

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI I.F. BIDARI
DATED 06TH MAY 2023

Complaint No: CMP/220401/0009298

Complainant : Mr. Rajeshkumar Manoharan,
E269, Mahaveer Zephyr Apartment,
Kodichikkanahalli,
Bengaluru Urban – 560076.
(In Person)

VS.

Respondents : 1. Reddy Housing Private Limited,
2. Reddy Housing Private Limited,
No. 133/1, 2nd Floor, The Residency
Residency Road,
Bengaluru Urban – 560025.
(By: Smt. Sujatha. H.H. Advocate)

J U D G M E N T

Complainant Mr. Rajeshkumar Manoharan, has filed this complaint bearing No. CMP/220401/0009298, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondents 1. Reddy Housing Private Limited, (here-in-after referred as respondent) & 2. Reddy Housing Private Limited, praying to direct the respondents to pay compensation of Rs. 41,14,461/- and legal fee towards material loss.

2. The brief facts of the complaint are as under:

The complainant has purchased an apartment bearing No.269 being constructed and developed by the respondent in the project “Mahaveer Zephyr Phase II” (here-in-after referred as project), on the converted lands bearing Sy. Nos. 25/2,



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25/3 and 25/4 in all measuring 3 Acres and 34 Guntas situated at Kodichikkanahalli Village of Beguru Hobli, Bengaluru South Taluk, described as Schedule 'A' Property in a copy of absolute sale deed dated: 18.02.2019. The complainant alleges that he had entered with respondent an agreement to sell dated: 06.12.2016 to purchase an apartment in the project paying booking fees also had entered construction agreement to get construct apartment bearing No. 269 in Block E of the project for consideration amount of Rs. 41,72,206/-. The respondent had agreed to deliver possession of the apartment within a period of 13 months with 6 months grace period. The project had several delays and after multiple follow-ups finally respondent handed over possession of the apartment in March 2019 and registered the apartment after paying the due amount in January 2019. The respondent has delivered apartment without all promised amenities. Subsequently after many follow-ups with respondent, individually and through group of other allottees, the respondent has provided 70% of pending facilities promised in brochure and construction agreement. The respondent has not provided (1) compound wall -E Block, (2) Children play area - between D & E block, (3) Permanent structure for Garbage room, (4) Second A/C Guest room, (5) Jacuzzi Bath (6) Meditation area, (7) Office room / Library, (8) Cauvery water connection. The builder has not responded to the communication made by the complainant in this regard and refused to reply or provide a concrete plan for completion. These main grounds among others urged in the complaint prayer to grant the relief as prayed.

3. There-after receipt of the complaint from the complainant, notice was issued to the respondents. The respondent has appeared through it's Advocate. The respondent has filed statement of objections dated: 07.03.2023, mainly contending that complaint is false, filed with sole intention to harass the



respondent. The respondent has registered the project in K-RERA as an ongoing project. The complainant had entered into agreement of sale and construction agreement with the respondent to purchase apartment No. 269 in the project. Thereafter completion of the construction of the project the complainant visited the site and did the survey of the project and shown interest to occupy the apartment. The respondent has executed a sale deed dated: 18.02.2019 in-favour of the complainant in-respect of the apartment. The complainant who is in possession and enjoyment of the apartment in the project has filed instant complaint after 2 years 10 months from date of possession. The Association of allottees of the project is taking care of maintenance of facilities in the project. The Association is a necessary party. The instant complaint is bad in law for non-joinder of necessary party. The allegations levelled against the respondent in the complaint are false and baseless. The respondent has provided facilities as agreed. The Adjudicating Officer (here-in-after referred as AO) U/Secs. 71 and 72 of RERA Act has only power to adjudicate compensation. The AO has no jurisdiction to adjudicate compensation towards "materials cost" much less as prayed in the complainant as same cannot be covered U/Sec.72 or U/Secs. 12, 14, 18 & 19 of RERA Act. These main grounds, among others, contended in the statement of objections, prayer to dismiss the complaint.

