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PROCEEDINGS OF THE AUTHORITY

Dated 28th OCTOBER 2022

COMPLAINT NO.: CMP/190825/0004009

COMPLAINANT.....

PRAVEENA KUMARA SHETTY,
No. 401, SR Arcade, 6th Cross,
Tulsi Theater Road,
Marathahalli,
Bengaluru – 560037.

(Rep. By Sri. Venkateshalu Dalapathy, Adv.,)

V/S

RESPONDENTS.....

1. **SRINIVASA MURTHY. T.V,**
S/o. T.S. Venkatesh Murthy,
DEVELOPER,
Working at No.44, Ground Floor,
20th Cross, Extended BHEL Layout,
R.R. Nagar,
Bengaluru – 560098.
(In person)

2. **MANJUNATH. R.N,**
S/o. Narayana Reddy,
LANDLORD-1
R/at, Ramasagara Village,
Muthanallur Village,
Attibele Hobli, Anekal Taluk,
Bengaluru – 560099.

3. **MANJUNATHA REDDY,**
S/o. Late Papa Reddy,
LANDLORD-2
R/at, No. 14, 1st Floor,
14th Main, HSR 5th Sector,
Bengaluru – 560034.

(R-1 & 2 represented by M.L. Gowda, Adv.,)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Jaithra Towers" developed by "Sri. Balaji Builders and Developers" for the relief of refund of amount with interest.

Brief facts of the complaint are as under:-

2. The complainant had booked a flat bearing No. 318 in the project of respondent wherein the complainant entered into an agreement for sale on 19/05/2012 for a total sale consideration of Rs.22,66,250/-(Rupees Twenty Two Lakhs Sixty Six Thousand Two Hundred and Fifty only) and paid Rs.6,49,054/- (Rupees Six Lakhs Forty Nine Thousand Fifty Four only) to the respondent on various dates. The respondent has assured to handover possession of the apartment will be given after completion or within 18 months from the date of plan sanction from the concerned authorities. However, the respondent failed to implement the project as per the agreement and did not complete the project in time. Further complainant submits that they are not occupied the flat and there is no response from the builder that he will construct the building within date. There is no progress in the project since 2014 and until now. Therefore, complainant prays this Authority to pass order to construct the flat through registered Association or to direct the respondent to refund the amount paid with interest at the rate of 18% per annum. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent 1, 2 and 3 have appeared before the Authority through its counsel and filed statement of objections.

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4. **Objection filed by the respondent No.1 is as under:-**

He has denied all the allegations made against him by the complainant as false. It contends that the Respondent No.2 and 3 landlords had entered into Joint Development Agreement on 06/07/2011. The said landlords had executed General Power of Attorney on 27/10/2011 along with supplementary agreement dated 27/10/2011. The landlords had acquired the property in the year 2007 through registered sale deed dated 29/08/2007.

5. Further it is submitted that the respondent had agreed to develop the subjected property by putting appropriate construction of the residential complex as accepted by the landlords. As per the terms and condition of the aforesaid documents, this respondent was entitled to 60% of overall development and landlords were entitled to 40% of overall development accordingly the apartment were distributed amongst themselves. The landlords have received a sum of Rs.50,00,000/- from this respondent at the time of execution of the Joint Development Agreement and General Power of Attorney. Subsequent to execution of aforesaid documents, the respondent obtained necessary approvals from the concerned authorities such as Anekal Planning Authority. However, the landlords started to obstruct the construction activities with a intention to throw the respondent out of the project with all development to be cornered for themselves virtually to make huge profit at the cost of the respondent and his customers.

6. The landlords in order to delay the project purposefully initiated false complaint and started to spread false rumours amongst the customers of the respondent in order to stall project and many of customers have fallen pray to the tactics of the landlords.

7. The landlords in violation of the terms and condition of the joint Development Agreement and General Power of Attorney issued notice for cancellation of the said documents and filed police complaint and also instigated the respondent's customer to file police complaints.

