

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 3rd November 2022

COMPLAINT NO: CMP/200826/0006419

COMPLAINT NO: CMP/200916/0006594

COMPLAINANT.....

In CMP/200826/0006419 and
CMP/200916/0006594

By Mr. Saravanan Rajan

Apt No. 01.01.01 & 02, F-1, T-1, Buildg 2,
Shriram Chirping Woods, 12th Main,
Eastwood Twp, Haralur,
Bengaluru- 560103.

(Rep. by Sri. Vrun Thomas Mathew,
Advocate)

V/S

RESPONDENT

(In both the cases)

SHRIVISION HOMES PRIVATE LIMITED
NO.40/43, 8TH MAIN 4TH CROSS
SADASHIV NAGAR
(In person)

**Project name and
registration No.....**

Shriram chirping woods
PRM/KA/RERA/1251/446/PR/171014/001085

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1. Both these complaints have been filed under section 31 of the RERA Act against the respondent with regard to the project "SHRIRAM CHIRPING WOODS" developed by **SHRIVISION HOMES PRIVATE LIMITED** registered as **PRM/KA/RERA/1251/446/PR/171014/001085**. Both these complaints are taken up together for disposal as they are filed by the same complainant and pertain to the same project.

Brief facts in both the complaints are as under:

2. The complainant Mr.**Saravanan Rajan** is an allottee of an apartment bearing No. 01.01.01. Initially complainant filed a complaint bearing No. **CMP/200826/0006419** and thereafter he filed one more complaint bearing No. **CMP/200916/0006594** was filed. In the initial complaint, the relief sought by the complainant was to seek a direction from the authority to (i) refrain the respondent-promoter from disrupting maintenance services during the pendency of the disposal of the complaint (ii) for a direction to the respondent to form a association and (iii) direction to provide audited accounts in respect of the maintenance services. In the subsequent complaint the complainant has prayed for formation of single association of the owners, comprising of villaments and apartments.
3. The Authority, as an interim measure, vide orders dated: 19/11/2020 has passed an interim order wherein the respondent promoter was directed to refrain from causing any disruption of services such as water supply, BESCOM power and STP. Another direction was also issued to refrain from forming two different association of allottees.

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4. Thereafter further hearings have been conducted by the Authority and the submissions made by the complainant as well as the respondent promoter have been considered.
5. The salient features of the complaint are that as on that date most of the development works were completed in respect of towers 1 to 4 and villaments. The construction of apartment tower No. 5 was yet to be completed. The respondent had obtained partial occupancy certificate on 29-07-2019 for towers 1 to 4 and occupancy certificate for villaments on 28-11-2018. The respondent had executed sale deed on 29-12-2018 and handed over possession on 03-01-2019 on the assurance that balance work will be completed in the stipulated time.
6. The advocate for complaint has filed his written arguments on behalf of complainant on 30-11-2020, covering various aspects including the submission of respondent that they have provided separate amenities for Villaments and apartments. The complainant advocate submitted that the only amenity that is exclusive to the Villament owners is the "Villament clubhouse". Other than the club House, the following are the common amenities for both apartment and villa owners:
 - a. "Chirping Woods Clubhouse" is common to all residents of building 1, 2 and 3.
 - Badminton Court, Squash Court, Mini Theater, Virtual Golf, Creche, Multipurpose gymnasium, Billiards and Medical room.
 - b. Skating ring
 - c. Amphitheater
 - d. Multipurpose Hall (to be constructed in building no. 2)
 - e. Children's park

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- f. Multiple open parks
- g. Basket ball court
- h. Tennis court
- i. Open parks
- j. Cricket pitch
- k. Joggers strip
- l. Common organic converter

In view of the above, the complainant contended that majority of the civic amenities are common to both apartments and Villament owners. There are around 450 apartments, majority of the apartments owners are opting for the formation of a single Owners association and strongly opposing the formation of two separate owners associations. Thus, complainant has prayed before this Authority to pass an order refraining the respondent from.

