

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 10th October 2022

Present

Shri. H.C. Kishore Chandra, Chairman

Complaint No.	CMP/190125/0001945
Complainants	Vibekananda Patra 108, NSR Greens Kodichikkanahalli Main Road Anugraha Layout, Bilekahalli Bengaluru-560 076 (represented by Sri.K.S. Nandish Babu & Associates, Advocates/Consultants)
Respondent	N.S. Sridhar M/s NSR Projects, No:24, 1 st Cross 3 rd Phase, 5 th Block Krishnaiah Layout Banashankari 3 rd Stage, Bengaluru-560 085 (represented by K.S. Nandish Babu & Associates, Advocates & Consultants)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project **'NSR Greens' developed by "M/s NSR Projects"** in the limits of Sy.No. 86, Bilekahalli Village, Begur Hobli, Bangalore South Taluk for the relief of mediate between respondent and BBMP to resolve the issue of occupancy certificate.

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2. This project is an unregistered one.

3. The brief facts of the complaint are as under:-

The complainant had purchased a flat bearing No; FF 108 in the project "NSR Greens" and was in occupation in the said flat. The complainant sought for RERA to mediate between respondent and BBMP to resolve issue of occupancy certificate for entire building for khatha transfer, No Objection Certificate for BESCOM transfer. He further contended that the respondent has not issued allocation letter for one fully covered and marked car parking area to his flat in the project. Hence, this complaint.

4. After registering the complaint, in pursuance of notice, the respondent has appeared before the Authority through his counsel and filed written submissions as under:-

5. The respondent has denied all the allegations made against him by the complainant as false. He states that this project was commenced and completed before the commencement of RERA Act. The respondent had entered into development agreement on 26/08/2013 with the land owners and completed the project and has sold the flats before the commencement of RERA Act. He has retained the few flats which have been rented out. The complainant booked a flat in question on 07.12.2014 and entered into agreement of sale on 12.01.2015. Further he has purchased the said flat bearing No: FF-108 in the project and the respondent has executed deed of absolute sale in favour of the complainant on 11/04/2016 and occupied the same long back.



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6. The respondent contends that he has handed over the NOC for BESCOM transfer to the complainant but the complainant did not reveal the same before the Hon'ble Authority and hence the relief sought by the complainant is not maintainable.

7. The respondent submits that as per Section 4 clause iii of the RERA Act, the project in question is not required to be registered under RERA Act as per the exemptions mentioned in explanation to clause 4(1) of the said Act, and as such the contention of the complainant in this regard is not maintainable.

8. The complainant had never demanded commencement certificate and completion certificate of this project. Once the construction is complete, registration of sale deed has been done and possession is handed over, question of refund does not arise and hence he prayed to dismiss the complaint with cost.

9. The complainant has submitted the response to the arguments of respondent as under:

10. The builder must provide occupancy certificate while handing over apartment to the purchasers. In the absence of occupancy certificate building is not legally occupiable as per section 5.7 of the Bangalore Municipal Building bye-laws 2003. The builder has failed to provide statutory documentation. He is ready to vacate the flat if asked by RERA due to any reason. It is an illegal construction.

11. The complainant has produced in all 7 documents such as (a) copy of the Hon'ble RERA order on complaint No.CMP/180601/0000878

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dated 6th June 2022, (b) construction agreement (c) sale agreement (d) sale deed (e) Email from respondent regarding occupancy (f) BBMP approved sanctioned plan (g) refund calculation.


12. In support of defence, the respondent has produced in all 15 documents such as (a) copy of sale agreement executed in favour of the complainant (b) copy of the sale agreement dated 20.04.2017 (c) copy of the sale deed dated 02.11.2015 (d) copy of the sale deed dated 14.12.2015, (f) copy of sale deed dated 11.03.2016, (g) copy of sale deed dated 11.04.2016, (h) copy of sale deeds dated 28.03.2016, 09.06.2016, (i) copy of sale deed dated 27.07.2016, (j) copy of the sale deed dated 21.10.2016, (k) copy of the sale deed dated 18.01.2017, (l) copy of the sale deed dated 10.01.2017 (m) copy of the sale deed dated 18.01.2017(n) copy of the sale deed dated 10.05.2017 (o) copy of the sale deed dated 05.05.2017 & (p) copy of the sale deed dated 07.06.2017.

13. Heard both the parties. Perused the written arguments of the respondent.

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

1. Whether the complainant is entitle for the relief as sought for?

2. What Order?



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15. My answer to the above points are as under:

1. In the Partly Affirmative
2. As per final order for the following:

FINDINGS

16. My answer to point no.1: The complainant has sought for mediation of RERA between builder and BBMP for issuance of occupancy certificate. Records reveal that the complainant has acquired the flat No. FF 108 in the project "NSR Greens" without occupancy certificate under sale deed executed by the builder. It seems problem arose when BBMP refused to issue khatha extract without occupancy certificate.

Undisputedly, the project has been completed much prior to enactment of RERA Act. However, the complainant had purchased one of the flat retained by the builder that have been rented out. Whether the flat had to be sold or to be retained, it was the duty of the builder to obtain occupancy certificate from BBMP. It does not seem to have done so. As of now, complainant requires occupancy certificate in to be recognized by BBMP as legally occupiable premises and khatha extract can only be issued after this.

Therefore, in the circumstances of the case, this Authority finds it appropriate to issue direction to the builder to take necessary steps for obtaining occupancy certificate. In that view of the matter, point raised above is answered partly in the Affirmative.

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17. 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/190125/0001945** is hereby partly allowed. Respondent is directed to take steps for obtaining occupancy certificate.

2. The respondent is directed to resolve the issue with regard to allocation of one fully covered and marked car parking to Flat No: FF 108 as per AOS.

No order as to costs.



(H.C. Kishore Chandra)

Chairman
K-RERA