8. Landlords have always participated the proceedings before this Honourable Authority and on few occasion this respondent sought for impleading the landlords as respondent before this Hon'ble Authority since the presence of the landlords is required for getting the project registered as well as to start reconstruction activities with the co-operation of the landlords and complainants. It is submitted that from the said date of proceeding the landlords have been failed to appear before this Hon'ble Authority.

9. The respondent is always ready and willing to complete the project; however, the complainants and landlords are not co-operating with the respondent and are seeking for removal of the respondent from the project.

10. The complaint is not in accordance with the various provision of the Act and Rules, as such same cannot be considered by this Authority. Hence, prayed to dismiss the complaint.

11. **Objection filed by the respondent No.2 and 3 is as under:-**

12. It is submitted that, nearly about 42 applications have been filed by the Agreement holders / customers before this Authority seeking reliefs, this Authority has considered all the applications.

13. The builders have collected substantial advance amount from the Agreement holder and stopped the construction work over the schedule properties, as per the report the construction work has been done only 30%. Subsequent to entering the agreement the developer has concentrated only on illegal activities. The construction work has been stopped since December 2013. Promised the customers and entered into an agreement of sale to sell the flats in 4th floor which is not sanctioned by the Authority. The developer has

entered into sale with agreement holders of 80 members. But he has got share only to the extent of 58 flats after construction of building.

14. The landlords further submit that, on 20/07/2020 they have filed an affidavit stating that to safeguard the interest of customers / Agreement holder they are ready to give no objection that this Hon'ble Authority may appoint 3rd party for further construction over the schedule property without deceiving their share and rights.

15. The above said circumstances the landlords have submitted the detailed facts before this Authority and this Authority may be take any appropriate action without deceiving the right and share of the landlords in the property, in the above case, in the interest of justice and equity. Hence, prayed to dismiss the complaint.

16. In support of his claim, the complainant has produced in all 3 documents such as copies of Agreement of sale dated 19/05/2012, Payment receipts and memo of calculation.

17. On the other hand, the respondent No.1 has produced in all 3 documents such as copies of List of allottees raised complaints, agreement for sale, payment receipts.

18. Respondent No. 2 and 3 has produced in all 12 documents such as copies of Joint Development Agreement dated 06/07/2011, Sharing Agreement dated 27/10/2011, Legal Notices dated 21/01/2014 and 02/03/2014 from customers, Public Notice dated 22/04/2014, Petition Copy in A.A. No.342/2014, claim petition in arbitration case in A.C. No.128/2019, Valuation report dated 09/01/2020 submitted by Sara Consultants, arbitration award dated 19/01/2021, judgement dated 19/11/2021 in A.P.27/2021, appeal memo in COM AP/2022 on the file of the Hon'ble High Court of Karnataka and order dated 14/07/2022 passed by the District Consumer Forum.

19. Hearings were conducted on 14/11/2018, 19/08/2019, 03/09/2019, 09/09/2019, 18/09/2019, 26/09/2019, 15/10/2019, 03/11/2019, 06/11/2019, 19/11/2019, 28/11/2019, 19/12/2019, 08/01/2020, 23/01/2020, 14/02/2020, 24/03/2020, 24/01/2022, 17/03/2022, 20/04/2022, 24/08/2022, 07/09/2022 and finally on 29/09/2022.

20. Heard arguments of both the parties.

21. **On the above averments, the following points would arise for our consideration:-**

    1. Whether the project "Jaithra Tower" is to be registered?
    2. Whether the complaint is entitled for the relief claimed?
    3. What order?

22. **Our answer to the above points is as under:-**

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

REASONS

23. **Our answer to point No.1:-** From the materials available on record, it is apparent that there is no progress in this project since 2014 till now. Hence, the said project is ongoing project as on the date of RERA Act came into force.

24. Further, documents furnished by the respondent No.2 and 3 such as petition copy in AA. No. 342/2014, copy of claim petition in Arbitration case in AC No. 128/2019, the Arbitration award dated 19/01/2021 etc., clearly goes to show that there is a dispute between builder and landowners. The allottees who have parted with the part of sale consideration and entered into agreement for sale should not suffer on account of this dispute. Keeping in view, the interest of the allottees, the Authority deems it fit to issue direction to the respondent to get register the said project immediately.

