

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 BEFORE BENCH-4

Dated 3rd October 2022

Present

Shri. H.C. Kishore Chandra, Chairman

COMPLAINT No: CMP/200103/0005130

COMPLAINANT.....

Poorvika & Anoop Rao Kordcal
1818/4040A, Ground Floor
SS Layout, "A" block, 6th Cross
Davanagere-577004
(represented by Mr. Amit Anand,
Advocate)

V/S

1. M/s Trishul Developers
109-B, 1st Floor, # 6
Mittal Towers
M.G.Road
Bengaluru-560 001

RESPONDENT.....

2. R. Narayanaswamy
117, Basaveshwara Nilaya
Muneshwara Temple Road
Jakkur Post, Bengaluru-560 064.

3. R. Basavaraju
117, Basaveshwara Nilaya
Muneshwara Temple Road
Jakkur Post, Bengaluru-560 064

4. R. Adinarayana
117, Basaveshwara Nilaya
Muneshwara Temple Road
Jakkur Post, Bengaluru-560 064



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5. R. Nagaraja

117, Basaveshwara Nilaya
Muneshwara Temple Road
Jakkur Post, Bengaluru-560 064
(represented by
Mr. Dhananjay Joshi M
Mr. M.Umashankar
Ms. Kavitha Damodaran
Mr. Anand, Ms. Saraswathi
& others, Advocates)

JUDGEMENT

1. The complainants had filed a complaint against the respondent promoter of **M/s Trishul Developers**. The promoter has developed a project called "**Mittal Palms**" in the limits of Sy.No: 31,32, 33, Shivanahalli Village, Bengalure North, Bengaluru Urban. This complaint is registered in CMP/200103/0005130. The complainant sought relief of refund with interest.
2. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/309/PR/180328/000585
3. The gist of the complaint filed by the complainant is as under:
4. It is submitted that the complainants represented have entered into joint development agreement between land owners & Trishul Developers on 16.03.2006.
5. It is submitted that the agreement of sale was executed between the land owners and the complainants on 07.09.2013 towards the purchase of Flat No. C-602 in the project "Mittal Palms" for a fixed sale consideration of

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Rs.47,00,000/- . It is further stated that under the agreement of sale, the super built up area of the allotted flat is 1300 sq.ft. along with undivided share is 533.67 sq.ft.

6. It submitted that the promoter is obligated to hand over the possession of the flat by September 2014 as per agreement of sale dated 07.09.2013.
7. It is submitted that the complainants have made payments of Rs.9,50,000/- i.e. (Rs.2,00,000/- towards booking and an amount of Rs.7,50,000/- towards agreement signing amount) from 07.08.2013 to 28.09.2013 to the respondents. The complainants contend that they have made total payment of Rs.34,02,000/- to the respondent
8. It is submitted that the complainants have written several e-mails seeking possession date of the apartment and also sought compensation for delay possession, the respondent did not responded.
9. It is submitted that there is inordinate delay in completion of the project since September 2014 and cancellation of building license on 28.08.2014 on the ground that there is no approach road of 18 meters. Hence the complainants sought refund along with interest.
10. After registration of the complaint, in pursuance of notice, the respondents appeared before this Authority through their counsels Mr. Dhananjay Joshi, & others and filed written submissions on 11.08.2021 as under:
11. The respondent-1 denies the entire allegations made against them by the complainants as false.
12. It is submitted that the complainant has alleged that the project is delayed and has sought for the refund of Rs.34,02,000/- with interest from the date of payment till the date of realization, compensatory damage, compensation towards rent and compensation towards mental agony.

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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13. It is submitted that there is no privity of contract between the complainants and the respondent-1 and that the complainant has been incorrectly filed against the respondent-1 herein. The respondent contends that he is not a signatory to the agreement dated 07.09.2013.
14. It is submitted that the sale agreement is not duly stamped under the Karnataka Stamp Act, 1957 and this Hon'ble Authority ought to impound the sale agreement and direct the complainants to pay the stamp duty along with the penalty to rely on the document.
15. It is submitted that the respondent's project, Mittal Palms is duly registered before this Authority. It is further submitted that respondent has assured to the landowners to construct and deliver their share of the property, however on account of Force Majeure i.e. due to facts beyond the control of respondent, such as in the present case, orders passed by the statutory authorities.
16. It is submitted that for the purpose of the project, respondents applied for and obtained all the necessary consents and approvals including from the Airport Authority of India, BWSSB, State Environment Impact Assessment Authority, BESCOM, Police Department, Jakkur Flight Club, BSNL, KSPCB etc.
17. It is pertinent to note that, by an Order dated 10.05.2013, the BDA de-notified the lands adjacent to the property, in which the 16th main road had been formed by the BDA as a result of which the original land owners sought to block the road which was the access to the property. The respondents challenged the order of de-notification in W.P. No: 18300-304/2014 before the Hon'ble High Court of Karnataka, Bangalore, by an order dated 16.04.2014, the Hon'ble High Court of Karnataka granted an interim order of Status Quo.
18. It is submitted that without any notice to the respondents, the BBMP issued an Order dated 28.08.2014, cancelling the sanctioned plan on the alleged ground that the property has lost its road access. It is further submitted that

