

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 23rd December 2022

COMPLAINANTS.....

1. CMP/UR/210809/0008229

PREETHAM LAKSHMIKANTHAN

2a-302, Akme Harmony,
Outer Ring Road, Ambalipura Village,
Bengaluru-560103.

2. CMP/UR/211126/0008645,

DR S PRAKASH,

flat no. 521, Parkside, Brigade Orchards,
Spinal Road, Devanahalli,
Bengaluru -562110,

3. CMP/UR/211126/0008644

SHOBHALATHA V

flat no. 309, Parkside Retirement Homes,
Brigade Orchards, Spinal Road,
Devanahalli,
Bengaluru -562110

4. CMP/UR/211202/0008668,

SRINIVASA MURTHY NIRMAL PRASAD

no. 50, 2nd floor, 12th block,
Serpentine Road, (above Pair Cables),
Kumara Park West, Bengaluru -560020

5. CMP/UR/211202/0008665

LT COL K R KASTURI RANGAN

flat no. 421, Parkside Retirement Homes,
Brigade Orchards, Spinal Road,
Devanahalli,
Bengaluru -562110

6. CMP/UR/211126/0008646

GOVIND RAJ KALMADI

30/284/11, besides dav public school,
east chandragiri colony,
neredmet, secunderabad,
Telangana -500056.

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14/12/22

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7. CMP/UR/211202/0008669

MEERA IYENGAR

Flat No. 524, parkside,

Brigade Orchards Enclave, spinal Road,

Devanahalli, Bengaluru- 562110

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

V/S

RESPONDENTS.....

M.R. Jaishankar and Col. K.N.Narasimha,

M/s.BCV Developers Pvt Ltd,

M/s.BCV Developers Pvt. Ltd., 29th Floor,

World Trade Centre,

Brigade Gateway Campus,

No.26/1, Dr.Rajkumar Road,

Malleshwaram-Rajajinagar,

Bangalore - 560055

(Rep. by Smt. Sonali S K, Advocate)

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JUDGEMENT

1. All the above said complaints have been filed under section 31 of the RERA Act against the project "Parkside Retirement Homes, Brigade Orchard" developed by "M/s.BCV Developers Private Limited" for the relief of initiating action against the respondent for not registering the said project under RERA, completion of project and to form an association.

2. 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:-

3. **In Cmp. No. 8229-** This project of the respondent is one meant for the peaceful living of senior citizens. The respondent had forced the

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buyers to register the flats without completion of amenities as agreed and obtaining occupancy certificate. Till today the said project is incomplete in many aspects including the permanent electricity supply connection to individual flats. The respondent is charging exorbitant maintenance charges without completing the pending amenities, forming an association.

4. **In complaint No's:-8645, 8668, 8665, 8669, 8644 and 8646-** This project is ongoing which requires registration under RERA as occupancy certificate is dated:12/05/2017. Occupancy certificate and commencement certificate have not been obtained from competent authorities as project is located in Kasaba hobli which is under the jurisdiction of town municipal council, Devanahalli. No permanent power is provided. Registered Allottee Association is not yet formed. Said project is incomplete till now and respondent is charging exorbitant electricity/diesel charges from July 2018. Hence, these complaints.
5. After registration of the complaints, in pursuance of notice, 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 the complainants have approached the respondent with an intention to purchase flats in the apartment known as Park Side Retirement Home at Brigade Orchards. There are more than 772 families already occupied in the said project. The respondent had informed the complainants that the larger project Brigade Orchards is an ongoing project and the health facilities, hospital, schools etc., as assured will be provided in a phased manner. As on date out of 156 units, 47 units are occupied with 80 residents.

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Initially agreement of sale and construction agreements were executed in favour of complainants. Subsequently, sale deeds have been executed and possession was delivered. Accordingly, complainants are in peaceful possession and enjoyment of their respective units. In addition, the Senior Citizen Services Agreement with Age Venture India was also executed with all the purchasers of park side including the complainants wherein the respondent has executed as a confirming party.

7. The respondent has completed the project on time and has obtained occupancy certificate on 11/05/2017 from the local authority i.e., Anneshwara Gram Panchayat of Devanahalli Taluk. The project Park Side retirement home is duly completed in all aspects. As the respondent had received occupancy certificate on 11/05/2017 before commencement of RERA Act, the said project is exempted from registration and this Authority doesn't have jurisdiction to try this matter.
8. As per application for power sanction made in November 2015, power was sanctioned in July 2018 with a condition that the power shall be commissioned only after establishing 2X20 MvA 66/11 KV sub-station. Subsequently, respondent obtained substation drawings and specifications from KPTCL. Due to force majeure like lockdown and covid restrictions which effected the completion schedules. As per clause 9 of agreement to sell, the respondent shall provide electricity and water either through Government or from private service provider. Till the substation was functional in the project, power supply with stand by DG power was supplied to all.

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9. The deed of declaration dated 15/02/2021 has been executed to the Brigade Orchard Park Side apartment owner Association. The present common area maintenance charges are fixed by the Association and the respondent has no role to play in maintenance matters. Hence, prayed to dismiss the complaints.