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25. Therefore, the said project "Jaithra Tower" requires registration u/s. 3 of the RERA Act which reads as under:-

3(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—
(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

26. Accordingly the point raised above is answered in the Affirmative.

27. **Our answer to point No. 2:-** From the materials available on records, it is apparent that in spite of entering into an agreement for sale to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project, and has not handed over the unit in favour of complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale dated 19/05/2012. There seems to be no possibility of completing the project or handing over possession in near future.

28. In the judgement reported in Civil Appeal No. 3581-3590 of 2020 at para No. 23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

> *"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 case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."*

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

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

31. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest.

32. Further, during the proceedings, on 29/09/2022 the complainant has filed an affidavit stating that the present complaint is filed on her behalf as well as other 25 members and that they are unable to approach consumers forum seeking direction for payment by the respondent since complaint is barred by law of limitation, under the Consumer Protection Act, 1986.

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

34. **Our answer to point No.3:-** In view of the above discussion, the complaint deserves to be allowed. 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/190825/0004009 is hereby allowed.

1. Respondents are directed to get register the project "Jaithra Tower" u/s. 3 of the RERA Act immediately. Failing which, this Authority will initiate penalty proceedings.

Rectified vide order dated 8/2/23 as respondent No.1 is

2. Further, the respondent No.1 is respondents are directed to pay the amount of Rs.6,49,054/- (Rupees Six Lakhs Forty Nine Thousand Fifty Four only) with interest at the rate of 9% p.a from 17/04/2012 till 30/04/2017.

Rectified vide order dated 8/2/2023 as respondent No.1 is

3. Further, the respondent No.1 is respondents are directed to pay the amount of Rs.6,49,054/- (Rupees Six Lakhs Forty Nine Thousand Fifty Four only) with interest at the rate of SBI MCLR+2% from 01/05/2017 to till the date of entire realisation.

4. Failing which, the complainants are at liberty to enforce the said order in accordance with law.

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

PROCEEDINGS OF THE AUTHORITY

DATED THIS 8th DAY OF FEBRUARY, 2023

ORDERS U/S. 39 OF RERA ACT

1. Both the applicants have moved this application for rectification of liability of payment in the judgement dated 28/10/2022 in Cmp. No's 3817, 3913, 3921, 3916, 4069, 4009, 4007, 4692, 4025, 4655, 4794, 4795, 4707, 4803, 4657, 4659 and 7499.

2. The grounds urged by the applicants are that, they were respondents No's 2 and 3 in the said judgment and complainants have sought for the relief of refund with interest. Both the applicants have appeared before the Authority during the proceedings and contested the matter through their counsels M.L. Gowda and Venkateshalu Dalapathy and filed their statement of objections on various grounds. According to them, they are landowners of the project area and they have entered into an joint development agreement dated 06/07/2011 with respondent No.1 T.V. Srinivasa Murthy, Balaji Builders and Developers. The respondent No. 1 had agreed to develop and construct the residential apartment consisting 97 flats in which as per sharing agreement 60% i.e., 58 flats goes to developer i.e., respondent No. 1 i.e., 38 flats goes to share of landowners i.e., Respondent No. 2 and 3. Accordingly, the respondent No. 1 / developer had entered into agreements of sale with its customers. Even both the applicants have executed General Power of Attorney dated 27/10/2011 in favour of respondent No. 1 developer to do all the acts for development and construction in the project area.