1. Forming two separate owners associations, i.e. one for the apartment owners and the other for Villaments; to direct the respondent to facilitate the formation of single association and handover the project (after completion of all pending works including drainage system, Rain water harvesting) its maintenance and management to the association so formed at the earliest.

2. Complainant has sought a direction to the respondent to provide audited / detailed statement of accounts (including that of Money collected towards BWSSB and BESCOM) together with the details of expenditure incurred by the respondent for the purpose of management and maintenance of the project. Until such time to refrain the respondent from disrupting the maintenance services provided within the project.

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Issues arising out of the complaint are as under:

A. Formation of two allottees association i.e. one for Villament Owners and another one for apartment owners, is as per RERA Act and Rules?

B. Maintenance of all the civic amenities and common area and who has to pay maintenance cost?

C. Providing statement of accounts on maintenance.

In this content the provisions of the Act are examined, which are as under:

"The functions and duties of the promoter are specified in section 11 of the RERA Act. The section 11 (4) The promoter shall –

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made there under or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or building, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority as the case may be.

(e) enable the formation of an association or society or co-operative society, as case may be, of the allottees or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project".

7. The Respondent has denied the entire allegations made against it by the complainant as false. It contended that the land owners entered into a joint venture with this respondent to develop the land into the said project 'Shriram Chirping Woods'. As per the Agreement of Sale entered

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into between the complainant and respondent the sale consideration is payable in installments as agreed without any default. Any default/delay in payment would affect the timely completion of the entire project. The schedule unit was completed and sale deed has been executed on 29/12/2018 and unit was handed over to the complainant who is residing there since 2018.

8. Subsequently, certain additional works were to be completed and hence respondent was following up the same. In the mean while complainant had sent a legal notice dated 17-07-2020 in this regard. Subsequently, the respondent has been informed vide email communication dated: 24/07/2020 by the villament owners that they have not consented to the said legal notice and have no knowledge of it. The respondent has replied to the said notice on 13/08/2020.
9. The respondent has completed the said project within stipulated time and relevant works had to be temporarily stalled due to safety and security concerns. Despite facing grave hardships in mobilizing man power and procuring labor, the respondent is in the process of completing the relevant works and there is a slight delay due to COVID-19 pandemic.
10. It is also submitted that the formation of association is currently being deliberated upon by the owners of vilaments and apartments and the respondent has making effects in facilitating the process of formation of said association/s. The sale agreements were executed prior to commencement of RERA Act.
11. As regards the issue of BWSSB, as per agreement to sell, Rs.150/- (one hundred and fifty rupees only) per sqft(apartments) and Rs.230/- (Two hundred and thirty rupees only) per sqft (villaments) are the amounts to be collected for internal infrastructure cost of the project. In

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this regard, the amount collected towards BESCOM and BWSSB charges have been shared with the complainant vide email communication dated : 09/07/2020.

12. With regard to rain water harvesting and bore wells, the respondent has discharged his obligations and after due inspection the appropriate Authority has issued an occupancy certificate. Further, at the time of registration of the apartments the respondent has shared the details of maintenance charges which is maintained by the respondent and utilized to pay to the security, housekeeping, water supply, maintenance of lift, STP, WTP etc. Said funds are not used for developmental activities. It has been agreed by the complainant and other customers that the respondent would be entitled to collect additional maintenance charges in the event the amount collected found to be insufficient for carrying out maintenance activities. Hence, the complainants had sought for to increase the maintenance period by additional 4 months i.e., July, August, September and October 2020. The respondent is also entitled to collect amount towards corpus fund for the project and to retain the same until the formation of the association. Hence, prayed to dismiss the complaints.

13. The complainant, in support of his contention, has produced documents such as copies of Agreement of Sale, sale deed, occupancy certificate, deed of declaration and email conversations and legal notice dated:17/07/2020

14. The respondent has furnished 02 documents in support of his defense such as copies of statement of accounts and plan.

