

PROCEEDINGS OF THE AUTHORITY

Dated 15th SEPTEMBER 2022

COMPLAINT NO. CMP/190131/0002029

COMPLAINANT.....

THOMAS K A

#29, Matha House,
2nd Cross, Sanjay Nagar,
RMV 2nd Stage,
Bengaluru – 560094.

(Rep. by Sri. Kadappa, Adv.)

V/S.

RESPONDENTS.....

**M/S. ANTEVORTA DEVELOPERS PVT.
LTD.,**

KUMAR JAISOM,
House of Hiranandani, 757/B,
100 Feet Road, HAL 2nd Stage,
Indiranagar,
Bengaluru – 560038.

**(Rep. by Sri. Chethan, Authorized
signatory)**

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1. This complaint is filed under section 31 of the RERA Act against the project “Glengate” developed by M/s. Antevorta Developers Pvt. Ltd., for the relief of interest on delay period.
2. Earlier, this matter was heard by the Adjudicating Officer who has passed an order. As against this order, the complainant has preferred an appeal before the K-REAT which has remanded the said appeal

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setting aside the order of the Adjudicating Officer for fresh consideration in view of judgement of Hon'ble Supreme Court in M/s. Newtech Promoters and Developers Pvt. Ltd., v/s. State of UP and others (2021).

Brief facts of the complaint is as under:-

3. The complainant Sri. Thomas K A had booked an apartment A-1303 in the project 'Glengate' of respondent. The respondent had agreed to deliver the apartment on 02/05/2016 to the complainant. Again the respondent has agreed to handover the possession till end of 2017. The complainant has paid the amount upto 2 instalments i.e., Rs.1,08,81,589/- (Rupees one crore eight lakhs eighty one thousand five hundred and eighty nine only). Subsequently, he had noticed in the agreement that there was a clause of 46+6 months for delivery of allotted apartment from the date of agreement dated 26/05/2016. So, he has expressed his concern through e-mail dated 28/04/2018. On enquiry the builder has assured the delivery between end of May and July 2018. He is facing financial losses by rent and EMI.
4. Further, the complainant claims that subsequently he came to know about some pending litigations i.e., W.P. Appeal No's 16566 - 16570/2011 related to the landed property covered under the said project. Hence, the complainant has decided to withdraw from the said project. Accordingly, he has amended his prayer seeking refund of entire amount with interest. He also came to know that the respondent has got changed the approved plan of the said project by shifting the club house and boundary of Glengate Gate Phase of the project by getting registered the DOD without knowledge of the complainant.
5. Hence, this complaint.

6. On 04/05/2022, the complainant has produced copy following documents in support of his contentions:

- i. Internet extract of publication made by the respondents regarding possession through websites
- ii. Internet extract of e-mail dated 01/05/2016
- iii. Agreement for sale and Construction agreement dated 26/05/2016
- iv. E-mails dated 28/04/2018 and 03/05/2018 in respect of completion
- v. Affidavit cum declaration dated 29/07/2017 submitted by the respondent with RERA regarding completion of the project
- vi. Affidavit dated 04/12/2019 stated to be subsequently got filed by the respondent in the said writ appeals
- vii. Acknowledgement of receiving the returned document by the respondent dated 30/10/2019
- viii. DOD dated 11/01/2019 got registered by the respondent pertaining to Glengate and the project plan recently got published by the respondent, as well as, plan got approved earlier
- ix. The development plan of approval dated 27/02/2013 pertaining to the entire project
- x. The changed development plan pertaining to the project dated 14/05/2018
- xi. Google map extract pertaining to changed development plan of the project
- xii. Construction agreement dated 13/08/2014 executed by the respondent to one of customer being a specimen
- xiii. E-mail correspondence, starts from 15/10/2019 to 06/11/2019
- xiv. Letter dated 08/11/2019 given by the respondent to the complainant regarding compliance of order / Judgement dated 10/10/2019 passed in the Cmp. No. 202 by the Adjudicating Officer, RERA.

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7. After registering the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and filed statement of objections as under:-
8. The respondent has denied each and every allegation made against it by the complainant as false. It contends that the complainant has sought for interest on delay and has also filed memo for refund of amount with interest. As per agreement of sale and construction agreement dated 26/05/2016 both the parties have agreed to complete the said project within 46 months with grace period of 6 months. Thus, the respondent was supposed to handover the possession of apartment to the complainant on or before September 2020. The said project was completed on 15/04/2019 and occupancy certificate was obtained on 03/04/2019. The respondent has completed the project well within the timelines and there is no delay in completing the project and the said apartment is ready to handover. In fact, the complainant has made delay in making payment and he is in due of paying said delay interest.
9. Further it has contended that, as per the demand letter dated 15/04/2019 the complainant should have made the payment on or before 14/05/2019, but the complainant didn't do so. Further, with regard to pending litigations, the respondent contends that the matters were pending before Hon'ble High Court of Karnataka as the landlords had challenged the land acquisition and they have not made this respondent party to the said matters. Hence, the respondent has filed an impleading application on 01/06/2019 and said matter is pending before the Court.
10. The respondent in the similar case has approached Hon'ble Supreme Court and got an order stating that the landowners are not entitled for seeking the quashing of the notification. Hence, this respondent has filed an impleading application in the said appeals, will contest the matter and get the similar order as given by Hon'ble Apex Court which