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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the respondents have challenged the BBMP's action, before the Hon'ble High Court of Karnataka at Bangalore vide W.P. No: 53809-13/2015. It is further contends that in W.P. 18300-304 of 2014, the respondent-1 entered into an agreement/compromise with the landowners and in lieu of the arrangement the landowners have released and relinquished the land pertaining to 12.2 meter-wide road through which the respondents shall have an access to the property.

19. It is submitted that the Hon'ble High Court of Karnataka vide its Order dated 08.04.2021 allowed the W.P. No:53809/2015 setting aside the order dated 28.08.2014, cancelling the sanctioned plan and has restored the sanctioned plan dated 26.04.2014 which was subsequently modified on 26.11.2011 and 21.02.2013.
20. It is submitted that the respondent-1 is confident to complete the project in another six to eight months from the restoration of sanctioned plan. It is further submitted that he has not committed any default in the delivery of the project. Hence prayed for dismissal of the complaint.
21. In support of the claim, the complainants have produced documents such as (a) agreement of sale dated 7.09.2013 (b) Typical floor plan Block-C (c) Details of payment made to the respondent (d) Statement of account of Deutsche Bank (e) Memo dated 08.07.2020 on behalf of the complainants clarifying the order dated 09.06.2020 of the Hon'ble High Court of Karnataka (f) Memo on behalf of complainants dated 6.01.2021 with regard to filing of W.P. No: 5036/2020 seeking direction to extend RERA registration (g) Memo on behalf of complainants dated 12.02.2021 enclosing certified copy of the order dated 14.12.2020 passed by Hon'ble High Court of Karnataka (h) Memorandum of facts seeking liberty of this Hon'ble authority to add landowners of Mittal Palms Project as party (i) memo of calculation submitted on 23.06.2022 (j)

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Memo dated 22.07.2022 enclosing copy of the complaint along with annexures sent to land owners by way of registered post dated 13.07.2022

22. In support of defence, the respondent has produced documents such as (1) Registration Certificate issued by RERA (b) copy of Writ Petition Nos.18300-304 of 2014, (c) Deed of Relinquishment executed on 12.04.2018.

23. Heard both the parties.

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

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

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

27. 1. In the Affirmative
2. As per final order for the following findings.

28. **Our findings on point no.1:**

From the materials placed on record, it is apparent that in spite of entering into an agreement for sale to hand over possession of an apartments, the builder has not completed the project as per agreement and has delayed the project and has not handed over the apartment to the complainant till date. Hence the builder has failed to abide by the terms of agreement for sale. There seems to be no possibility of completing the project or handing over the possession in near future.

At this juncture, our attention is drawn towards the judgement of Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment".

In case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants has already paid substantial sale consideration. Having accepted the said amount and failure to keep up promise to hand over possession of apartment certainly entitles the complainant herein for refund with interest.

Having regard to all the aspects, I conclude that the complainant is entitled for refund with interest. Therefore it is incumbent upon the respondent to refund the amount with interest.

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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29. Accordingly, the point raised above is answered in the Affirmative.

30. **My findings on point no.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, I proceed to pass the following order.

ORDER

In exercise of the powers conferred with the Authority u/s 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/200103/0005130** filed u/s 31 of the Act is hereby allowed.

1. The respondent is hereby directed to refund amount of Rs.34,02,000 (Thirty four lakhs two thousand only) along with interest calculated at the rate of 9% per annum from 07.08.2013 to 30.4.2017. Further at the rate of SBI MCLR + 2% per annum commencing from 01.05.2017 till the date of realization.

2. The respondent shall refund the amount within 60 days from the date of this order, failing which, the complainant is at liberty to enforce this order in accordance with law.

No order as to costs.



(H.C. Kishore Chandra)

CHAIRMAN

K-RERA