

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 BEFORE BENCH-4

Dated 16th November 2022

Present

Shri. H.C. Kishore Chandra, Chairman

Complaint No.	CMP/UR/220526/0009535
Complainants	Hill Crest Apartment Owners Association Hill Crest Apartment House of Hiranandani, Bnenneraghatta Hulimavu Begur Road Akshaya Nagar, Bengalure-560 068. (represented by Sri.E. Subail Ahmed, Advocate)
Respondent	M/s Suadela Constrctions Private Limited Begur-Hulimavu Road Next to Hulimavu Akshayanagar Bengaluru-560 068. (represented by Authorized Signatory for respondent)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project **'Hill Crest'** developed by **"M/s Suadela Constructions Private Limited"** in the limits of Begur Village, Begur Hobli, Bommanahalli Zone, for the relief of direction to the respondent to register the project under RERA and to hand over physical possession



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of the project along with all common areas and civic amenities within the project to the complainant Association.

2. This project is not registered in RERA.

3. The brief facts of the complaint are as under:-

The respondent has promised to deliver amongst other amenities and facilities a Clubhouse including a swimming pool, gym and exercise hall, Badminton squash and tennis courts etc. It contends that the project "Hill Crest" stood incomplete on various counts even as on 01.05.2017. The respondent failed to register the project with the RERA Authority. Further, the respondent has constructed commercial shops on the ground floor of the project in contravention of the approved sanctioned plan and has also retained the ownership and possession of the Club house, swimming pools, sports and other recreational areas and also engaging and allowing outsiders and third parties other than the allottees not only to maintain the Club house but also inducting them as members to the Club house. Hence, this complaint.

4. After registering the complaint, in pursuance of notice, the respondent has appeared before the Authority through his counsel and filed written submissions as under:-

5. The respondent has denied all the allegations made against by the complainant as false. It is contended that the respondent has completed constructions of 3 blocks/projects namely Club Meadows, Hill Crest

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and Lake Verandhas before the commencement of RERA Act. Further when the Act got implemented in Karnataka, the respondent has registered three more projects/phases before this Authority. The Township is known as "the House of Hiranandani – Bannerghatta. As the development of the township was not yet completed, the common amenities reserved for the entire township for all the projects were maintained by the respondent. The common areas and facilities formed for the individual projects have already been handed over to the respective projects.

6. It is contended that the complainant had approached the respondent with the desired to purchase an apartment from the respondent. Having satisfied with the title of the property and understanding the scheme, the members of the complainant have executed the agreement of sale on various dates by paying the initial payment. Further, the members of complainant were taken to the schedule property as per the respondents policy to inspect the same and after due inspection and satisfaction the members of the complainant got their sale deeds registered in their favour and also have executed possession documents without any protest by making payment of the remaining amount.

7. It is contended that the respondent has obtained all necessary NOCs and approvals before obtaining the OC. Further, all the documents executed between the members of the complainant it has clearly stated that amenities such as the Club house/sports hall would be common for the larger development and the completion of the shall not be construed as mandatory at the time of handing over possession of the



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respective apartments in the said individual developments which are done in phases.

8. It is contended that the respondent has obtained necessary approvals for the construction of convenience stores and running the same. Hence, the respondent prays that this Hon'ble Authority may be pleased to dismiss the complaint with exemplary cost.

9. In support of his claim, the complainant has produced documents such as (1) Copy of authorization letter authorizing the President of the Association to represent before RERA Authority (2) Copy of the brochure/prospectus published by the respondent (3) copy of the agreement for sale (4) copy of the construction agreement (5) copy of the partial Occupancy certificate dated 29.08.2017 (6) copy of the approval of electrical installation (7) copy of the approval for lifts operation (8) copies of the Deed of declaration (9) copy of the Rectification deed (10) Copy of the sale deed executed by the respondent in favour of allottees (11) copies of consent for operation for STP, operation for lift, document evidencing permanent power from BESCOM. (12) Memo dated 12.09.2022.

