

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 17th October 2022

COMPLAINANTS....

1. **CMP/211011/0008430**
Venkatesh S. Arbatti
Rachana V Arbatti
309/1, 1st Floor, 3rd Cross
N.R. Colony
Bengaluru-560 019
2. **CMP/200724/0007284**
Pradeep G.S.
Usha S
IC Universal Legal, 5th Floor
"Phoenix Pinnacle"
#46, 3rd Cross Road
Yellappa Chetty Layout
Bengaluru-560 042.
3. **CMP/201202/0007178**
Phaneendra K.N.
Supriya MP
IC Universal Legal, 5th Floor
"Phoenix Pinnacle"
#46, 3rd Cross Road
Yellappa Chetty Layout
Bengaluru-560 042
4. **CMP/200724/0007208**
Pruthvi Raj
Prathiba M.P.
IC Universal Legal, 5th Floor
"Phoenix Pinnacle"
#46, 3rd Cross Road
Yellappa Chetty Layout
Bengaluru-560 042

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

(represented by Mr. Bibhas
V. Kittur, advocate)

V/s

Respondents...

**Prestige Estates Projects
Limited**

The Falcon House, No: 1
Main Guard Cross Road
Bengaluru-560 001.

(represented by Mr. Mohd.
Sadiq, Advocate)

JUDGEMENT

1. All the complainants have filed these complaints under section 31 of RERA against the project "**Prestige Bagmane Temple Bells**" developed by "**Prestige Estates Projects Limited**" in the limits of Sy.No: 54,55, 56/1, 56/3, 56/4, 57/2, Hosakerehalli Village, Uttarahalli Hobli, Bangalore South.

2. This project has been registered under RERA vide registration no. PRM/KA/RERA/1251/310/PR/170915/000281.

3. All these five complaints are arising out of the same project and hence they are taken up together for disposal in order to avoid repetition and for the sake of convenience.

4. The gist of the complaints is as under:

5.CMP/211011/0008430: Complainants Venkatesh S. Arbatti and Rachana V. Arabatti have booked an apartment No: 7045 B Type Level

6/10/20

plus

2
Vishu

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

in the project "Prestige Bagamane Temple Bells" for the sale value of Rs.28,44,720/-. They contend that, prior to the execution of the sale deed, the respondent had promised the complainants that car parking space would be provided along with the apartment and the sale consideration was inclusive of one car parking as per the booking confirmation letter dated 05.01.2015. The respondent has executed an agreement for sale in favour of the complainant on 05.01.2015. However, the respondent has not provided the complainants with the car parking space despite received consideration towards the same and is now demanding additional amount of Rs.2,50,000/- from the complainants. The complainants sought relief of allotment of car parking space without seeking additional costs and rectification of issues in the apartment.

In support of their claim, the complainants have produced documents such as (a) Prestige Bagamane Temple Bells – Booking confirmation letter dated 22.09.2014 (b) Agreement to Sell dated 05.01.2015 (c) Deed of Sale dated 5.12.2020 (c) copies of emails.

6.CMP/201218/0007284: The complainants Pradeep G.S. and Usha S.C. have entered into an agreement of sale dated 07/08/2015 towards the purchase of apartment No: 8061 in the project "**Prestige Bagmane Temple Bells**". The complainants took possession of the above flat on 23/04/2019 and there was no deviation whatsoever from the sanctioned plan. They contend that the respondent has deviated the change in position of the organic waste compost from next to tower 9 to tower 8 where the apartment unit purchased by the complainants is situated. Besides, the complainants are also facing the issues of

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

structural defects and have requested the respondent to resolve this issue but the respondent has not taken steps till date. The complainants contends that the respondent has breached agreement for sale and construction and has refused to provide car parking space. The complainants sought relief for strict adherence to sanction plan and compensation for repair of structural defect, allotment of car parking space, and compensation for mental agony.

In support of their claim the complainant has produced document such as Agreement to Sell.

