

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority, Bengaluru

ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

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BEFORE ADJUDICATING OFFICER

PRESIDED BY SRI I.F. BIDARI

DATED 26TH APRIL 2023

Complaint No: CMP/UR/211016/00008444

Complainant : Dr. Niranjana Y. C.,
No.106, Thirumala Elite, Arekere,
80 Feet Road, 6th Stage,
Bengaluru Urban - 560076.
(By: Sri. P.K. and Associates Advocates.)

VS.

Respondents: 1. M/s. Shree Mookabika Builders &
Developers,
No. 2258, Roopa Nivas,
1st Man 4th Cross, BDA Kallappa Layout,
HAL, III Stage, Vimanapur,
Bengaluru Urban-560017.
2. S. Raghavendra,
No.1519 A, Near petrol Bunk,
Begur Village, Begur Hobli,
Bengaluru Urban - 560068.
(R-2 Absent.)

J U D G M E N T

Complainant Dr. Niranjana Y. C., has filed complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016 (here-in-after referred as RERA Act) against the respondent No.1 M/s. Shree Mookabika Builders & Developers, (here-in-after referred as respondent No.1) and respondent No. 2 Mr. S. Raghavendra, praying to direct the respondents to issue Occupancy certificate, handover possession of the apartment as

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per sale deed dated: 29.11.2017, delay interest, compensation and grant such other relief. The case of the complainant is that the respondent No.1 has executed a registered sale deed dated: 29.11.2017 in respect of residential apartment bearing No. 1010 being built in the project "Tirumala Sunidhi Desire" (here-in-after referred as project). The respondent No.1 did promise that apartment will be handed over to the complainant within 3 months from the registration. The complainant in the year 2019 found respondent No.2 Mr. S. Raghavendra who is one of the landowner was in possession of the aforesaid apartment. The complainant confronted respondent No.2 to vacate from the apartment and handover the same to the complainant. The respondent Nos.1 & 2 agreed to clear the complainant's loan amount of Rs. 49,60,000/- and buy back the apartment from the complainant. The respondents did not take any steps to purchase the apartment from the complainant. Therefore the complainant left with no other alternative approached the police and filed NCR on 10.03.2021. The respondent No.2 after filing the NCR vacated the premises but damaged the whole interiors and amenities worth Rs.25,00,000/-. The respondent No.1 failed to handover possession of the apartment.

2. The instant complaint was pending before the Hon'ble K-RERA Authority, subsequently the Hon'ble K-RERA Authority transferred the instant complaint to the Adjudicating Officer (here-in-after referred as AO) since case pertains to compensation. The respondent No. 2 Mr. S. Raghavendra had appeared through Sri. H.M. Ganghadahar & Associate Advocates before the K-RERA Authority and has filed the objections dated: 02.11.2022 to the complaint when the complaint was pending before the K-RERA Authority. Thereafter receipt of this



complaint from the K-RERA Authority, the notices ordered to be served on the parties. The respondent No.2 remained absent before the AO, in-spice of service of the notice. Sri. P.K. learned Advocate for the complainant filed a memo dated: 05.01.2023 before the AO stating that both the partners of respondent No.1 have died and sought to exempt the complainant from bringing the LR's of the deceased partners of respondent No.1 on record as contemplated U/O. 22 Rule 4(4) of CPC and further stated that after death of respondent No.1 now the complainant seeking relief only against respondent No.2.

3. The respondent No.2 not appeared before the AO in this complaint and not filed objection statement before the AO. The respondent No.2 in the statement objection dated: 02.11.2022 filed before the K-RERA Authority is seeking the dismissal of the complaint mainly contending that no transaction took place between the complainant and the respondent, hence the complaint is liable to be dismissed. The respondent No.2 is contending that the respondent No.1 is the builder. The respondent No.2 along with Y S Sampangi and Ratnamma are the land owners who entered into joint development agreement (here-in-after referred as JDA) dated: 23.08.2010 with respondent No.1 builder on which land the project has been developed. The sharing agreement was entered between respondent No.1 and the landowners. The apartment No. 1010 was allotted to the share of the respondent No.1. The respondent No.1 has constructed an incomplete residential apartment complex in the project. The respondent No.1 has executed the sale deed in-favour of the complainant in-respect of apartment No.1010. Therefore the complainant has to seek relief of compensation, possession of apartment from the respondent

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No.1 and not from respondent No.2. The RERA Act is applicable only to the builders. The respondent No.1 has to pay balance amount to the respondent No.2 and when demanded in turn respondent No.1 asked the respondent No.2 to take possession of the apartment No.1010 and represented that he has not sold few apartments. The respondent No.2 believing version of respondent No.1 incurred lakhs of rupees for interiors to suit his requirements for his dwelling as the respondent No.1 had left the apartment incomplete and as it is condition. The complainant instated of taking action against the respondent No.1 has lodged false complaint against respondent No.2 in Beguru Police Station. The respondent No.2 as suggested by the Police vacated the apartment and handed over keys in Beguru Police Station and handed over one key to the respondent No.1 and stated that he has removed all his installed items and apartment at the stage how he has obtained from the respondent No.1. The respondent No.2 pleads that complaint is liable to be dismissed on ground of non-joinder and mis-joinder of necessary parties. The RERA Act is not applicable to landowners. The complainant is not entitled for the relief sought. The respondent No.1 denied most of the remaining complaint allegations and contended that same are false. The project was started on 04.07.2012, on this count also the RERA Act is not applicable in this case. These main grounds among others, contended in the statement of objections, prayer to dismiss the complaint.