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will never harm the purchasers of the apartment. So, the respondent has never hidden any litigation filed by them or against them. The construction of compound wall is complete and only pending for putting up of the entrance gate. At this point of time the complainant cannot seek for refund of amount with interest. Hence, prayed to dismiss the complaint with costs.

11. On 12/07/2019, the respondent has filed additional objections contending that they have filed an application in Form – E for extension of registration for one more year. As the application is not rejected by the Authority it is deemed that the extension was given for one more year i.e., till May 2019. Section 18 of Real Estate (Regulation and Development) Act, 2016 is not applicable for the complainant as the building is completed and occupancy certificate has been obtained and respondent had sent final demand on 15/04/2019 and asked the complainant to take the possession after paying balance amount. But, the complainant is not interested to pay the balance amount of Rs.24,54,636/- (Rupees twenty four lakhs fifty four thousand six hundred and thirty six only) excluding the registration charges. The last date to pay the said amount was on 14/05/2019.
12. Again on 12/05/2022, the respondent has filed additional objections stating that the complainant has not paid balance amount of Rs.24,48,042/- (Rupees twenty four lakhs forty eight thousand and forty two only) with interest of Rs.6,80,478/- (Rupees six lakhs eighty thousand four hundred and seventy eight only) as on 30/04/2022. Mere filing of a case or pendency of case doesn't amounts to defect in the title.
13. As per order passed by AO to refund the amount, the respondent kept ready the DD for a sum of Rs.1,09,05,399/- (Rupees one crore nine lakhs five thousand three hundred and ninety nine only) along with Rs.5,000/- (Rupees five thousand only) and requested the complainant

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to execute the necessary documents and to collect the DD. But, the complainant refused to execute necessary documents. Further, the respondent has contended that there were 2 cases filed against it before Hon'ble High Court of Karnataka in W.P. No. 454/2014 and W.A. No. 16566/2011. In the first case W.P. No. 454/2014 the prayer against this respondent was got deleted in the year 2014 itself and its name was continued in the said case as nominal party. When some of the allottees wanted to take undue advantage of the said case, the respondent got its name deleted from the said petition on 15/01/2021. Further, the W.A. No. 16566/2011 was also disposed of and the appeal filed by the appellants also came to be dismissed by the Hon'ble Apex Court in SLP 13697/2021.

14. As per section 19(10) & (11) every allottee shall take the possession of the apartment within 2 months of the OC issued for the apartment. The respondent has intimated the same in the month of April 2019 to the complainant. But the complainant didn't come forward to pay the balance amount and to take possession of the apartment. Hence, prayed to dismiss the complaint with costs.
15. The respondent has produced documents on 12/05/2022 in support of its defence such as copy of
 - i. Interest calculation sheet
 - ii. Agreement of sale and construction agreement
 - iii. Occupancy certificate dated 03/04/2019
 - iv. Demand letter dated 15/04/2019
 - v. Order passed in writ appeal No.16566/2011, in order passed in SLP No's 13697/2021
 - vi. Order passed in WP. No. 454/2014
 - vii. Board resolution letter and Aadhar of authorised signatory
 - viii. Supreme Court order in IREO Grace Real Tech Pvt. Ltd., v/s. Abhishek Khanna and others Civil appeal No. 5785/2019 dated 11/01/2021.

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16. The matter was heard on various dates and final arguments were heard by the Authority on 18/05/2022.

17. **Based on the above documents and oral arguments, the following points would arise for our consideration:-**

- 1) Whether there was any pending litigation that affects the right of the complainant?
- 2) Whether the club house area is different than has been shown in the layout plan?
- 3) Whether there is a delay in completion of the project?
- 4) What order?

18. **Our Answer to the above points are as under:-**

- 1) In the Negative
- 2) In the Negative
- 3) In the Negative
- 4) As per the final order

REASONS

19. **Our Answer to point No. 1:-** During the oral arguments the complainant advocate has sought for refund of amount with interest on the ground that there were litigations pending before Hon'ble High Court of Karnataka which were not disclosed to the complainant.

20. He has pointed out clause 15 of the Agreement of sale between the parties dated 13/08/2014 where it is agreed that the seller shall convey the purchasers free from attachment, encumbrances, and court or acquisition proceedings of any kind.

