

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 21st of June 2019

COMPLAINANTS

1. CMP/171124/0000261 & 0000774

ADITHYA B V

No. 571, 15th Main, 10th Cross,
Bengaluru Urban - 560070.

2. CMP/180101/0000364

MADHURI MILIND SHILP,

A 1102, Mont Vermeille, Pune,
Maharashtra - 411021.

3. CMP/180531/0000375

GAUTHAM CHAKRACHARJEE,
Flat No. V 015,

Celebrity Signature Apartment,
Bengaluru Urban - 560100.

4. CMP/180809/0001126

ADHU VADLAMANI,

Electronic City,
Bengaluru Urban - 560100.

5. CMP/UR/190308/0002105

P A NARAYAN,

No. S 304, Mantri Paradise,
Bengaluru Urban - 560076.

6. CMP/UR/190211/0002112

P A JOSEPH,

No. 203, Venus Rajahans Campus,
Hazira Road, PAL,
Surath - 395009, Gurjurat.

7. CMP/UR/190212/0002120

SUNIL,

226/A/HSR Layout, Sector 3,
Bengaluru Rural - 560102.

8. CMP/UR/190220/0002222

ARCHIES MENENZES,

No. C-102, DSK Garden Enclave,
Off NIBM Road, Kondhwa,
Pune - 411048.

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9. CMP/UR/190213/0002128

MANOJ SHANBHAG,
No. D 1003, Purva Sky wood,
Silver County Road,
Bengaluru Rural - 560068.

10. CMP/171201/0000287

SAI KRISHNA SUNDAR,
Flat No. F403, Pride Apartments,
Bengaluru - 560076

VERSUS

RESPONDENT

M/S G.V. INFINITE DWELLING (INDIA) PVT. LTD.,

GEM PEARL, No. 06,
1st Stage, 1st Phase,
PFM Layout, Ring Road,
Bengaluru - 560068.

GM INFINITE E CITY TOWN PHASE - 2, (Project Name)

Thirupalya Village, Electronic City Phase 1,
Bengaluru.

(Represented by Sri. G. V. Chandrashekar,
Advocate, JP and JP Law Firm)

The common grievances of the complainants is that they have booked apartments in the above said project way back in 2014 and some of the complainants have booked the apartments in the year 2015 and they have raised bank loans to pay for the cost of the apartments. That the builders have already collected 95% of the flat cost. That the builder had promised to deliver the possession of the apartment by December 2016 or January 2017 and even if the grace period of 6 months is allowed, he ought to have delivered the possession within July 2017. But till today the developer has not handed over the possession of the apartment, that the complainant are deprived of owning a flat and on the contrary they are paying interest on the amount borrowed from the bank. They also allege that the developer has denied them a copy of the Khata and Commencement certificate which they are legally entitled

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to. On enquiries by the complainants, the developer all the time assured new dates for delivery of possession. The project is still under construction and has not been registered under RERA. The developer has not adhered to the terms and conditions of the Agreement of Sale and the construction Agreement. The relief sought is

- (a) The project has to be registered under RERA.
- (b) Authority should intervene for early completion of the project avoiding further delay.
- (c) To order for penalty for the delay.
- (d) To direct the builder to arrange for occupancy certificate.
- (e) To get the sale deeds registered only when all the amenities are fully completed.

A notice was issued to the respondent on 28/10/2017 informing that it has to get registered under the provisions of the Real Estate (Regulation and Development) Act, 2016. The respondent vide his letter dated 13/12/2017 informed this Authority that the project is completed and had applied for the Occupancy Certificate and Completion Certificate before 10/07/2017. Hence the respondent claims that the project is exempted under RERA. The respondent also enclosed the copy of the acknowledgement of filing application for Occupancy Certificate and copy of the Completion Certificate. However the said application does not mention about the payment of fees which is required to be paid for processing the occupancy certification by BDA. This information is required to be submitted by the promoter. Once again on 28/07/2018 the respondent requested this Authority to exempt the project from registration and to delete the same from the list of projects under investigation. On a notice from this Authority the respondent filed copies of the certificate issued by the chartered accountant, engineer certifying the completion of the project. On the other hand the complainants have submitted several photos and such

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other information to demonstrate that the project was not complete in all respects and was not in a habitable condition in the years 2017 and 2018. Some more pending work such as installation of lifts was being carried out during 2019 as well. Further the occupancy certificate issued by BDA is dated 11/06/2018, which establishes that the project was an ongoing project requiring Registration u/s 3(1) of the Act.