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

- i) RTI reply from Anneshwara Gram Panchayat enclosing gazette notification.
- ii) Notification dated:14/03/2012 issued by urban development Secretariat on competent authority.
- iii) ROCS letter circular dated : 07/02/1986 on registration of Flat Owners Co-op Society.
- iv) Writ petition no. 2034/2016 of Mr. Paul Parambi vs. The Bombay Dyeing and manufacturing Co passed in Hon'ble Bombay High Court.
- v) CRP no.96/2021(SC) C/W CRP no.64/2021(SC) of shantharam prabhu and veena shantharam vs. K.Dayanand Rai and others passed in Hon'ble Karnataka High Court on 08/09/2021.
- vi) Written reply by Co-op minister dated : 17/02/2022 on the formation of Co-op society for apartment maintenance purposes.
- vii) Minutes of meeting dated : 25/04/2020 held between parksiders and the respondent's senior executives
- viii) Interim Ex parte order in O/S 183/2020 issued by Hon'ble Civil Judge and JMFC, Devanahalli.
- ix) BCV's letter dated 23/10/2017 addressed to Anneshwara Gram Panchayat confirming the jurisdictional authority of TMC, Devanahalli.

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- x) Organization model/legal opinion from ARK associated dated 01/11/2020.
- xi) Letter dated 17/12/2020 from the office of Registrar of co-operative society addressed to BCV Ltd.
- xii) Statement of objections filed by IGRS through Chief Secretary, Govt of Karnataka under W/P no.511/2021 dated 17/02/2021.
- xiii) In-house budget figures for 2021-22 by the defendant.
- xiv) Brigade Cedar Occupancy certificate issued by Gram Panchayat.
- xv) Sale deeds and Brochure.
- xvi) Encumbrance certificate copy of landed property bearing Sy. No. 268/10 for 2.12 acres located at Kosaba Hoballi, Devanhalli.
- xvii) Electricity bills from BCV developers and photo of 66kva sub-station

11. On the other hand, in support of its defence, respondent has produced the documents such as copy of

- i) Endorsement from BIAAPA dated 2nd May 2017
- ii) Occupancy certificate for the project Parkside Retirement homes at Brigade Orchards
- iii) Letter dated 18/08/2021 by the respondent to RERA clarifying the reasons for not registering the project
- iv) BESCOM electricity connection sanction to the parkside apartment
- v) Photographs showing the individual meters fixed / installed to individual flats.
- vi) Deed of declaration dated 15/10/2021.

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- vii) Letter dated 29/03/2021 from the Association informing to the registrar of the co-operative societies
- viii) A chart showing the details of payments towards CAM payable and due by the complainants.
- ix) E-mail dated 27/06/2021 of the Association taking over the maintenance of the project along with a copy of invoice on CAM.
- x) E-mail dated 12/07/2021 by the Association requesting the respondent to continue the management of CAM

12. These matters were heard on 19/11/2021, 15/12/2021, 23/02/2022, 23/03/2022 and 04/05/2022.

13. Heard both sides.

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

- 1) Whether the complainants are entitled for the relief claimed?
- 2) What order?

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

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

REASONS

16. **Our findings to point No. 1:-** Grievance of the complainant is that the said project of the respondent is meant for senior citizens and the respondent has forced them to register their respective flats without completion of amenities as agreed and obtaining occupancy certificate.

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Till today there is no permanent electricity supply to individual flats and the respondent is charging exorbitant maintenance charges without completion of amenities and forming an Association.

17. On the other hand, contention of the respondent is that the said project has been completed on time and has obtained occupancy certificate on 11/05/2017. Hence, the said project has been exempted from registration under RERA. Due to force majeure like lockdown and covid restrictions there was delay in completing the schedules. They have executed DOD dated 15/02/2021 to the apartment owners Association and the present common area maintenance charges are fixed by the Association.
18. On going through the materials placed on record, it is not in dispute that formality of obtaining occupancy certificate is completed on 11/05/2017. It is apparent from the endorsement issued by BIAAPPA dated 02/05/2017 that the respondent had applied for occupancy certificate before BIAAPPA. However, BIAAPPA vide its endorsement dated 02/05/2017 had clearly stated that it is not the competent Authority to issue completion certificate. Hence, on 11/05/2017 Anneshwar village panchayat of Devanahally taluk issued the occupancy certificate in respect of said project.
19. Later, when TMC Devanahally raised the issue of jurisdiction stating that said parcel of land falls under their jurisdiction and also wrote letter to Anneshwar village panchayat calling for entire records, the government vide its gazette notification dated 13/03/2018 declared that the said project falls under the jurisdiction of town municipal council Devanahally. Therefore, the said project fell under the

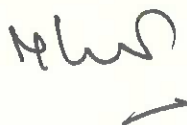
jurisdiction of TMC Devanahally is after the respondent obtained occupancy certificate in the month of May 2017.

20. From the materials placed on record it is apparent that the respondent procured sanctioned plan vide commencement certificate dated 15/09/2014 from Bengaluru International Airport Area Planning Authority for construction of said project and they have completed the construction of the same and obtained occupancy certificate on 11/05/2017.
21. The materials on record disclose that upon completion of entire project work, the respondent had applied for occupancy certificate even prior to enactment of RERA. Irrespective of when the occupancy certificate was issued, the eligibility for obtaining occupancy certificate has to be reckoned from the dated of application itself. From that point of view, the provisions of RERA doesn't attract to the case on hand. Therefore, even though the occupancy certificate is issued subsequent to enactment of RERA, the case falls within the exception provided under the Act. Hence, the present complaints would not be maintainable at any stretch of imagination. Accordingly, the point raised in the Negative.
22. **Our findings to point No.2:-** In view of the above discussion, all the complaints deserve to be dismissed. Accordingly, 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 complaints bearing No. CMP/UR/210809/0008229, CMP/UR/211126/0008645, CMP/UR/211126/0008644,





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CMP/UR/211202/0008668, CMP/UR/211202/0008665,
CMP/UR/211126/0008646 and CMP/UR/211202/0008669
are hereby dismissed as not maintainable.

No order as to costs.



(H.C. Kishore Chandra)

Chairman
K-RERA



(Neelamani N Raju)
Member
K-RERA

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