21. Further, it is also pointed out that the AOS mentions that the seller is the absolute owner of the Schedule 'A' property and its title thereto is

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good, marketable and subsisting and it has the power to convey the same and right to carry on the development as per the scheme.

22. The developer has produced the order copy of WA no 16566/2011 and stated that they have become party to the said case only on 07/08/2019. Further the said Writ Appeal got dismissed on 02/08/2021. A SLP was filed challenging the said order and the same also has got dismissed on 17/09/2021 by the Hon'ble Supreme Court. A review petition was also filed and the same was got dismissed by the Hon'ble High Court of Karnataka.
23. With regard to the other writ petition No 454/2014 the developer has brought our attention to the order dated 14/02/2014, 15/01/2021 & 24/09/2021 wherein the prayer against the Developer got deleted and further their names also got deleted from the case.
24. As there was no pending case against them, the question of disclosing the pending litigation at the time of registration of the project before RERA does not arise.
25. The advocate for the complainant pointed out on a pending review petition filed in WA 16566/2011. The developer has stated that there is no restraining orders from the court on the said petition and hence it will not amount to defect in title and also the said issue was already decided by the Hon'ble Supreme Court and one such revision petition was already disposed of.
26. This Authority is of the view that as there is no impediment from any of the court or any orders restraining the developer in continuing with their business the same cannot be considered as title defect. This Authority cannot look into the merits of the pending cases. In case by virtue of the pending litigation if the developer was unable to do their business and handover the apartment, then this Authority could have

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considered it as the title defect. Hence, this point is answered in the Negative.

27. **Our Answer to point No.2:-** Complainant has drawn the attention of this Authority to the draft sale deed sent by the developer and also copy of sale deed executed by the developer to another allottee in respect of apartment with said project.
28. The complainant has stated that, in comparison of the sale deed draft sent by the developer before the registration, there is a change in the schedule with respect to larger area and schedule A in comparison with the sale agreement executed by the developer, which is detrimental to the interest of the buyer. It is also submitted that the copy of the sale deed executed by the developer to another allottee in respect of the apartment in the said project.
29. The opponent has committed gross violation of the sanctioned plan by shifting the club house of the project to a place contrary to the position shown in the plan. It also amounts to violation of the provisions under RERA wherein 2/3rd of the allottees consent need to be sought before making any changes in the sanctioned plan.
30. The respondent advocate has contested on the issue of the differences in the schedule property has pointed out that the agreement of sale contains the property of larger property schedule.
31. Measuring in all 40470 sq.mts equalling to ten acres of vacant land. Whereas the schedule A property shown in the agreement of sale which is actually the project area measuring 5459.79 sq.mts.
32. The promoter has submitted that they have not changed the extent of the project, but they had changed the boundaries mentioned in the agreements to perfect the title at the time of executing the sale deed which will be the title document for the Allottees. Further, they have

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even submitted that they can retain the same schedule as mentioned in the Agreements at the time of execution of the sale deed to the complainant. Further, the said grounds cannot be considered as title defect and for refund.

33. Further, the complainant advocate has submitted that while obtaining the commencement certificate, the developer has hidden few survey numbers purposely. The Respondent drawn our attention to the fact that while mentioning the survey numbers in the commencement certificate, the respective authorities will look into the khata certificate and khata extract issued by BBMP and while entering the survey numbers inadvertently few survey numbers were missed. However, the same got rectified at the time of obtaining the occupancy certificate. Hence, these grounds also cannot be considered as title defect and for refund.
34. Further, the complainant has not provided any such document except a bald plan which is not a sanctioned plan to prove his claim. Hence, point No. 2 is answered in the Negative.
35. **Our Answer to point No.3:-** It is the contention of the complainant that as per the construction agreement the date of delivery was to be in the month of September 2020 and the occupancy certificate was received on 03/04/2019. Hence, there is a delay in handing over the possession.
36. As against this, the respondent has contended that there is no delay at all in completion of the project and sending intimation to the complainant through mail that the complainant has to make balance payment and to take possession.

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37. On perusal of Construction agreement dated 26/05/2016, the respondent was supposed to handover possession of an apartment in favour of complainant on 26/09/2020. Occupancy certificate has been obtained on 03/04/2019. The respondent has given intimation to the complainant to take the possession of the said apartment through a mail dated 15/04/2019. Hence, there is no delay on the part of the respondent in handing over possession of apartment to the complainant. Accordingly, this point is answered in the Negative.
38. **Our Answer to point No.3:-** In view of the above discussion, complainant deserves to be dismissed. Hence, we 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/190131/0002029 is hereby dismissed.

No order as to costs.


(Neelamani N Raju)

Member-2
K-RERA


(D. Vishnuvardhana Reddy)

Member-1
K-RERA


(H.C. Kishore Chandra)

Chairman
K-RERA

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