The statement of objections dated 12/04/2019 was filed by the respondent. The objections in brief are that the complaints are false and baseless and out of the 1399 apartments excepting the complainants others have got registered the sale deeds and they are occupying the apartments. The respondent further says that he has completed all the previous 5 projects in time and phase 1 of the project in question was completed 6 months before the schedule. It was only on 28/08/2011 that the respondent had got the commencement certificate and the modified sanctioned plan was obtained on 05/03/2016. The delay if at all had occurred, it was because of demonetization and non availability of the labour for which the respondent cannot be held responsible. There was delay by the BESCO who wanted a substation to be setup unnecessarily. There was delay also on the part of BBMP in sanctioning and modifying the plans. The respondent further states in the statement of objections that in spite of these hurdles the project was completed in 2017 and the completion certificate was issued on 01/07/2017 and they applied for occupancy certificate on 03/07/2017. The occupancy certificate is reported to have been received on 11/06/2018. The delay was unintentional and not deliberate on the part of the respondent. The respondent has said that if still the authorities conclude that there is a delay, he is willing to compensate at the rate of Rs. 4/- sqft as per the construction agreement.

In the same statement of objections dated 12/04/2019, the respondent has submitted that the complaints filed with this Authority are not

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maintainable and it is only the Adjudicating officer who can decide the complaints. Moreover the respondent claims that the project is exempted from the provisions of the Real Estate (Regulation and Development) Act, 2016 on the ground that it had applied for the completion certificate on 01/07/2017 that is before the Act came into force. The respondent further claims that penalty cannot be levied on the respondent as has been held in the Neelkamals judgment by the Hon'ble Supreme Court, that the Section 18 of the Act cannot have retrospective effect.

Disputing the objections filed by the respondent, the complainants have filed a rejoinder dated 18/05/2019 claiming that the project commenced on 23/12/2014 and the period of completion of 30 months (including grace period of 6 months), ended on 22/06/2017. On a perusal of the complaints, it is seen that the complainants have stated that as on April 2019, certain basic amenities such as Kitchen Sink, Kitchen Platform, Bathroom fittings, Parking Space and other promised amenities such as club house, Gym, Pool etc have not been provided. In view of the above, the complainants have demanded the refund of all the payments made towards purchase of the flat by each individual along with interest thereof and other charges. The complainants demanded payment of interest on such amount received by the respondent at the rates as provided under the Real Estate (Regulation and Development) Act, 2016. The complainants also have sought payment of Rs. 10 Lakhs each as compensation for the mental agony they have suffered.

Finally the respondents filed a settlement offer dated 31/05/2019 submitting that they are prepared to pay compensatory interest at the rate of Rs. 4/- per sqft per month on the super built area together with the amount paid to the respondent by borrowing loans from the banks and all such amounts payable to the complainants will be deposited in the form of demand draft with the Real Estate Regulatory Authority within 60 days from the date of

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order. On settlement of the refunds, the complainants will have to withdraw the complaints and file no claim affidavits.

The case was posted for hearing on 03/04/2019 and finally on 04/06/2019. The complainants were present. G. V. Chandrashekar, Advocate was present on behalf of the respondent / promoter. Heard both sides and perused the documents. The following points arise for our consideration.

1. Whether the complaints filed before this Authority are maintainable? And whether this Authority has jurisdiction to adjudicate the same?
2. Whether the respondent project namely M/S GM INFINITE DWELLING (INDIA) PVT. LTD., can be exempted from registration under the provisions of the (Real Estate Regulation and Development) Act, 2016.
3. Whether there is a delay in handing over possession of the apartments in question?
4. If yes, whether the complainants are eligible for compensation? If so, at what rate?

Our findings to the above raised points are as under:-

Point No. 1:- In the affirmative.

Point No. 2:- In the negative.

Point No.3:- In the affirmative.

Point No. 4:- In the affirmative and as per the final order.

REASONS

Point No. 1:- The respondent in his objection petition have raised the issue of jurisdiction of this Authority to entertain the said complaint and have further said that the complainants have to be rejected as not maintainable.

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Section 31(1) of the Real Estate (Regulation and Development) Act, 2016 reads as under:-

"Any aggrieved person may file a complaint with the Authority or the Adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be".

Authority has to regulate the projects and enforce the compliance of the promoters as required under 11(4) of the Act.

The functions of the Authority under Sec. 34 (f) of the Act is "to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder".

Further under Sec. 38(1) of the Act says that "the authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents under this Act or the rules and regulations made thereunder".

Adjudicating officer is an arm of the Authority for speedy disposal of the complaints. It is for this reason section 71(1) of the Act empowers the Authority to appoint one and more Adjudicating officers.

