

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 9th November 2022

COMPLAINANTS.....

1. **CMP/201125/0007124**
VIKAS DHARIWAL and
GAUTAM DHARIWAL
B601, NCC Ivory, Heights, Outer Ring
Road, Mahadevapura,
Bengaluru-560016.
2. **CMP/201127/0007137,**
MAHESH SUDHAKARAN,
G-21/1103, Sandeep Vihar, Hosakote
Whitefield Main Road,
Kannamangala,
Bengaluru Urban-560067, Karnataka.
3. **CMP/201127/0007138**
MAHESH SUDHAKARAN
G-21/1103, Sandeep Vihar
Hoskote Whitefield Main Road
Kannamangala,
Bengaluru Rural-560067
4. **CMP/210118/0007468,**
RAHUL SHUKLA and
ARADHNA SHUKLA
128/108, H-2 Block, Kidwai Nagar,
District: Kanpur Nagar,
State: Uttar Pradesh-208011
5. **CMP/210118/0007469**
RAHUL SHUKLA and
ARADHNA SHUKLA
128/108, H-2 Block, Kidwai Nagar,
District: Kanpur Nagar,
State: Uttar Pradesh-208011
6. **CMP/210118/0007470**
RAHUL SHUKLA and
ARADHNA SHUKLA
128/108, H-2 Block, Kidwainagar,
District: Kanpur Nagar,
State: Uttar Pradesh-208011.

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MWS

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WBS

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7. CMP/210203/0007565

ASHISH CHOUDHURY and
ARPITA PATRA,

No. 315, new housing colony
Indian Institute of Science
Bengaluru North
Bengaluru Urban-560 012.

8. CMP/210604/0007979

VENKATRAM RAMMURTHY,

No. 156, 6th Cross, Teachers Colony,
Nagarbavi 1st Stage,
Bengaluru Urban-560 072.

9. CMP/210626/0008061

NIKHIL RANADE and
APOORVA JOSHI

A 705, Spring Beauty Apartment,
ITPL Main Road, AECS Layout,
Kundallahalli,
Bengaluru Urban-560037.

10. CMP/210107/0007412

SHIVANAND HIREMATH and
ASHA HIREMATH

349/1, Rainbow Drive Layout,
Near Wipro Corporate Office,
Sarjapur Road,
Bengaluru Urban-560035.

(Rep. by Sri. Girish Kumar R, Adv.)

V/S

RESPONDENTS.....

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

No. 514 Dalamal Towers Nariman Point,
State: Maharashtra,
District: Mumbai City- 400021.

(Rep. by Sri. Chethan, Authorized Signatory)

Asst

MLK

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1. All the above said complaints have been filed under section 31 of the RERA Act against the project "**Glen Classic**" developed by "M/s. Antevorta Developers Private Limited" for the relief of refund with interest.
2. This project has been registered under RERA vide registration No. PRM/KA/RERA/1251/309/PR/171016/000958.
3. All these matters are taken up together for disposal as they are arising out of the same project, have common issues and in order to avoid repetition.

Brief facts of all the complaints are as under:-

4. All the above said complainants have booked the flats in the project of respondent and entered into agreements of sale and construction by paying a considerable sale consideration to the respondent. The respondent has not completed the project and handed over the respective flats to the complainants as agreed. Now their grievance is that there are pending litigations with respect to title of the land wherein the said project has been coming up. Hence, the respondent is not in a position to handover the flats to the complainants as agreed. Therefore, they have all sought for the refund of amount paid with interest. Hence, these complaints.
5. After registration of the complaints, in pursuance of notices, the respondent has appeared before the Authority through its counsel and filed objections as under:
6. The respondent has denied the entire allegations made against it by the complainants as false. It contends that it has completed the construction of the apartments well within timeline agreed with the complainants and has offered them to take possession after paying the balance amount. Every allottee shall take the possession of the apartment within two months from the date of obtaining occupancy certificate. But the complainants have not made the final payment due to them. The respondent was supposed to

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handover the possession of the apartments to the complainants on or before February 2021 whereas it had completed the construction and obtained occupancy certificate on 10/11/2020.