4. I have heard Sri. P.K. Advocate for the complainant. The respondent No.2 argument taken as heard. Perused the records and the materials on record.



5. The points that would arise for consideration are:

Point No.1: Whether the complainant is entitle for
compensation? If so, to what extent?

Point No.2: What order?

6. My findings on the above points are as under:

Point No. 1: Yes, to the extent as shown in the final order.

Point No. 2: As per final order, for the following:-

REASONS

7. Point No.1: The records disclose that the respondent No.1 being a developer and the respondent No.2 Sri. Raghavendra, Sri. S. Sampangi, Sri. S. Jayaram, Smt. Rathnamma, being the land owners represented by their GPA holder Sri. Sunder Singh partner of M/s. Sri. Mukambika Builders and Developers, have developed and constructed the residential complex apartments in a project, in a land comprised in Survey number 289/2, measuring 0 Acres 06 Guntas and 1 Acre 14 Guntas in Sy. No. 289/3 in all measuring 1 Acre 20 Guntas of Beguru Village, Bengaluru South Taluk, now bearing BBMP No. 42/42, 289/2 and 289/3, described as Schedule "A" Property in a copy of Sale deed dated: 29.11.2017. The respondent No.1 also being GPA holder of aforesaid land owners have executed this sale deed dated: 29.11.2017 in-favour of the complainant. The complainant has purchased a 3 bedroom apartment bearing No.1010 on 9th Floor, constructed in schedule "A" property having super built up area of 1535 Sq. ft., together with 1 covered car park, described as schedule "C" property in the aforesaid sale deed, for consideration amount mentioned therein.

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8. Sri. P.K. learned counsel for the complainant submits that thereafter filing the instant complaint as per the direction of the Hon'ble Authority complainant visited the Beguru Police Station on 17.07.2022 and receiving the key of the apartment visited the apartment No.1010 in the project and saw that apartment door was broken and apartment was vandalized. The complainant has filed a memo dated: 19.01.2023 before the AO signed by his counsel to this effect. The complainant before the Hon'ble K-RERA Authority has filed memo dated: 04.08.2022 with photographs showing the broken door etc., in the apartment when he visited the apartment in question on 17.07.2022. Sri. P.K. learned counsel for the complainant as already discussed above submits that both the partners of respondent No.1 have died and after death of partners of respondent No.1 now the complainant claims relief only against respondent No.2 and prays to exempt the complainant from bringing the LR's of deceased partners of the respondent No.1. The learned counsel in support of argument placed reliance on the judgment dated:18.10.2019 in Civil Appeal No:3311/2015, passed by the Hon'ble Supreme Court of India, in the case of S.P. Misra and others VS Mohd Laiquddin Khan and another. The complainant has not produced the partnership deed of the respondent No.1. Admittedly respondent No.2 remained absent before the AO and not opposing the memo dated: 05.01.2023 filed on behalf of the complainant to exempt the complainant from bringing the LR's of the deceased partners of the respondent No.1. Under the circumstances the version of the complainant in this regard remained unchallenged and after death of only two partners of the respondent No.1 the partnership will not continue as such it is just and proper to exempt the complainant from bringing the

LR's of the deceased partners of the respondent No.1, accordingly complainant is exempted from bringing the LR's of the deceased partners of the respondent No.1 in this complaint. This apart the complainant in this complaint restricting his claim only against respondent No.2, as such, the other land owners though proper parties in the complaint may not be necessary parties in this complaint.

9. The sale deed dated: 29.11.2017, in-respect of apartment No.1010, has been entered after coming into force of RERA Act, between the complainant and the respondent No.1 also in his capacity as a GPA holder of land owners, The respondent No.2 is contending in the statement objections that project was started on 04.07.2012. Therefore it is just to consider as to whether the provisions of RERA Act 2016 and K-RERA Rules 2017, are applicable in the present case or not. The Hon'ble Haryana Real Estate Appellate Tribunal in appeal Nos. 52 & 64 of 2018 decided on 03.11.2020, in appeal No 52/2018, in the case of Emaar MGF Land Limited Vs. Ms. Simmi Sikka and another and in appeal No. 64/2018 in the case of Ms. Simmi Sikka Vs. M/s. Emaar MGF land Limited, among others, observed that provisions of the Act shall become applicable even to an unregistered project or projects which do not require registration with respect of the fulfilment of the obligations as per the provisions of the Act, Rules & Regulations framed there-under. Therefore, it is made clear that in the present case though the project started on 04.07.2012 prior to coming into force of RERA Act and as on date of coming into force of RERA Act, the project was an ongoing project, so, required to be registered with K-RERA, as an ongoing project, as such, the provisions of the

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RERA Act and K-RERA Rules are made applicable in the present case.

