground that the complainant has filed the complaint before NCDRC, New Delhi in consumer case number 880/2020 with I.A. No. 7350/2020 and this complaint is subsequent to the complaint filed by RERA.

On perusal of the order sheet, when the matter was before AO, the complainant has not attended the hearing for several times. Even the complainant has not appeared before this Authority on 01/07/2022 and 12/07/2022.

Perused the copy of the complaint filed by the present complainant before NCDRC in consumer case No. 880/2020 with I.A. 7350/2020 in respect of the same issue involved in the present complaint No. CMP/UR/200106/0005149. Therefore the subject matter of present complaint consumer's complaint No. 880/2020 with I.A. 350/2020 are one and the same between the same parties.

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:



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*"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."*

Moreover, complainant has remained continuously absent in spite of providing sufficient opportunity. Considering all these aspects, the point raised above is answered in the Negative.

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

### **ORDER**

In exercise of the powers conferred u/s. 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/UR/200106/0005149 is hereby dismissed.

  
(H.C. Kishore Chandra)

Chairman  
K-RERA

