

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 9<sup>th</sup> November 2022**

**COMPLAINANT NO. CMP/210325/7838**

**COMPLAINANT.....**

**P. Vidhyasagar Arya**  
C4-403, Ramky One North  
Doddaballapur Road  
Avalahalli  
Yelahanka  
Bengaluru-560 064.

V/s

**RESPONDENT.....**

**Bhaskar Reddy**  
Ramky Estates & Farms  
Limited, Ramky House  
Site No.25-30, 2<sup>nd</sup> Cross  
Raghavendra Nagar,  
Hennur Ring Road  
Kalyan Nagar Post  
Bengaluru-560043

**(represented by Mr.Hitendra  
Hiremash, Advocate)**

**JUDGEMENT**

1. The complainant Mr. P. Vidhyasagar Arya had filed this present aforesaid complaint against the project "**Ramky one north Phase-2**" seeking relief of survey of entire land of project, registration of all phases, maintenance refund.

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2. The complainant had earlier also filed complaints before the various forums against the project "**Ramky one north phase-2**" developed by "**Ramky Estates and Farms Limited**" in the limits of Sy.Nos. 48/2A, 49/1, 49/2A, 49/2B, 51/1, Avalahalli, Doddaballapur Road, Yelahanka, Bengalure-560064. It is just and necessary to go through the previous complaints and orders passed by the various forums on the reliefs sought by the complainant before taking into consideration the present complaint filed by the complainant in CMP No: 210618/0008010.

**3. Brief back ground of the previous complainants filed by the complainant are as under:**

**(i) Complaint No.CMP/190314/0002374 & 0003174 filed before the**

**Authority:** The complaint in brief is that Rammky North is a real estate project, having A,B,C,D and E Blocks. Most of the apartments have been sold. A copy of the occupancy certificate has been given, but NOC/consent/license from pollution control board has not been given.

The STP is not operating scientifically and the untreated water along with faecal matter is coming up in the commode of the apartments whenever the water is flushed, giving a foul smell. The grievances of the allottees not redressed. Since the built up area has exceeded from the approved area as could be seen from the consent for establishment in 2010. The consent for operation was refused by the Karantaka State Pollution Control Board. Though the STP was sanction for 400 KLD and after an increase in the built up area, the promoter without expanding the STP has falsely stated that the capacity of the STP has been increased in 525 KLD.

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The project has 754 apartments and many are yet to be registered. The respondent has refused to survey the land for confirmation of the total area, common area, undivided share, parking area and also the area left for greenery. The promoter has increased the maintenance charges without justification and especially when the STP is malfunctioning. The genuineness of the khatha is doubtful. That the respondent may be directed to maintain the project till it is completed.

**Orders passed by the Hon'ble Authority dated 13<sup>th</sup> November 2019 on the aforesaid complaint as below:**

- (i) The respondent is hereby directed to immediately file application seeking extension of both the projects namely Ramky One North Phase-3 and Ramky One North Phase-4
- (ii) To immediately take corrective steps necessary for the installation and functioning of the STP of requisite capacity under the supervision and guidance of the competent authority namely, the Karnataka State Pollution Control Board
- (iii) The facilitate the complainants and others similarly placed purchasers to obtain the khatha from the competent authorities.
- (iv) To adhere to the payments of all outgoings until he transfer the physical possession of the project contemplated under section-11(g) of the RERA, 2016.

(ii) **Complaint No.CMP/191120/0004715 filed before the Adjudicating Officer, RERA:** The complaint in brief is that (1) the developer be directed to register the entire RON project(all phases) under RERA-K, conduct a structural audit of all the apartments in RON



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using the services of competent government agencies or any other agency of repute as prescribed by competent government agencies and maintain apartments for a period of 5 years from the date of handover of the apartment to the duly and legally constituted association/organisation/society of residents. The developer be directed to set right the STP satisfactorily and certified to be so in all aspects by competent government agencies or any other agency of repute as prescribed by competent government agencies. The developer be directed to undertake a joint survey of the entire land under RON with residents to ensure a clear title of the land in the name of the developer. The developer be directed to pay compensation, calculated as Rs.12,18,766/- to him for the delayed handover of the said flat.

**Orders passed by the Adjudicating Officer, RERA dated 20th June 2020 on the aforesaid complaint as below:**

- (i) The complaint filed by the complaint bearing No. 0004175 is hereby allowed
- (ii) The developer is hereby directed to pay delay compensation in form of the simple interest on the total amount paid as on July 2015 @ 9% till 30/04/2017 and @ 2 above the MCLR of SBI on the principal amount paid on the sale deed commencing from May 2017 till October 2018. (MCLR to be calculated @ prevailing rate as on today)
- (iii) The developer is also hereby directed to pay Rs.5,000/- as cost of the petition.