4. The complainant has filed reply dated: 17.03.2023 to the objection statement of the respondent, mainly stating that the association is not a necessary party. The respondent has not handed over common area and facilities to the association. The instant complaint for compensation for not providing



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facilities as promised is maintainable and AO has power U/Sec.71 to adjudicate instant complaint and relief sought is covered U/sec.72 of RERA Act. The respondent had promised to put-up compound wall on all sides of apartment but provided compound wall only on three sides of the apartment complex. The respondent had promised children play area with multi-gym between D & E block as shown in brochure and master plan but respondent has not built such play area in D and E block. The garbage room is provided within the car parking area without proper encloses endangering lives of residents. The respondent has provided only one fully furnished A/C guest room but in brochure two A/C guest rooms are promised. The respondent has not given Jacuzzi bath and given only steam and sauna. The meditation area provided is not proper place to sit and do meditation. The respondent has given only office room and library is not provided in office room as promised. The respondent has not provided Cauvery water connection as promised. The complainant denied most of the objections statement contentions of the respondent. These main grounds, among others urged in the reply, the complainant prays to grant the compensation as prayed.

5. I have heard the complainant Mr. Rajeshkumar Manoharan and heard Smt. H.H.S. learned Advocate for respondent. The respondent has filed written argument. Perused the records, materials and written argument.

6. The points that would arise for consideration are:

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

Point No.2: What order?

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7. 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

8. Point No.1: The complainant has produced copies of (1) Brochure of common amenities. (2) Project plan (3) Sale agreement dated: 05.12.2016 (4) construction agreement dated: 05.12.2016. The complainant and respondent both have produced copies of (1) Absolute sale deed dated: 18.02.2019 (2) Occupancy Certificate (here-in-after referred as OC) (3) possession letter dated: 21.02.2019 issued by the respondent in-favour of complainant. There is no dispute that the complainant has entered into sale agreement and construction agreement both dated 05.12.2016 with the respondent to purchase undivided share to the extent of 620 Sq. ft., in schedule A land and get construct and apartment bearing No. 269 on 1st floor of super built up area of 1448 Sq. ft., in block E in the project with one car parking area for consideration amount mentioned therein. The copy of absolute sale deed dated: 08.02.2019 evidences that respondent has sold aforesaid undivided share of land with constructed apartment No. 269 built in the project for consideration amount mentioned therein. The copy of OC dated: 21.02.2019 and copy of possession letter 21.02.2019 evidences that the respondent has handed over the possession of apartment No. 269 to the complainant. There is no dispute that since purchase the complainant is in possession and enjoyment of the apartment No. 269 in the project.

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9. Smt. H.H.S., the learned Advocate for the respondent during argument in many words submits that the apartment owners have formed association in the project and taking care of maintenance, as such, to claim compensation for any incomplete amenities association is a necessary party but association is not made as a party in this complaint, hence complaint is liable to be dismissed for non-joinder of necessary party. The learned counsel referring to Para No. 86 in the judgment dated: 11.11.2021 passed by the Hon'ble Supreme Court of India in the case of M/s. Newtech Promoters and Developers VS State of UP and Others, submits that in the instant case the complainant is seeking compensation of "materials cost" which is not covered U/Secs. 72, 12, 14, 18 & 19 of RERA Act, as such, AO has no power to adjudicate the relief sought in this complaint. These facts are also pleaded in the objection statement of the respondent also mentioned in the written argument filed on behalf of the respondent. Per contra complainant referring to the very same judgment in Newtech Promoters case submits that he is claiming compensation for the incomplete amenities in the project and not cost of the materials, as such, AO has power in the instant complaint to adjudicate the dispute between the parties. The complainant submits that his children have no facility in D & E block for play as multi-gym as shown in brochure and master plan is not provided. At the same time complainant submits that a compound wall has not been constructed on one side of the project and constructed compound wall only on three sides of the project and because of incomplete facilities as shown in the complaint and the reply, he forced to file instant complaint as respondent did not responded to his e-mail communications about completion of incomplete

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amenities. The complainant in support of his argument that respondent has not handed over common areas and amenities to the association have drawn the attention of the AO to the copy of letter dated: 07.01.2023 given by the association in his name and pray to grant compensation as prayed. The copy of letter dated: 07.01.2023 disclose that same is issued by the "Mahaveer Zephyr Residents Welfare Association (Regd.)" where-under it is stated that at the request of complainant who is a member of the association and owner of apartment No. 269 in the project said letter has been issued. The copy of the said letter also makes it clear that respondent failed to form association and stopped maintenance from 31.03.2022, hence to protect assets and lives of residents association has been formed to maintain and up-keep premises using subscriptions collected on monthly basis and association does not take responsibility of any pending activities in project without formal handover. It is also stated in the said letter that all and any pending/incomplete amenities are responsibility of respondent and association has not taken handover of the project. The contents of copy of this letter issued by the association proves that association is formed only for maintenance and till this day respondent has not handed over common amenities and common areas in the project to the association and complainant is one of the member of the association. As per Sec.10 of the Karnataka Ownership Flats (Registration of Promotion of the Construction, Sale, Management and Transfer) Act, 1972, the respondent being builder is required to form an association or co-operative society of the owners of the apartment but respondent failed to do the same, hence apartments owners have formed the association in the project. The complainant



