

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

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

DATED 18th DAY OF JULY 2023

COMPLAINT No: CMP/UR /220430/0009409

COMPLAINANT:

RADHAKRISHNAN T.C.
1144, TOWER-1, PRESTIGE
MISTY WATERS
ANJENEYA TEMPLE
STREET
KEMPAPURA
BENGALURU URBAN-560024

(IN PERSON)

V/S

RESPONDENT:

1. M/S SREE KRISHNA
DEVELOPERS AND
PROMOTERS
NO: 189, 2nd FLOOR, 1st
MAIN, WEST OF CHORD
ROAD, MAHALAKSHMI
LAYOUT
BENGALURU URBAN-560086

2. M/s KARNATAKA STATE
EXCISE MULTIPURPOSE
COOPERATIVE SOCIETY
LIMITED
2721, 14TH MAIN
ATTIGUPPE, VIJAYANAGAR
BENGALURU-560040.

(BY SRI. PRASHANTH P.V.
ADVOCATE)

18/7/23

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

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "EXCISE LAYOUT" developed by " M/S SREE KRISHNA DEVELOPERS AND PROMOTERS " for the relief of direction to respondent to register the sale deed in favour of the complainant.
2. This project is not registered in RERA. This Authority has issued show cause notice dated 28/12/2022 directing the respondent-promoter to register the project under RERA immediately as required under section 3 of the Real Estate(Regulation and Development) Act, 2016. But the respondent has failed to do so.

3. **The brief facts of the case are as under:**

The complainant had booked a site bearing No.14 in the project "EXCISE LAYOUT" carved out of Sy.No: 207 situated at Doddachimmanahalli Village, Kundana Hobli, Devenahalli Taluk, Bengaluru Rural District which was proposed by M/s State Excise Multi-purpose Cooperative Society Limited and M/s Sree Krishna Developers and Promoters. He has got an allotment letter No.01/2019 dated 14/11/2019 signed by the President, State Excise Multi-purpose Cooperative Society Limited and the promoter Shree Krishna Developers & Promoters. The respondent had agreed to sell the site for a total sale consideration of Rs.35,89,219/-. The complainant has paid an amount of Rs.6,50,000/- on 2/1/2012, Rs.6,50,000/- on 22/4/2014 and Rs.6,50,000/- on 16/1/2019 altogether Rs.19,50,000/- (Rs. Nineteen lakhs fifty thousand only) which has been duly acknowledged by the respondent. At the time of booking, the respondent represented to the petitioners that the

Adh

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

proposed layout would be formed adjacent to IVC main road at 699/- per square feet. This is highly objectionable as the respondent has shifted the project approximately 1.5 Kms way from IVC Main Road without notifying the petitioners. Further, the respondent has issued a letter dated 3/11/2021 demanding to pay Rs.950/- per square feet instead of the agreed price. The respondent has violated the agreed terms and not ready to execute the sale deed, registration process in favour of the complainant. The complainant has approached this Authority for the relief of direction to the respondent to register the sale deed in favour of the complainant without violating the initially agreed terms and conditions. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent-1 and have appeared before this Authority through its counsel and filed common Interim Application dated 5/7/2023 as under:
5. It is contended that the Society, constituted as respondent no.2 was established with the purpose of promoting the welfare objectives of its members with respect to housing. The acquisition of membership, administration of the Society, and method of pooling resources from the members to accomplish the objective of allotting residential sites to the members as per the By-laws. It is important to note that Housing Cooperative Societies, which develops layouts and allot plot/sites to its members are not covered under the definition "Promoter". The Society identified several properties around Devanahalli and Bengaluru North Taluks. As the Society did not have the technical skills or manpower to procure necessary sanctioned plans, layout plans and provisions for civic infrastructure, an

ಎಸ್

ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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

agreement was reached with respondent no.1 M/s Sree Krishna Developers and Promoters to function as an independent contractor responsible for the development of the property.