3. There is a clause 11.1 in Joint Development Agreement in respect of obligation of developer is as under:-

> *The first party shall execute a registered power of Attorney in favour of the Second party empowering to proceed with obtaining of Licenses and Sanctioned plans, consents and in regard to the residential building to be constructed on the schedule properties and further authorize the second party to enter into Agreements for sale of 60% undivided share in the schedule properties;*

4. Accordingly, the said Joint Development Agreement was only for the purpose of construction of building and whatever the powers vested in the said agreement was only in respect of development of the project area. Further, said General Power of Attorney is unregistered one and it has no validity. In the meanwhile since the dispute arose between both the applicants and the first respondent, the matter was referred before the Arbitrator and after due proceedings, the Arbitrator passed an award in A.C. No. 128/2019 directing the respondent No. 1 herein i.e., Sri. Balaji Builders and Developers to apply before the appropriate authorities for registration of Joint Development Agreement, General Power of Attorney and supplementary agreement and to complete the construction within 12 months from the date of arbitration award and to handover 40% of the share of the landowners in all the stairs / floors and thereafter builder may allot the remaining apartments to the purchasers.

5. Further, the applicants have produced the order copy of District Consumer Disputes Redressal Forum, Bengaluru in the complaints filed by the agreement holders for the relief of refund of amount with interest wherein the said complaints came to be allowed and direction was issued to the builder herein i.e., M/s. Balaji Builders and Developers to pay the amount to the complainants and it is observed that since there is no privity of contract between O.P. No. 2 and 3 i.e., applicants herein and hence, the complaints against them came to be dismissed.

6. Further as per clause 11 of GPA dated 27/10/2011 reads as under:-

> *"To put purchasers of any part or portion thereof the Developers constructed area in possession of the any house, apartment and related rights thereof as and when any unit is sold after completion of construction as per the Joint Development Agreement."*

7. We have gone through the entire materials placed before the Authority. It is pertinent to note that, few agreements of sale furnished by the complainants do not bear the names and signatures of applicants herein. In some agreements of sale names of applicants herein have not been mentioned but, they bear their signatures and some agreements of sale were executed exclusively by the respondent No.1 M/s. Balaji Builders and Developers. They disclose that the respondent No.1 M/s. Balaji Builders and Developers had entered into these agreements with the customers representing the applicants herein through General Power of Attorney dated 27/10/2011 and he had received the entire sale

consideration by way of cash / cheque as the case may be. Further, it was agreed between the applicants herein and respondent No.1 M/s. Balaji Builders and Developers that unless and until project has been completed and General Power of Attorney and Joint Development Agreement were registered, the builder was not supposed to sell any flat. Herein these matters the complainants have approached this Authority for the relief of allowing the Association of allottees to complete the project or to refund the entire amount with interest.

8. Till now, the said project has not been completed. Respondent No. 1 M/s. Balaji Builders and Developers has violated the terms and conditions of General Power of Attorney and Joint Development Agreement and without registration of those documents and completion of the said project, the builder had entered into several agreements of sale with the customers and had received the sale consideration. Viewed from any angle the applicants herein have not received any part of sale consideration from any customers. Having regard to all these aspects, we are of the view that the respondent No. 1 M/s. Balaji Builders and Developers alone is liable to make payment of amount which he had received from various customers.

9. Further, being a developer the respondent No. 1 M/s. Balaji Builders and Developers has to register the said project Jaithra Towers under RERA. But through oversight in the Judgement dated 28/10/2022, the applicants herein were also directed to get registered the project and to make payment along with respondent No.1 builder M/s. Balaji Builders and Developers.

10. As per section 39 of RERA Act this Authority may at any time within a period of 2 years from the date of order made can rectify any mistake apparent from the record, amend any order passed by it and shall make such amendment if the mistake is brought to its notice by the parties. Further, so far there is no information regarding filing of appeal against the said judgement before Hon'ble Appellate Tribunal. There is no amendment on the substantive part of the order.

11. Considering all these aspects, we are of the view that at this stage it is just and proper that the relevant portion in the operative part is to be corrected by fixing liability only on respondent No.1 M/s. Balaji Builders and Developers and dismissing the complaints against the applicants herein i.e., respondent No. 2 and 3.

(G.R. REDDY)
Member
K-RERA

(NEELMANI N RAJU)
Member
K-RERA

(H.C. KISHORE CHANDRA)
Chairman
K-RERA