7. There were no impediments from any court of law or authorities for execution of sale deeds / transfer of title or for taking the possession of the apartments. Mere filing of a case or pendency of a case does not amounts to defect in the title. Further it is pertinent to note that as on the date there was no pending case against the respondent and the cases which were pending at the time of filing these complaints are all frivolous and disposed of by the court. All these complaints have been filed soon after obtaining occupancy certificate.
8. The respondent came to know about the pending litigation very late. A case was filed by erstwhile landowners against the government one NTI society who had sold a portion of their land to one company SBG housing pvt Ltd., and later this respondent had purchased the same from them. The landowners neither made their predecessor SBG as party to the said case nor the present respondent also hence, when the respondent came to know about the said pending litigation, filed an impleading application before the Hon'ble High Court of Karnataka on 01/06/2019 which came to be allowed on 07/08/2019. Any orders passed prior to becoming the party to the case is not binding on this respondent. Upon impleading the respondent has filed an application to clarify the earlier status quo order and after detailed hearing the court clarified its earlier order and permitted this respondent to construct and complete the pending works on the alleged disputed area after filing an affidavit to the effect stating that they shall not claim equity in case the case goes against them. Accordingly, the respondent has filed an affidavit in this regard. Therefore, it has not hidden any litigation with any of its customers.
9. In the meanwhile, the erstwhile owners had lost their case before single bench in writ petition and had preferred an appeal in W.A No. 16566/2011

which came to be dismissed by the division bench. The pendency of the said case was nowhere had affected the complainants in paying the balance amount and to get executed the sale deeds and to take possession of their respective apartments.

10. Moreover, in one of the similar case, the Hon'ble Supreme Court in case No. S.L.P.(c) Nos.9036-9038 of 2016 has clearly clarified the position of the cases filed challenging the old acquisitions that if award has been passed on taking possession under section 16 of the Act of 1894, the land vests in state there is no divesting provided under section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under the said section and also if the award is deposited before the treasury is also valid and the land owners cannot challenge the acquisition. The averments with regard to the affidavit filed, orders passed in the writ Appeal does not survive as the appeal is dismissed as on date. The said order passed in writ appeal was also challenged before the Hon'ble Supreme court in special leave to appeal (c) No(s). 13697/2021 and there also the matter got dismissed. And the order of the Hon'ble High court was upheld. Hence, the issue with regard to the question of challenge to the acquisition of the property from erstwhile owners of the respondent has completed.
11. Further, w.p No. 454-459/2014 which is filed by few members of the NTI society against the society and this respondent was made as a party to the same and it has filed objections with a prayer to delete the respondent and after a detailed hearing this respondent was deleted and continued as a formal party. They have provided the basic facilities to the building such as water, electricity, sewage, lift, STP, etc, along with club house and a swimming pool. Mere pendency of any case will not amounts to breach of terms of agreement.
12. Further as per Sec.19(10) of RERA Act every allottee shall take the physical possession of the apartment within a period of 2 months of issuance of occupancy certificate. Accordingly, the respondent has intimated the same

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to the complainants to take possession. But the complainants instead of paying balance amount and taking possession, only after repeated reminders have filed these complaints. Hence, prayed to dismiss the complaints with costs.

13. All the complainants have furnished the documents as under:

- i) Agreement to sell between the complainant and respondent
- ii) Case details of writ appeals No.16566-70/2011 Interim Order of the Hon'ble High Court of Karnataka in writ appeal No.16566-70/2011.
- iii) Interim Order of the Hon'ble High Court of Karnataka in writ appeal No.16566-70/2011.
- iv) Photographer of the banner at the side of the said project depicting the case number pending before Hon'ble High Court of Karnataka.
- v) Undertaking dated 04.12.2019 filed by the Opponent before the Hon'ble High Court of Karnataka in WA 16566-70/2011.
- vi) Case details of Writ Petition No.454-459/2014 was filed before the Hon'ble High Court of Karnataka.
- vii) Commencement Certificate.
- viii) Registration Certificate granted by RERA to the opponent that demonstrates the fact that there is a delay in completing the project.
- ix) Affidavit cum Declaration submitted to RERA by opponent
- x) Layout plan

14. In support of its defence, the respondent has produced documents such as copy of

- i) Agreement of sale and construction agreement for all the Apartments
- ii) Occupancy Certificate
- iii) Demand Letter
- iv) Order passed in writ appeal no 16566/2011, & in order passed in SLP no's 13697/2021
- v) Order passed in WP no 454/2014