6.CMP/201203/0007208: The complainants Pruthvi Raj and Prathiba M.P. have entered into an agreement of sale dated 14/12/2016 towards the purchase of apartment No: 8036 in the project "**Prestige Bagmane Temple Bells**". The complainants took possession of the above flat on 23/04/2019 and there was no deviation whatsoever from the sanctioned plan. They contend that the respondent has deviated the change in position of the organic waste compost from next to tower 9 to tower 8 where the apartment unit purchased by the complainants is situated. Besides, the complainants are also facing the issues of structural defects and have requested the respondent resolve this issue but the respondent has not taken steps till date. The complainants contends that the respondent has breached agreement for sale and construction and has refused to provide car parking space. The complainants sought relief for strict adherence to sanction plan and compensation for repair of structural defect, allotment of car parking space, and compensation for mental agony and legal cost.

1/38

1/38

4
like

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

In support of their claim, the complainants have produced documents such as (a) Booking form (b) statement of accounts (c) statement of accounts(d) OWC Photos.

6.CMP/201202/0007178: The complainants Phaneendra K.N. and Supriya M.P. have entered into an agreement of sale dated 13/06/2016 towards the purchase of apartment No: 8055 in the project "**Prestige Bagmane Temple Bells**". The complainants took possession of the above flat on 06/02/2019 and there was no deviation whatsoever from the sanctioned plan. They contend that the respondent has deviated the change in position of the organic waste compost from next to tower 9 to tower 8 where the apartment unit purchased by the complainants is situated. Besides, the complainants are also facing the issues of structural defects and have requested the respondent resolve this issue but the respondent has not taken steps till date. The complainants contends that the respondent has breached agreement for sale and construction and has refused to provide car parking space. The complainants sought relief for strict adherence to sanction plan and compensation for repair of structural defect, allotment of car parking space, and compensation for mental agony and legal cost.

In support of their claim, the complainants have produced document such as (a) Prestige agreement to sell (b) construction agreement (c) statement of accounts

7. Hence, these complaints.

8. After registration of these complaints, in pursuance of notice served, the respondent has appeared before this Authority through his counsel

6/8/20

12/8/20

12/8/20 5

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

Mr. Mohammed Sadiq, advocate and filed written submissions as under:

9. The respondent denied all the allegations made against it as false.

10. The respondents submits that the OWC plant operation which was placed adjacent to Tower No. 8 is shifted to an Open Space which is quite a distance from all the towers at the project. The respondent further contends that he has demolished the OWC structure adjacent to Tower No. 8 as per the directions issued by this Authority.

11. The Respondent submits that the OWC is just a utility which can be placed at any centrally located place without causing inconvenience to the communities. The respondent has relocated the OWC to an open area which is far away from all the towers at the project and that no adverse implication is caused to any flat owners.

12. The respondent submits that the OWC to an open area which is far away from all towers is also being objected by the group of flat owners and hence could not be commissioned. The respondent initiated process for formation of the Association and a letter was sent to the registered flat owners, inviting them to come forward for the formation of Apartment Owners Association and scheduled the election of the Executive Committee on 16.04.2022.

13. The respondent submits that as there was no nomination filed by the flat owners, on 16.4.2022 the respondent has arranged a video conference with the registered flat owners and called upon the registered owner to file nomination and to elect the Executive

6/5/8

14/5/22

6
Lishe

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

Committee members of the Association. Since there was no requisite nomination for the election of Executive Committee, the election process of Executive Committee would not be completed on 16.04.2022.

14. It is apparent that the location of the OWC could be decided by the Apartment Owners' Association and upon communication by the Owners' Association the respondent will either start commissioning OWC from the present location or re-install the equipment at the identified location by the Owners Association on its formation.

15. On the other hand, the complainants are not coming forward to get the sale deed registered in their names for the flats booked by them on the ground that he has to agree for the contents of Deed of Declaration of OWC location which is located adjacent to Tower No. 8 is baseless. The OWC is presently shifted to an open area far away from all Towers and also the old OWC structure adjacent to the tower no.8 which was demolished in compliance of the order of this Hon'ble Authority. Hence, prayed to dismiss the complaints.

16. In support of his defence, the respondent has produced documents such as (a) copies of the email dated 25.3.2022 and the letter dated 24.3.2022 (b) copies of the letters informing regarding filing of nomination and withdrawal of the nomination (c) copy of the letter dated 18.4.2022 (d) copy of the email dated 07.04.2022 sent by the complainant objecting for the formation of the Association. (e) Photographs reflecting the rain water entering the residential complex (f) Memorandum of Interlocutory application u/s 11(4)(e) of the RERA r/w section 151 of the CrPC 1908 dated 20.07.2022 (g) Memo dated

16/8

16/8

16/8

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

16.08.2022 with amended DOD showing the location of the OWC in open space

17. Both the parties furnished written submissions.

18. This matter was heard on 9/12/2021, 21.01.2022, 22/02/2022, 23/03/2022, 10/05/2022, 07/06/2022, 12/07/2022, 2/08/2022.