10. In support of defence, the respondent has produced documents such as (1) Copy of the petition filed in NCDRC in CC 73/2022 (2) copy of the petition filed before Principal Senior Civil Judge in CC 49/2021 (3) copies of the Architect certificate (4) copy of Occupancy certificate (5) copy of clearance letter issued by Fire Department dated 11.05.2017 and CFO dated 05.08.2016 (6) Copy of the khatha certificate and extract and ground floor plan (7) Copy of the Board resolution.



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11. Heard both the parties. The complainant also filed written arguments on 30.9.2022. This matter was heard on 18/07/2022, 08/08/2022, 02/09/2022, 16/09/2022,

12. On the above averments, the following points would arise for my consideration.

1. Whether the complainant is entitled to the relief claimed?

2. What order?

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

14. 1. In the Affirmative

2. As per final order for the following:

FINDINGS

15. **My findings on point no.1:** The grievance of the complainant is that the respondent has constructed the Club House and other amenities in the area reserved for civic amenity in violation of the sanction plan, retained himself the ownership and possession of the Club House, Swimming Pools, Sports and other recreational areas. Further, the respondent is allowing outsiders and third parties to use the club house constructed on a civic amenity area site and also allowing them to use the same for commercial purposes without sharing the proper books of accounts with the Complainant Association. The



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agency engaged by the respondent demanding exorbitant subscription fees from the Resident Owners which is illegal and arbitrary.

It is pertinent to note that the said complainant has been filed after a huge delay i.e. on 26.05.2022. The RERA has come into force from 2017, the Occupancy certificate was received in the year 2017 and the sale deeds and handing over of the possession was started from the year 2016. The respondent has obtained all necessary NOCs and approvals before obtaining the Occupancy certificate.

It is pertinent to note that the respondent has undertaken construction and development in phases wherein he had completed construction of 3 projects namely Club Meadows, Hill Crest and Lake Verandhas before the commencement of RERA Act. Later, the respondent registered three more projects before this Authority after the RERA Act got implemented in Karnataka and this Township is known as "the House of Hiranandani-Bannerghatta". The said township comprises of common amenities such as sports hall, swimming pool, club house, tennis court, basketball court, parks, playgrounds etc., for the use and utilization of all the purchasers of the property in the said Township.

It is pertinent to note that development of the township were incomplete and hence the common amenities reserved for the entire township for all the projects were maintained by the respondent. Further, the respondent has already handed over common areas and facilities formed for the individual projects.

It is apparent from the records that the respondent has made application for the issuance of Occupancy certificate on 15.05.2017.

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After due inspection, the BBMP has issued Partial Occupancy certificate on 29.08.2017 after the enactment of RERA Act came into existence on 1.5.2017. The Architect's Certificate obtained by the respondent was dated 27.04.2017. Civil works at the basement were ongoing as late as in the month of December 2018. At this stage, it is just and necessary that the promoter to get the project registered immediately. Further proceedings are required to be initiated against the promoter under Section 59 of the Act for violation of Section-3 of the Real Estate (Regulation and Development) Act, 2016.

In the light of the facts and circumstances as discussed above, the point raised above is answered in the Affirmative.

My answer to point no.2. In view of the above discussion, I proceed to pass the following order:

ORDER

In exercise of the powers conferred under section 31 read with section 18 of the Real Estate(Regulation & Development) Act, 2016, the complaint bearing no. **CMP/UR/220526/0009535** is hereby allowed.

1. The Respondent/Promoter **M/s Suadela Constructions Private Limited**, is hereby directed to register the project under RERA immediately under section 3 of the Real Estate (Regulation and Development) Act, 2016, within two weeks from the date of receipt of this order.

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2. The respondent is hereby directed to immediately hand over physical possession of the project along with all common areas and civic amenity sites within the project to the Hill Crest Apartment Owners' Association and submit compliance report.
3. No order as to costs.


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