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- vi) Khatha certificate and extract
- vii) Board resolution letter
- 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
- ix) The respondent has also filed objections for the rejoinder.
- x) The relevant orders in the said W.A. No. 16566/2011
- xi) Petition in W.P.No 454/2014
- xii) The order of the deletion of the said prayer in W.P. No.454/2014
- xiii) Dismissal order in SLP 13697/2021,
- xiv) The Khatha certificate and Khatha extract of the said 10 acres of land
- xv) Copy of dismissal order in RP no 274/2021
- xvi) Copy of the order passed in CMP/190311/0002424 and others dated 05/08/2022

15. These matters were heard on 08/02/2021, 07/04/2021, 16/07/2021, 08/10/2021, 08/08/2022, 13/10/2022 and finally on 27/10/2022.

16. Complainants have submitted written arguments.

17. Heard arguments of both the sides.

18. **Based on the above averments, the following points would arise for our consideration:-**

- 1) Whether there was any pending litigation that affects the right of the complainants?
- 2) Whether the complainants are entitled for the relief claimed?
- 3) What order?

19. **Our findings to the above points are as under:-**

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

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REASONS

20. **Our findings to point No. 1:-** The only grievance of the complainants is that the respondent had not disclosed them regarding pending litigation and hence they have sought for refund of amount paid with interest.

21. Same is resisted by the responded on the ground that they have completed the project and obtained occupancy certificate on 10/11/2020 within timelines.

22. We have carefully scrutinised the materials available on record. During the proceedings the complainants have pointed out clause 15 of the Agreement of sale between the parties wherein it is agreed that the seller shall convey the purchasers that the project shall be free from attachment, encumbrances, and court or acquisition proceedings of any kind as under:-

- 1) *The promoter has filed a false affidavit before the Authority at the time of marking an application for registration of project.*
- 2) *The promoter has made false statement while entering to the agreement of sale in so far suppressing the fact of pending litigation.*
- 3) *Undisputedly the promoter has filed an affidavit in W.A.No.16566/2011 before the Hon'ble High Court of Karnataka stating that the compound wall, gate and road proposed to be constructed on Sy. No.68/5 & 69/7 will be removed if the promoter fails to succeed in the litigation. It is submitted that the review petition with respect to the schedule property wherein this project has come up is pending before the Hon'ble High Court of Karnataka in review petition No. RP 318/2022.*
- 4) *The promoter has violated as per Section 3, Section 4(2)(1)(B) of the Act in making a false declaration. In view of the said fact, the Authority Suo Motu take appropriate action as per Section 7(1)(c) of the Act.*

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23. 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 clear, marketable and subsisting and it has the power to convey the same and right to carry out on the development as per the scheme.
24. The developer has produced the order copy of the W.A 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 Supreme Court.
25. With regard to the writ petition No 454/2014 the developer has drawn 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.
26. 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.
27. 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 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.
28. Therefore, 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

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handover the apartment, then this Authority could have considered it as the title defect. Hence, this point is answered in the Negative.

29. **Our findings to point No.2:-** As per construction agreement the respondent had agreed to handover the possession of apartments in favour of complainants within 46 months with 6 months grace period. Further, after completion of the project the respondent had obtained occupancy certificate on 10/11/2020 and intimated the complainants to pay the balance amount and to get registered the sale deed and to take possession of their respective apartments. The complainants have to take possession of their respective apartments within 2 months from the date of intimation by the respondent for the same. Herein this case, after receipt of such intimation from the respondent, the complainants didn't come forward to pay the balance amount, get registered the sale deeds and to take possession. Even they have not raised any objections. Later when the respondent sent them several remainders, the complainants instead of complying with the terms of agreements approached this forum for the relief of refund of amount paid with interest on the guise that the respondent didn't disclose regarding pending litigation.

30. As already discussed above there was no delay from the respondent side to complete the project, obtain occupancy certificate and intimate the complainants to take possession of their respective apartments. Even otherwise there was no pending litigation against this respondent as on date. Accordingly, the point raised above is considered as Negative.

31. **Our findings to point No.3:-** In view of the above discussion, all the complaints deserve to be dismissed. Accordingly, we proceed to pass the following order.

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ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaints bearing No. CMP/201125/0007124, CMP/201127/0007137, CMP/201127/0007138, CMP/210118/7468, CMP/210118/0007469, CMP/210118/0007470, CMP/210203/0007565, CMP/210604/0007979, CMP/210626/0008061 and CMP/210107/0007412 are 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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