6. Further, the complainants in Complaint Nos. 9396, 9389 and 9871 have concurrently sought redressal from the Registrar of Cooperative Societies of identical prayer that is currently pending. These complainants despite engaging in parallel legal proceedings over the same prayer, have neither informed nor sought approval from this Authority. The acquisition process of the land, demarcated by Sy.Nos: 31 and 32 of Doddachimanahalli Village, Kundana Hobli, Devanahalli Taluk, Bengaluru Rural District has been completed under the purview of respondent no.2. Subsequent to the acquisition, necessary procedures were initiated and completed to convert the land from agricultural to non-agricultural use. As it stands, the project lacks the necessary and valid developmental permissions. Consequently, this Authority also lacks jurisdiction to issue any directions to the respondents, considering the legal requirement of such permission for the project registration under Sections 3 and 4 of the RERA Act.
7. The complainant has failed to furnish any specific information or substantiated details pertaining to the land associated with the proposed project. There is no necessity for the Authority to entertain or assess the additional grievances outlines by the complainant. Hence, prayed to dismiss the complaint.
8. In support of his claim, the complainant has produced documents such as (1) Allotment letter (2) Excise layout brochure (3) Payment receipt (4) E-mail from developers (5) Allotment letter No.01/2019 (6) Letter from society dated 3/11/2021.

Ans

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

9. The respondent in support of their defence have produced copy of the title deeds acquired in the name of Mr. Ramesh on behalf of respondent "M/S SREE KRISHNA DEVELOPERS AND PROMOTERS" and draft plan submitted to local planning authority (2) copy of complaint against State Excise Multipurpose Cooperative Society Limited(R) from the petitioners before Registrar of Cooperative Societies along with list of petitioners.
10. Heard both the parties. This Authority has considered the written submission dated 17/8/2022 submitted by the complainant.
11. This matter was heard on 29/7/2022, 29/8/2022, 16/12/2022, 18/01/2023, 20/02/2023, 10/3/2023.
12. On the above averments, the following points would arise for my consideration:-
1. Whether the complainant is entitled for the relief claimed?
 2. What order?
13. **Findings on the above points are as under:-**
1. Partly Affirmative.
 2. As per final order for the following

FINDINGS

14. **Findings on point No.1:-** The complainant has approached this forum claiming for the relief of directions to the respondents to execute the sale deed in his favour in respect of plot no. 14 which he had purchased in the allotment letter dated 14/11/2019.

12. The same is resisted by the respondents on the grounds that respondent-1 who is responsible for inter alia obtaining sanctioned plans, layout plans,



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

civic infrastructure etc. The Society is not a promoter under Section 2(zk)(iv). The Hon'ble Authority does not have the jurisdiction to entertain the above complaint against the Society. The Society is a mere facilitator and is neither a promoter nor a real estate agent as envisaged under the RERA Act. The Society does not act either on behalf of the complainant or the 1st respondent in the transaction to transfer a plot to the complainant.

13. Here, in this case the claim of the complainant is based on the allotment letter dated 14/11/2019 in respect of plot no.14. Looking to the entire averments of said allotment letter issued by the respondents, it is significant to note that it is nowhere mentioned with regard to description of the property as well as location of the property. The complainant is setting up his claim only on the basis of allotment letter. But description of the property is not forthcoming so as to identify the property unmistakably and to grant the relief of execution of sale deed as prayed for by the complainant. While entering into any such documents, buyer has to make sure that such description shall be incorporated in the allotment letter so as to lay foundation for the claim in the event of any dispute. When the complainant is claiming for the relief based on such documents which binds the parties in in a contractual relation so as to be properly enforced in accordance with law. It is quite necessary that it shall be free from ambiguity and vagueness. Otherwise, it is quite possible that the buyer may not be able to maintain his claim over the property which he is intending to purchase on account of want of proper description of the property.
14. The relief claimed by the complainant is akin to the one claimed in suit for specific performance before the Civil Court. There also for grant of main relief, it is quite essential to prove the description of the property in the first place. On the same analogy here also it is mandatory for the complainant to prove the description of the property in respect of which he is seeking execution of sale deed from the respondents.

123

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

15. On going through the allotment letter dated 14/11/2019, it is apparent that the respondent no.1 had received the amount paid by the complainant to the respondent no.2. The respondent no.1/developer has clearly stated that he had received the amount from respondent no.2 paid by the complainant. Hence, the respondent no.1 is liable to refund the amount along with interest to the complainant.
15. Having regards to all these aspects, no option left to this Authority except to accept to order for refund of amount paid along with interest. Accordingly, the point raised above is answered as partly Affirmative.
16. **Findings on point no.2:** In view of the above discussion, the complaint deserves to be partly allowed. Hence, I 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/UR/220430/0009409** is hereby partly allowed.

1. The respondent no1 is hereby directed to refund an amount of Rs.19,50,000/- (Rs. Nineteen lakhs fifty thousand only) along with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 02/11/2012 to 30/4/2017. Further, at the rate of SBI MCLR +2% from 1/5/2017 till the date of entire realization
2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.



(H.C. KISHORE CHANDRA)

Chairman
K-RERA

NOT AN OFFICIAL COPY