19. On the above averments, the following points would arise for our consideration.

1. Whether the complainants in CMP Nos. 0008430, 0007284 are entitled for the car parking space as claimed?
2. Whether the complainants prayer for shifting OWC requires consideration
3. What order?

20. Our findings on the above points are as under:

1. In the Affirmative
2. Does not survive for consideration
3. As per final order

21. **Our answer to point No.1:** The grievance of the complainants in CMP Nos. 0008430, 0007284 are that the respondent is demanding additional charges to allot car parking space for their respective flats in the project. On perusal of the allotment letter and agreement of sale, the respondent has agreed to provide car parking space to the complainants. Therefore, when he has failed to keep up his assurance,

6/8/22

2/8/22

8/8/22

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

the complainant has approached this forum for the relief of allotment of car parking space without seeking additional cost. The respondent is supposed to comply with all the terms agreed in the agreement of sale. Therefore, the respondent has to provide car parking space to the complainants without demanding additional charges. Accordingly, the point raised above is answered in the Affirmative.

22. **Our answer to point no.2:** The grievance of the complainants in CMP Nos. 0007284, 0007208 and 0007178 is that the OWC plant operation which was placed adjacent to tower no. 8 is shifted to an open space which is quite a distance from all the towers at the project. During the proceedings before this Authority, as per the directions of the Authority, the respondent has demolished the OWC structure adjacent to Tower No. 8 on 22.2.2022. In fact, OWC is just a utility which can be placed at any centrally located place without causing any inconvenience to the residents. The respondent has relocated the OWC to an open area which is far away from all towers at the project and no inconvenience is caused to any of the flat owners. Presently, segregation of dry wastes is done at the basement under each tower and the dry waste is collected by BBMP from the respective basements. Under such circumstances, the OWC plant at the new location is exclusively for wet waste management and the manure is used for gardening as such any vehicular access does not appear to be required for the OWC.

Further, it is evident from the records that the respondent has entered into rectification deed to the deed of declaration on 03.08.2022 due to inadvertence, the location of the OWC has been wrongly shown in the sketch to the Primary Deed and location of the same is also wrongly

6/8

22/8/22

Wise

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

described in Page No. 92, Sl.No. VI(i). Further in the said deed, Page No: 92 Sl.No. VI(i) 2 Nos. Organic Waste Converter Reddonatura make with capacity of 1000 KG & 500 Kg per day are installed behind Tower 8 near compound wall shall be deleted and replaced with open space away from all the towers.

Considering all these aspects, the replacement of OWC structure which has been relocated to an open area which is far away from all the towers certainly causes no inconvenience to any of the residents. Hence, this point does not survive for consideration.

Further with regard to grievances of these complainants about structural defects, no where complainants have specifically mentioned what are the structural defects remain unattended. In the absence of any materials, in respect of structural defects, no direction can be given to the respondent for repairs.

Coming to the aspect of compensation of mental agony, this relief is not coming under the purview of this Authority. The complainant is at liberty to approach Adjudicating Officer, RERA by filing fresh complainants for seeking compensation for mental agony.

Accordingly, this point is answered.

23. Our answer to point no.3: In view of the above discussion, the complaints deserves to be allowed. Hence, we proceed to pass the following:

[Signature]

[Signature]

[Signature]

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

ORDER

In exercise of the powers conferred under section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaints bearing Nos: 8430,7284, 7208 and 7178 are hereby allowed partly as under:

1. The respondent is hereby directed to allot car parking space as agreed to the complainants in complaint Nos. CMP Nos. 0008430, 0007284 without demanding additional amount from them.
2. Further the complainants are at liberty to file fresh complaints before the Adjudicating Officer, RERA for seeking remedy for the compensation of mental agony.

No order as to costs.


(D. Vishnuvardhana Reddy)
Member
K-RERA


(Neelmani N. Raju)
Member
K-RERA


(H.C. Kishore Chandra)
Chairman
K-RERA

Not an official copy