

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

PRESENT:

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT NO.: CMP/220614/0009624

DATED THIS 20th DAY OF DECEMBER, 2022

COMPLAINANT.....

ABDUL HAQ,

No.25, Ramalingeshwara Temple Street,
Frazer Town,
Bengaluru – 560005.

(In person)

V/S

RESPONDENT.....

**SAMMYS DREAM LAND CO PRIVATE
LIMITED.,**

No. 9, 2nd Floor, BEL Air Drive,
Mekhri Circle, Bellary Road,
Bengaluru – 560032.

(Rep. By Smt. H. H. Sujatha, Adv.,)

**PROJECT NAME &
REGISTRATION NO.**

**SAMMY'S BEVERLY HILLS PHASE - II
PRM/KA/RERA/1251/309/
PR/210111/003782**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "Sammy's Beverly Hills Phase-II" developed by "Sammys Dream Land Co Private Limited" for the relief of direction to the respondent to pay Rs.29,98,100/- as compensation amount.



Brief facts of the complaint are as under:-

2. The complainant had booked a Plot No. #42 inside the gated community measuring 1986 sq.ft., on 10/11/2020 in the project of the respondent. When he was ready to get the property registered, he found in the copy of agreement of sale sent to him on 26/11/2020 that dimensions of the plot was reduced to 1707 sq.ft., Subsequently, he was asked to choose a plot outside the gated community for which he has agreed and chosen the plot No. 3 measuring 2109 sq.ft., Later, he was informed that the said site No. 3 changed to No.9 with dimension 2070 was offered to the complainant on 09/10/2021 and cost of the site was Rs.1,13,88,600/-. At the time of booking he had paid advance payment of 10% and the builder was insisting him to pay 25% amount to get the property registered for which he insisted the builder to get the property registered and to collect the entire sale consideration. On 09/05/2021 the builder asked him to pay Rs.1,14,16,960/- within 7 days without any draft agreement of sale. When he has not paid the amount, the builder has cancelled his booking arbitrarily without his signature on cancellation form. Hence, this complaint.
3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its counsel and filed objections as under:-
4. It has denied the allegation made against it by the complainant as false. It contends that, the complainant has paid Rs.5,00,000/- on 09/11/2020 as a booking amount to purchase plot No.42 measuring 1986 sq.ft. Subsequently, the physical measurement of the said plot was arrived to 1707.99 sq.ft., in lieu of 1986 sq.ft., Accordingly, an agreement of sale was communicated to the complainant on 26/11/2020 with new dimension. But, the complainant was refused to consider the said agreement of sale for plot No. 42 as there was change in the dimension. As the complainant was not ready to accept the said plot, the respondent offered plot No. 3

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measuring 2109 Sq.ft., and the complainant had agreed and was ready to pay the balance amount. Subsequently, the modification was taken place on 13/01/2021 wherein the area of the project land got reduced and plot No.3 was proposed to the complainant was not in existence. Hence, new plot No.9 measuring 2707 Sq.ft., was offered to the complainant. After discussions with complainant on 25/02/2021, the complainant has given a post dated of Rs.6,00,000/- cheque bearing No.373053 drawn on Citibank, Bengaluru. Accordingly, the fresh booking form was sent to the complainant on 29/03/2021.

5. As the project was near completion, the respondent has requested the complainant on 09/05/2021 to pay the balance. Instead of paying, the complainant has sent a mail on 16/05/2021 stating that due to lockdown he is unable to get a legal opinion immediately, only after getting a legal clearance he will be ready for registration and further payments. The respondent has followed for the balance sale consideration on several dates but the complainant didn't pay the balance and on 12/03/2022 through whatsapp the complainant has intimated the respondent to cancel the said booking due to financial crisis faced under Covid-19.
6. As per the instructions of the complainant, the respondent has sent a mail / whatsapp on the same day i.e, on 12/03/2022 with cancellation copy to the complainant to sign on the same. But there was no response from the complainant. Hence, the respondent has waited for some days and sent a cancellation e-mail to the complainant on 19/03/2022. Subsequent to the said cancellation, the complainant sent a mail to the respondent to have one more discussion. As the decision was already taken, the respondent returned the amount of Rs.11,00,000/- to the complainant on 16/04/2022 through RTGS without forfeiting the cancellation charges.