Aggrieved by the order dated 20/06/2020, the promoter company challenged against grant of delay compensation as the complainant has already taken the possession in 2017 and in turn the complainant has

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filed an cross appeal before the Real Estate Appellate Tribunal for non-grant of other prayers. Section 11 of Code of Civil Procedure, 1908 dealing with the doctrine "Res-judicata" is reproduced as follows.

*"Section-11 – Res judicata – No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which issue has been subsequently raised, and has been heard and finally decided by the such Court".*

**(iv) Appeal No.K-REAT) 344 c/w 382 of 2020 filed before the Hon'ble Karnataka Real Estate Appellate Tribunal by the complainant:** The facts in brief is that appeals preferred by the promoter and the allottee respectively against the common order dated 20<sup>th</sup> June 2020 passed by the respondent no.2 Adjudicating Officer, RERA in CMP/191120/0004715.

**The Hon'ble Karnataka Real Estate Appellate Tribunal after having heard the matter passed the order dated 24/09/2021 as follows:**

- (i) Appeal No.(K-REAT) 344/2020 preferred by the promoter is dismissed and Appeal No.(K-REAT) 382/2020 preferred by the allottee is partly allowed.
- (ii) The impugned order is modified directing the promoter to pay delay compensation in the form of simple interest @ 9% per annum from July 2015 till 30/04/2017 and to pay interest at

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10.75% P.A. commencing from 01/05/2017 till 25/10/2018 on the sale consideration paid on the sale deed.

- (iii) The Registry is hereby directed to release the amount deposited by the promoter-promoter with this Tribunal while preferring the Appeal in compliance of proviso to Section 43(5) of the Act, in favour of the Respondent no.1 – Allottee along with interest, if any, accrued thereon, by issuing either a cheque or DD in his name by following due procedure.
- (iv) The promoter is directed to pay balance of Rs.2,07,472/- as per the calculation made above within one month from today, failing which, it will carry interest at the rate of 10.75% P.A. till the date of payment.
- (v) In the event of promoter failing to pay the balance amount, the allottee is at liberty to recover the same by initiating proceedings before the appropriate forum, in accordance with law.
- (vi) Registry is directed to comply with the provisions of Section 44(4) of the Act and to return the records to RERA, if any received.

4. The complaint has again filed a present complaint in CMP No: 7838 under section-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project "**Ramky one north phase-2**" developed by "**Ramky Estates and Farms Limited**" in the limits of Sy.Nos. 48/2A, 49/1, 49/2A, 49/2B, 51/1, Avalahalli, Doddaballapur Road, Yelahanka, Bengaluru-560064 praying for directions to the respondent for validation of clear title of the project in



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all phases, registration of project under RERA and refund of maintenance fund.

5. This project is not registered in RERA.

6. **Brief facts of the complaint are as under:** It is submitted that the entire land in for Sy.No: 49/2B-1 to be subjected for survey to ascertain the genuineness or otherwise of the clear title of the said land. It is further submitted that the entire land area under RON project require to be registered under RERA. Further the maintenance amount to be refunded and the promoter should be prohibited for collection of maintenance amount from the complainant. The complainant prays for direction to survey entire land of the project, registration of all phases and refund of maintenance amount. Hence this present complaint.

7. After registration of the case, in pursuance of the notice served, the respondent through his counsel appeared before this Authority and filed objections as under:

8. The respondent has denied all the allegations made against it by stating that the complaint is false. It is submitted that the complainant has already filed various complaints with similar claims before this Hon'ble Authority(Adjudicating Officer, RERA) in complaint bearing Nos: CMP/190314/0002374 & 0003174 and CMP/UR/191120/0004715. The Hon'ble Authority and Adjudicating Officer have passed an order in the aforesaid complaints.

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9. It is submitted that the respondent-promoter has challenged the aforesaid order against grant of delay compensation as the complainant has taken the possession in 2017 and in turn, the complainant has filed an appeal before Real Estate Appellate Tribunal for non-grant of other prayers.

10. It is submitted that in the present complaint, the complainant has prayed reliefs of survey of entire land of the project, registration of all phases and refund of maintenance fund. Further it is submitted that the said reliefs were earlier prayed in complaint bearing no. CMP/UR/191120/0004715, an order was passed on 20/06/2020 by Hon'ble Adjudicating Officer allowing only the relief of delay compensation against the respondent promoter company.

11. Aggrieved by the order dated 20/06/2020 by the Hon'ble Adjudicating Officer grant delay compensation, the respondent promoter company has preferred an appeal bearing no. 344/2020 before the Hon'ble Karnataka Real Estate Appellate Tribunal, Bengaluru. The complainant has also preferred a cross appeal bearing no. 388/2020 before the Hon'ble Karnataka Real Estate Appellate Tribunal wherein the complainant sought for modification order, but however, has not sought for other reliefs as prayed in the lower court.