15. Both parties have submitted written submissions.

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

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A. whether is there a restriction in formation of two allottees associations i.e. one for Villament Owners and another one for apartment owners, is as per RERA Act and Rules? Is it required that only one Association has to be formed as contended by the complainant?

B. Maintenance of all the civic amenities and common areas and the method or meeting the maintenance costs of the project.

C. Providing statement of accounts on maintenance.

17. The Authority has examined the issues on the basis of the pleadings, the materials on record and the written arguments. During the course of the hearing of the complaint the allottees of the villament impleaded themselves and submitted that there is a requirement of giving an opportunity of hearing to the villament owners also on the issue of formation of association.

18. The Allottees / owners of the apartments have argued that since there are several common amenities and common areas which are common and overlapping for the villament part of the project and apartment part of the project, it is appropriate to direct the promoter of the project to form one single association. It is the case of the apartment owners that except the exclusive club house that falls within the exclusive domain and with exclusives membership rights for the vilament owners, the entire common areas and other amenities are accessible for all the owners/residents of the vilaments as well as apartments. In view of this, the apartment owners have sought for formation of single association of owners comprising of vilament owners as well as apartment owners. It is also submitted by the apartment owners that they have no objection for the exclusive right of the vilament owners to use the club house which is meant for the vilament owners only.

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19. On the other hand the vilament owners have contended that it is not only feasible but the law also permits for the existence of two associations in the same project area based on the nature and development of the project into different types of residential units. It is the case of villament owners that the plan had envisaged certain exclusivity as regards the location of vilaments falling in the same project area with different type of structures and exclusive club house. It is further submitted that to the extent there are common amenities and common areas that are not exclusive to each of the parts of the project, namely, apartments part of the project and villament parts of the projects, such non exclusive areas have to be maintained by contributing and sharing the pro-rata expenditure by the vilament owners as well as relevant owners.
20. The respondent-promoter has submitted during the hearing proceedings to the effect that the respondent-promoter while entering into the sale agreements had committed that it would provide exclusive club house and amenities to the villament owners. The project development was envisaged and executed to fulfill the promise that villament owners shall have an exclusive area with a club house. It is submitted that it is feasible to have two associations, one for the villaments and another for apartments, with a committee that would be responsible to manage the common areas that are common to the both the parts of the project, namely, villaments and apartments.

ORDER

The Authority has carefully examined the rival contentions of the parties. It is evident that the project was envisaged to be developed into two different types of residential units, one as vilaments and other as apartments. The exclusive club house provided for the villaments makes it convenient for the villament owners utilize the said amenities without over crowding the club house built in the apartment part of the project. As regards the common areas such as roads, security, electricity, water, STP and so on are concerned, it is feasible for the committee consisting of the representatives of villament owners and apartment owners to ensure proper maintenance and upkeep by collecting pro-rata charges payable by the owners of villaments as well as apartments. As regards

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the areas exclusive to villaments and apartments are concerned, the respective owners shall form their respective associations and provide the maintenance services. The scale and quality of such services, shall be determined by the decisions in their respective association meetings. It would be more harmonious to have the co-existence two associations, given the nature and character of the residential units, namely vilaments and apartments. Accordingly the respondent promoter is hereby directed to facilitate the formation of two associations one for the vilaments another for apartments.

2. As regard the prayer for direction to the respondent-promoter to furnish audited accounts of the maintenance charges collected and expenditure incurred thereof is concerned, the Authority has given interim directions during the course of hearings itself and they have been substantially complied with by the respondent-promoter. Further, the respondent-promoter is directed to hand over the audited account statements and the bank accounts pertaining to the maintenance services to the respective associations after formation of the two associations.


(Neelamani N Raju)
Member-2
K-RERA


(D. Vishnuvardhana Reddy)
Member-1
K-RERA


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