7. Subsequent to the said cancellation and receipt of said amount, the complainant has started sending series of e-mails by rejecting the cancellation note. The respondent has replied to all his e-mails by taking stand for cancellation that the complainant was a defaulter in making further payment. Hence, prayed to dismiss the complaint.
8. In support of his claim, the complainant has produced in all 4 documents such as copies of Payment receipts, allotment letter, draft agreement to sale and e-mail conversations.
9. On the other hand, the respondent has produced in all 10 documents, such as copies of RERA registration certificate, COVID extension certificate, Extension certificate issued by K-RERA u/s. 6 of RERA Act, Cheque leaf dated 22/10/2020, draft agreement of sale dated 26/11/2020, modified order dated 13/01/2021, booking form, e-mail conversation dated 15/05/2021, 16/07/2021, 12/03/2022 and 19/03/2022, screenshots of whatsapp message and RTGS details.
10. Hearings were conducted on 12/08/2022 and 02/09/2022.
11. Both the parties have submitted written arguments.
12. **On the above averments, the following points would arise for my consideration:-**
 1. Whether the complaint is entitled for the relief claimed?
 2. What order?
13. **My answer to the above points is as under:-**
 1. In the Negative.
 2. As per final order for the following

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REASONS

14. **My findings on point No. 1:-** Grievance of the complainant is that, he has asked the respondent for time to take legal opinion due to pandemic situation and not stated anything about a financial crisis. In fact, he was ever ready for paying entire sale consideration as agreed. The E-mail dated 12/03/2022, is a half-truth projected to show that the complainant has defaulted.
15. Same is resisted by the respondent on the grounds that though sufficient time was provided and discount was offered to the complainant, he didn't pay the balance sale consideration. The complainant became a continuous defaulter in making payments since April 2021 to March 2022. Hence, they have cancelled the booking of a plot of the complainant and they have returned the entire booking amount paid by the complainant without any deductions and that complainant has confirmed the receipt of said amount of Rs.11,00,000/-.
16. From the materials available on record, it is apparent that, initially the complainant was allotted a plot No. 42 measuring 1986 sq.ft., and complainant has paid Rs.5,00,000/- on 09/11/2020 towards booking which was subsequently reduced to 1707 Sq.ft. and same was communicated on 26/11/2020 through agreement of sale. For this complainant has not agreed and hence, the respondent has offered plot No. 3 measuring 2109 sq.ft for which the complainant has agreed and was ready to pay balance amount. Again the modification was taken place on 13/01/2021 with new plot No. 9 measuring 2071 sq.ft., fresh booking form was sent to the complainant on 29/03/2021.
17. As per clause 3 of allotment form dated 25/02/2021, the complainant shall come forward to execute the agreement for sale within 30 days of the application. Further, as per clause 8 of said booking form in the event the agreement of sale is not executed within the said period, the allotment shall stand cancelled automatically and administrative fee of Rs.50,000/- will be



deducted with tax. On going through the several e-mail conversations between the parties, it is apparent that the respondent had requested the complainant to make payment of balance consideration for several times. Accordingly, due to default in payment and insistence by the complainant side, the respondent has cancelled the said booking and immediately returned the entire advance amount of Rs.11,00,000/- to the complainant through RTGS. The complainant has accepted the said amount without any resistance.

18. These being the facts, now the complainant has approached this forum seeking relief of direction to the respondent to pay appreciated property value and advance amount as compensation. The appreciated market value is not coming under the purview of this Authority as per decision of Hon'ble Apex Court in Neelkamal Realtors Suburban Pvt. Ltd., and another V/s. Union of India and others at para 86, it is held that "the Authority has power to examine and determine the complaint filed for refund of the amount and interest on the refund amount, or directing payment of interest for delayed delivery of possession or penalty and interest thereon. Apart from the same, other reliefs have to be adjudicated by the Adjudicating officer". Hence, the question of adjudicating the relief sought for by the complainant with regard to appreciation market value is not maintainable before this Authority.

19. Accordingly, the point raised above is answered in the Negative.

20. **My findings on point No.2:-** In view of the above discussion, the complaint deserves to be dismissed. 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/220614/0009624 is hereby dismissed as not maintainable.




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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027.

Complainant is at liberty to file a complaint before
adjudication officer for the relief of compensation for
appreciated market value.

No order as to costs.


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

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