Though the Act says that an adjudicating officer can be appointed for adjudicating compensations under Sec. 12, 14, 18 and 19, the Authority is not divested of the process vested with it under the Act and accordingly jurisdiction can be assumed whenever it is required to do complete justice to the complaints filed. Once the jurisdiction is assumed, the Authority is empowered to deal with all the provisions of the Act, including section 12, 14, 18 and 19 in the interests of speedy redressal of the grievances of the Homebuyers.

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The complainants have not restricted their prayer for compensation but also sought directions to the respondent promoter to get the project registered under the Act and comply with all the duties imposed upon the promoter under the Act.

Hence for all intents and purposes, it cannot be said that this Authority does not have jurisdiction to entertain and pass suitable orders on the complaints in question. The complaints are maintainable as they have been filed under the provisions of the Act, seeking certain reliefs against the promoter.

Point No. 2:- The respondent has taken a plea that the project is exempted from registration and hence the provisions of the Act do not apply. It is contended that the project was completed, and completion certificate was received before the notification dated 10/07/2017 (the date on which the Rule came into force). That the project is also exempted under Rule 4(iv) of the Rules.

The relevant portion of Sec. 3(1) of the Real Estate (Regulation and Development) Act, 2016 reads as under

"No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it in any planning area, without registering the real estate project with the real estate regulatory authority established under this Act:

Provided that projects that are on-going on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of 3 months from the date of commencement of this Act"

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Sec. 3 (2) (b) reads as under:

Not with standing anything contained in subsection (1), no registration of the real estate projects shall be required where the promoter has received completion certificate for a real estate project prior to commencement of this Act.

The relevant portion of Rule 4(1) of the Karnataka Real Estate (Regulation and Development) Rule, 2017 reads as under:

“Upon the notification for commencement of subsection (1) of Sec. 3, promoters of all on-going projects which have not received completion certificate shall, within the time specified in the said subsection, make an application to the regulatory authority in the form and manner as specified in rule 3.

EXPLANATION: For the purpose of this rule “Ongoing project” means a project where development is going on and for which completion certificate has not been issued but excludes which fulfill any of the following criteria on the date of notification of these rules, namely :-

(IV) Where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent Authority for issue of completion certificate/ occupation certificate: and”

Sec. 3 of the Act has come into force with effect from 01/05/2017 and the rules have come into force from 10/07/2017. It is beyond doubt that the said project was an ongoing project on the date when the Act and the Rules came into force. The correspondence between the developer and the complainants clearly goes to show that the project is not complete in all respects as on date. In his letter dated 27/12/2018 the Assistant Executive Engineer BESCOM in his reply to an application under RTI has stated that the

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builder has filed application for BESCOM connection on 27/05/2017. A communication from the respondent address to one of the allottees has stated that the BESCOM supply will be available from 31/01/2019. In his E-mail dated 12/08/2017 address to one of the complainants it is stated that electrical wiring, aluminum work, painting, internal plastering wire, etc., are still in progress. In its E-mail dated 06/12/2017 the respondent has informed the complainants as "we wish to inform that the basic amenities will be ready by March 2018. You can start up the interiors and rest be assured the possession of the said unit will be ready by March 2018. Even the MEMO dated 24/04/2019 filed by the respondent has admitted that "the unfinished work and teething problem will be attended to and completed within 45 working days. Even during the months of April/May 2019, while the hearings were in progress, it was submitted that the some lifts have already been installed for the basic utility of the allottees and the balance lifts shall be provided within 60 working days subject to statutory compliances. As per Sec. 19 (10) of the Act, the developer shall invite the consumer to take the physical possession within 2 months from the date of receipt of occupancy certificate. It is not the case of the developer that he has invited the consumers who willing to continue with the project. It means it is a clear violation of Sec. 19 (10) of the Act. Therefore we hold that the plea taken by the developer that he has completed the project prior to the commencement of the Act cannot be entertained. Hence by all means it is clear that the project is yet to be completed in all respects. Therefore the plea that the project has to be exempted from the pervue of the Real Estate (Regulation and Development) Act, 2016 cannot be accepted.

In view of the reasons stated herein above, a show cause notice u/s 59(1) of the Act is hereby issued so as to provide an opportunity of hearing on the issue of violation of section 3(1) of the Act and accordingly the hearing is scheduling at 11.30 Am on 23rd July 2019. In case of non-compliance, decision will be taken on the basis of the materials on record.