12. It is submitted that the Order in appeal bearing no. 344/2020 c/w 382/2020 was passed by Hon'ble Karnataka Real Estate Appellate Tribunal, Bengaluru dismissing the appeal and partly allowing by the appeal. Aggrieved by the order in appeal bearing no. 344/2020 c/w



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382/2020, the appellant promoter company preferred an appeal before the Hon'ble High Court of Karnataka at Bengaluru in RERA appeal No. 26/2021 and 27/2021 and the appeal was admitted on the substantial question of law:

*"(i) whether the courts below were justified in passing the impugned orders as opposed to the express Declaration cum Undertaking given by the allottee that he shall have no claim including any claim for construction delay?*

*(ii) Whether the tribunals below were justified in passing the impugned order despite the project in question not coming under the RERA Act, 2016."*

The Hon'ble Court of Karnataka after having admitted the case, called for lower court records and the case is pending before the Hon'ble High Court of Karnataka.

13. It is submitted that the complainant from time and again is making unwarranted claims before this Hon'ble Authority by filing various complaints after purchase of the apartment and execution and registration of sale deed in his favour. In view of the same, the promoter prays to dismiss the above complaint, as the complainant has not disclosed the same in the complaint and is seeking the very same reliefs as sought for in the said complaint which has already been disposed and has been challenged before the Hon'ble Real Estate Appellate Tribunal.

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14. In support of his claim, the complainant has produced documents such as (1) Agreement of sale dated 19.10.2012 (2) sale deed dated 22.11.2018 (3) Occupation certificate issued by BDA dated 30.05.2018 (4) completion certificate dated 03/-7/2017 (4) copies of appeal no. 344 c/w 382 of 2020 and complaint no. CMP/191120/004715.

15. In support of his defence, the respondent has produced documents such as (1) copy of complaint in present complaint bearing no. CMP/UR/210325/0007838 (2) Order dated 20/06/2020 in CMP/191120/0004715 passed by Hon'ble Adjudicating Officer (3) copy of complaint in appeal bearing no. 382 of 2020 filed before Hon'ble Real Estate Appellate Authority Tribunal, Bengaluru (4) copy of order dated 24/09/2021 in appeal bearing no. 344 c/w 382 of 2020 by Hon'ble Real Estate Appellant Tribunal, Bengaluru (5) Daily order sheet reflecting of admitting RERA appeal No. 26 of 2021 by Hon'ble High Court of Karnataka (9) Daily order sheet reflecting of admitting RERA appeal no. 275 of 2021 by Hon'ble High Court of Karnataka (10) Memo dated 22/06/2022.

16. Heard both the parties. This matter was heard on 25/02/22, 18/5/2022, 22/06/2022, 20/09/2022.

17. On the above averments, the following points would arise for the consideration of the Authority.

1. Whether the complainant is entitled to the relief claimed?
2. What order?

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

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19. 1. In the Negative

2. As per final order for the following:

**FINDINGS**

**20. Our findings on point no.1:** The complainant has prayed for the reliefs of survey of entire land of project, registration of all phases and refund of maintenance amount.

It is pertinent to note that the said reliefs were earlier prayed in complaint bearing no. CMP/UR/191120/0004715, order was passed on 26/06/2020 by Hon'ble Adjudicating Officer allowing only the relief of delay compensation against the respondent promoter company.

All the claims under this complaint have already been heard by this Hon'ble Authority under complaint Nos. CMP/190314/0002374 & 0003174 and by Adjudicating Officer and orders have been passed. It may be noted that against the order passed in the complaint No. CMP/UR/190314/0002374 & 0003174, the complainant has preferred an cross appeal under Appeal No. 382/2020 before the Real Estate Appellate Tribunal. The Karnataka Real Estate Tribunal have passed orders dismissing the appeal and partly allowing by the appeal.

It is evident from the fact that the issues in the present complaint has been directly and substantially been adjudicated and concluded in the former complaint by the Hon'ble Authority.



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Having regard to all these aspects, we conclude that the complaint is liable to be dismissed as the complainant is seeking the very same reliefs as sought for in the said complaint which has already been disposed and has been challenged before the Hon'ble Real Estate Appellate Tribunal. Accordingly, the point raised above is answered in the Negative

**23. Our findings on point no.2:** In view of the above discussion, we proceed to pass the following order:


**ORDER**

In exercise of the powers conferred under section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/UR/201325/0007838** is hereby dismissed.

No order as to costs.

  
(**D. Vishnuvardhana Reddy**)

Member-1  
K-RERA

  
(**Neelmani N Raju**)

Member-2  
K-RERA

  
(**H.C. Kishore Chandra**)

Chairman  
K-RERA