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having purchased apartment No. 269 in the project because of incomplete amenities in the project is claiming compensation for the loss and not the materials cost, as such, the instant complaint is filed by the complainant is maintainable and association is not a necessary party in this complaint. 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 Para No.86 of the said judgment reads as under:

"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

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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”.

10. At the cost of repetition it be state that complainant is seeking compensation for the alleged incomplete amenities in the project, hence same is covered U/Sec. 12, 14, 18 &19 of RERA Act and AO U/Sec.71 of RERA Act is empowered to adjudicate dispute in this complaint taking into consideration factors stated in Sec.72 of RERA Act, as such, there is no substance in the contention of the respondent that the AO has no power to adjudicate the dispute in the instant complaint. At the same time the above discussed reasons makes it clear that the complaint is not bad for non-joinder of necessary party.
11. The copies of e-mail communications produced by the complainant evidences that since November 2021 to Mar 2022 the complainant was demanding through e-mails to the respondents to complete the incomplete amenities in the project. The respondent has produced copies of photos to show that compound wall on three sides of the project is built. The respondent in the written argument has stated that due to hindrance of the local people the respondent is not able to put compound wall to the border of the land area, hence put sheet covering. It is also stated that association is not allowing respondent to take wall position inside towards that project and local people are not allowing the respondent to construct permanent wall structure removing the temporary sheet. It is also stated in the written argument that respondent has collected nominal fee to get Cauvery connection to the project



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and said amount is not sufficient to meet full expenses to get connection, as such, respondent has provided water facility to the allottees in the project through bore-well. The complainant and respondent both have produced photo copies of play area comes between D & E block. The respondent in the written argument has stated that no sand and playing things are kept by the respondents as the association has decided to keep the place open, hence the play materials are handed over to the association. The respondent has produced photo copies to show that garbage room, guest rooms, Jacuzzi bath, office/library are provided. Admittedly except the complainant, no members of the association or other allottees are complaining before the Authority/AO about the incompleteness of the amenities in the project, much less, as alleged by the complainant in this complaint. However as admitted by the respondent in its written argument that because of local people and the association, the respondent is unable to construct permanent compound wall on one side of project and had kept only temporary sheet and because of association respondent not spread the sand and not kept the playing materials in one of the children play area and the amount collected by the respondent for Cauvery water connection is not sufficient to meet full expenses to get water connection hence water facility is provided to the allottees through bore-well itself evidences that to this extent the respondent has contravened the provisions of the Sec.12 and 14(3) of RERA Act & the respondent for having failed to discharge obligations imposed on it is liable to pay compensation to the complainant as per provisions contemplated U/Sec.18(3) of RERA Act. Admittedly the complainant has purchased apartment No. 269 in the project paying huge hard earned money with a hope of



living comfortably with family members but because of aforesaid incomplete amenities it is not possible. This apart the respondent having taken huge consideration from the complainant in-respect of apartment No. 269 with a promise to provide amenities and facilities but made disproportionate gain itself by not completing amenities as promised thereby caused monetary loss to the complainant. Therefore the respondent is liable to pay compensation to the complainant in this regard. 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. 1,50,000/- (Rupees One Lakh Fifty Thousand only) is awarded as compensation to the complainant payable by the respondents. Thus I hold point No.1, accordingly for consideration.

12. 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 01.04.2022, thereafter 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.

13. 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/220401/0009298 is partly allowed against the respondents.
- (ii) The respondents are hereby directed to pay compensation of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the complainant within 45 days from this date failure to which it will carry 6% interest P.A. till payment of entire amount.
- (iii) The respondents 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 respondents fail 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 06.05.2023)


I.F. BIDARI
Adjudicating Officer-1
K-RERA