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Point No. 3 and 4:- All the complainants have entered into both sale agreement as well as construction agreement as soon as they advanced money to the developer. For example Mr. P. A. Narayan (Complaint No. 2105) has entered into sale agreement on 18/11/2014 similarly he has also entered into a construction agreement on 15/11/2014. Clause 23 of the construction agreement reads as under:

"First party/developer shall construct and deliver to the second party/purchaser the flat in the building agreed to be constructed by the first party/developer on the schedule A property within the period of 24 months from the date of plan sanction. The flat so constructed by the first party / developer for the second party/ purchaser, which is more fully described in the schedule here under (herein after refer to as the "schedule - C flat") shall be in accordance with the specifications contained in the schedule - D hereto or equivalent thereof, along with proportionate undivided share in the land, more fully described in the Schedule - B hereto. The first party / developer shall be entitled to a grace period of 6 months beyond the agreed period of 24 months from the date of plan sanction. In addition to the delay attributable to any eventuality of force majeure mentioned above in this agreement".

BDA sanctioned the plan on 08/01/2015. So the period of 30 months (Grace period of 6 months included) will expire on 07/07/2017. The respondent was suppose to handover possession on 07/07/2017, but till date he has not delivered the possession of the apartments purchased by the complainants. Hence there is a delay in delivering possession which attracts compensation under the Act. Rule 16 of the Real Estate (Regulation and Development) Act, 2016 reads as under:-

"Rate of interest payable by the promoter and the allottee , -
the rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State

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Bank of India highest marginal cost of lending rate plus two percent”

Rule 16 has come into force with effect of 10/07/2017. Hence the promoter is bound to pay compensation by way of interest as prescribed in the said Section.

The complainants have also claimed a compensation of Rupees ten lakhs each on the ground that they have suffered mentally agony.

It is appropriate here to rely upon in the judgment of the Hon'ble Supreme Court of India in the case of Ghaziabad Development Authority v/s Union of India {(2000) 6sec113}, wherein “whilst considering a case of breach of contract under Sec. 73 of the contract Act, it has been held that no damages are payable for mental agony in cases of breach of ordinary commercial contracts”.

Complainant Sri. Manoj Shanbagh (Complaint No. 2128) and Sri. Sai Krishna Sundar (Complaint No. 0287) apart from claiming compensation for the delay have expressed desire to continue in the said project.

Rest of the complainants have claimed compensation for the delay and have expressed desire to cancel the contract and exit from the project.

In view of the above discussion, following order is passed.

ORDER

1. The complaints are maintainable and this Authority has jurisdiction to entertain the same. The complaints are hereby allowed.
2. The claim of the respondent seeking exemption from registration of the project is hereby rejected as not tenable.

The respondent is hereby directed to get the project registered by filing an application under Section 4 of the Real Estate (Regulation and

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Development) Act. Further the respondent is given as opportunity to offer its explanation as to why penalty u/s 59(1) of the Act should not be levied for violation of section 3(1) of the Act. Hearing proceedings are scheduled at 11.30AM on 23rd July 2019 and in case of non compliance, decision will be taken based on the materials available on record.

3. The respondent ought to have delivered the possession of the apartments in habitable condition on 07/07/2017, which has not been done. Hence there is delay.
4. a) In respect of complainants shown at serial No. 9 and 10 above i.e., in respect of Manoj Shanbagh and Sai Krishna Sundar, who have expressed desire to continue in the said project,

"The respondent promoter is hereby directed to pay interest at the rate of 10.75% per annum commencing from 08/07/2017 on the total amount paid by the complainant till the possession is delivered.

b) In respect of complainants shown at serial No. 1 to 8, i.e., those complainants who have expressed desire to exit from the project,

"The respondent promoter is hereby directed to

- a) Return the amount paid by the purchaser to the developer (excluding home loan) along with interest at the rate of 9% per annum on the respective payment made on respective date upto 30/04/2017 and at the rate of 10.75% per annum commencing from 01/05/2017 till the entire amount is realized.
 - b) To get the bank loan discharged along with the interest and other incidental charges.
5. The developer is directed to pay the cost of Rs. 5,000/- each to the complainants.
 6. The complainants in serial No. 1 to 8 shall execute cancellation of sale agreement in favour of the developer after the realization of entire amounts.

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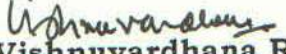
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7. The developer shall produce the copy of the discharge certificate issued by the banker and also to produce the cancellation of sale agreement. (except in case of Manoj Shanbagh, Cmp. No. 2128 and Sai Krishna Sundar Cmp. No. 0287)
8. The respondent is hereby directed to furnish copies of the documents to the complainants as required under the Real Estate (Regulation and Development) Act, 2016.


(Adoni Syed Saleem)
Member-2
KRERA


(D. Vishnuvardhana Reddy)
Member-1
KRERA
21/06/2019


(M.R Kamble) 21/6/2019
Chairman
KRERA