

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 /220516/0009464

COMPLAINANT:

SHASHIKALA S
161, 7TH MAIN
AGB LAYOUT
CHIKKASANDRA
HESARAGHATTA ROAD
BENGALURU URBAN-560090

(IN PERSON)

V/S

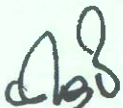
RESPONDENT:

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

(BY SRI. PRASHANTH PV
ADVOCATE)

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.



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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 approached the respondent to purchase a site which was proposed by M/s State Excise Multi-purpose Cooperative Society Limited and M/s Sree Krishna Developers and Promoters in the project "EXCISE LAYOUT" carved out of Sy.No: 207 situated at Doddachimmanahalli Village, Kundana Hobli, Devenahalli Taluk, Bengaluru Rural District. Thereafter, the complainant has entered into an agreement of sale on 29th August 2013 with the respondent. The respondent had agreed to sell the site for a total sale consideration of Rs.10,48,500/-. The complainant has paid an amount of Rs. 7,86,375 /- (Rs. Seven lakhs eighty six thousand three hundred seventy five only) which has been duly acknowledged by the respondent M/s Sree Krishna Developers and Promoters. The respondent was required to register the sale deed in favour of the complainant within 12 months, i.e. by 29/8/2014. The complainant further submits that the schedule property was offered at Rs.699/- per square feet for total amount to Rs.10,48,500/-. Pursuant to registration the respondent has sent a letter dated 3/11/2021 demanding to pay Rs.950/- per square feet instead of the agreed price. The complainant along with other members sent a legal notice through their counsel to the Proprietor M/s Sree Krishna Developers and Promoters seeking that they revoke the letter dated 3/11/2021, thereby abiding by the price stated in the sale agreement. The

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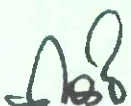
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complainant's counsel has issued another rejoinder to notice dated 29/11/2021 in reply to the notice dated 22/12/2021 issued by the respondent's advocate. The complainant has approached this Authority for the relief of direction to the respondent to 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 has appeared before this Authority through its counsel and filed an common interim application dated 5/7/2023 in respect of respondent M/s Sree Krishna Developers & Promoters and Karnataka State Excise Multipurpose Cooperative Society Limited identified themselves as respondent no.1 and respondent no.2 respectively, 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 Bye-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 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.



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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 complainants have 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 her claim, the complainant has produced documents such as (1) agreement of sale (2) Payment receipt (4) Price hike letter from State Excise Society (5) BIAPPA temporary approval letter with blue print.
9. The respondents in support of their defence have produced copy of the title deeds acquired in the name of Mr. Ramesh on behalf of



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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 matter was heard on 29/7/2022, 29/8/2022, 16/12/2022, 18/01/2023, 20/02/2023, 10/3/2023.

11. 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?

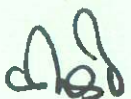
12. Findings on the above points are as under:-

1. Partly Affirmative.
2. As per final order for the following

FINDINGS

13. **Findings on point No.1:-** The complainant has approached this forum seeking for the relief of direction to the respondent to execute the sale deed in favour of her in respect of plot in the project "Excise Layout". Her claim is based on the agreement of sale dated 29th August 2013.

14. The same is resisted by the respondent that the Society constituted as respondent no.2 was established with the purpose of promoting welfare objectives of its members with respect to housing. The objective of allotting residential sites to the members were all carried out according to the Bye-laws of the complainant consistent with the provisions of the Societies Act. The Housing Cooperative Societies, which develops layouts and allot plots/sites to



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its members, are not covered under the definition "Promoter". The Society had identified several properties around Devenahalli and Bengaluru North Taluks. As the Society did not have the technical skills or manpower to procure necessary sanctioned plans, layout plans and provisions of civic infrastructure, an 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. As it stands, the project lacks the necessary and valid developmental permissions. Consequently, this Authority lacks jurisdiction to issue any directions to the respondents, considering the legal requirement of such permission for project registration under Sections 3 and 4 of the RERA Act.

15. Undisputedly, the claim of the complainant is based on the agreement of sale dated 29th August 2013. She has paid an amount of Rs.7,86,375/- (Rs. Seven lakhs eighty six thousand three hundred seventy five only) out of total sale consideration of Rs.10,48,500/- (Rs. Ten lakhs forty eight thousand five hundred only) to the respondent-developer M/s Shree Krishna Developers and Promoters on various dates which has been duly acknowledged by him.

16. Looking to the averments of said agreement of sale dated 29/8/2013 entered into between both the parties, it is significant to note that there is no mention of plot number and there is no unique description of the property upon which the complainant is setting up her claim so as to identify the property unmistakably in order to grant relief of execution of sale deed as prayed for by the complainant. Further, even there is no mention of location of the property to identify the same. While entering into agreement of sale, the entire onus lies on the buyer to make sure that such description, property

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number and location shall be incorporated in the agreement of sale so as to lay foundation for the claim in the event of any dispute.

17. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law. It is quite necessary that it shall be free from any ambiguity and vagueness. Otherwise it is quite possible that the buyer may not be able to maintain her claim over the property which she is intending to purchase on account of want of proper description of the property. 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 she is seeking execution of sale deed from the respondent.

18. Having regard to all these aspects, no option left to this Authority except to order for refund of amount paid along with interest. Accordingly, the point raised above is answered as partly Affirmative.

19. **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/220516/0009464 is hereby allowed.



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1. The respondent-promoter M/s Shree Krishna Developers and Promoters is hereby directed to refund an amount of Rs.7,86,375/-(Rs. Seven lakhs eighty six thousand three hundred seventy five only) along with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 29/8/2013 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