10. The one more contention of the complainant is that he is the land owner, therefore RERA Act is not applicable against him and if at all the complainant can seek relief in this complaint only against respondent No.1. The complainant has produced copy of legal notice dated: 16.07.2021 got issued through his advocate to the respondents No.1 & 2 contending almost similar grounds urged in the complaint. The respondent No.2 has got issued reply notice dated: 30.07.2021 to the aforesaid legal notice dated: 16.07.2021, stating almost similar grounds contended in the statement objections filed before the K-RERA Authority in this complaint. The copy of reply notice, got issued by the respondent No.2 and contents of the objections of respondent No.2 filed to the instant complaint before the k-RERA Authority makes it clear that respondent No.2 is a land owner along with other land owners on which project in question is situated and apartment No.1010 is existing. Therefore as per the definition under Sec.2 (zk) of RERA Act, the respondent No.1 being landowner is a promoter along with respondent No.1 builder. The relevant portion of the said section 2(zk) of RERA Act, reads as under:

“(zk) “promoter” means,—

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

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- (ii) *a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) *any development-----*”

The land owner and developer both deemed to be the promoters and shall jointly be liable for functions and responsibilities specified under the RERA Act or rules and regulations made there-under as could be seen from the definition of promoters mentioned in Sec.2(zk) of RERA Act. Therefore in view of Sec. 2(zk) of RERA Act, the respondent No.2 is a promoter along with builder, hence there is no substance in the contention of respondent No.2 that RERA Act is not applicable to him and the complainant cannot claim relief against him in this complaint.

11. The AO is required to consider issue regarding compensation only, in this Complaint. In view of the judgment dated: 11.11.2021 passed by the Hon'ble Supreme Court of India, in Civil Appeal Nos. 6745-6749 of 2021, in the case of M/s Newtech Promoters and Developers Pvt. Ltd., Vs State of UP & ORS.ETC., With Civil Appeal Nos. 6750/21, 6751/21, 6752/21, 6753/21, 6754/21, 6755/21, 6756/21 and 6757/21, the AO is only empowered to adjudicate the compensation and interest thereon U/Secs.12, 14, 18 & 19 RERA Act, as contemplated U/Sec. 71 taking into account the factors enumerated U/Sec.72 of the RERA Act. The relevant portion in Para No. 86 of the said judgment reads as under:



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"From the scheme of the Act of which a detailed reference has been made and taking note of power of Adjudication delineated with the regulatory Authority and adjudicating officer , what finally culls, out is that although the Act indicate the distinct expressions like "refund", "interest", "penalty", "compensation", a conjoint reading of Section 18 and 19 clearly manifests that when it come to refund of amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon it is regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudicating compensation and interest thereon under Section 12,14,18 and 19 the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Section 12,14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of Act 2016".

12. The records disclose that the complainant availing hose loan from the HDFC bank has paid the consideration amount to the respondent No.1 in-respect of apartment No.1010. As already discussed above the copy of legal notice dated: 10.07.2021 and copy of reply notice dated: 30.07.2021, pleadings of the complainant and the respondent No.2 as also the photos produced by the complainant with memo dated: 04.08.2022 showing the damaged portions in apartment No.1010 prove that the respondent No.2 who was in possession of apartment No. 1010 has removed interiors said to have been installed by him. The version of the respondent No.2 that he had taken possession of the apartment No.1010 on the representation of

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the respondent No.1 is not acceptable. Thus the materials on record prove that the respondent No.2 caused financial loss to the complainant in as much as causing damage in apartment No. 1010 of the complainant purchased by him situated in the project as such the respondent No.2 is liable to pay the compensation to the complainant. The complainant has sought compensation of Rs.25,00,000/- towards damage caused in the apartment No.1010. It is not possible to quantify the exact loss amount caused to the complainant on the basis of the materials and evidence produced by the complainant. Therefore considering the facts and circumstances of the case an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) is awarded as compensation to the complainant payable by the respondent No.2 to the complainant. Thus I hold point No.1, accordingly for consideration.

13. As per the provisions contemplated U/sec. 71(2) RERA Act, the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. This complaint has been filed on 16.10.2021 and complaint was pending before K-RERA Authority, subsequently transferred before AO, thereafter the notices issued directing the parties to appear for hearing. The parties given the reasonable opportunities to contest the case, as such, the judgment is being passed on merits, with some delay.

14. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-



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ORDER

- (i) The complaint filed by the complainant bearing No.: CMP/UR/211016/0008444 is partly allowed against the respondent No.2.
- (ii) The respondent No.2 is hereby directed to pay compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the complainant within 45 days from this date failure to which it will carry 6% interest per annum till payment of the said amount.
- (iii) The respondent No.2 shall have to pay an amount of Rs.5,000/- (Rupees Five Thousand only) to the complainant towards cost of litigation.
- (iv) The complainant is at liberty to initiate action for recovery of amount in accordance with law if the respondent No.2 fails to pay the amount within 60 days as per this order.
- (v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 26.04.2023)


I.F. BIDARI

Adjudicating Officer-1
K-RERA