

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, Bangalore-560027

PROCEEDINGS OF THE AUTHORITY

Dated 19th of May 2020

Complaint No. CMP/190827/0003975

TARUN BHARTI

.....Complainant

No. C301, Sumo Sonnet,
Kudlu Main Road,
Bengaluru Urban-560068.

AND

SUMO PROPERTIES AND

HOUSING PRIVATE LIMITED.,

.....Respondent

Sumo Solitaire, No. 14, 37th 'A' Cross,
1st Main Road, Opposite to JSS Auditorium,
8th Block, Jayanagar,
Bengaluru Urban – 560082.

This complaint is filed against the project "Sumo Sonnet" situated in Kudlu Village, Sarjapur Hobli, Anekal Taluk, Bengaluru.

Following are the brief facts that are stated in the complaint:-

- (i) Though the agreement of sale did not indicate mandatory interior for flats, it was insisted by the developer and thereafter registration was allowed. This has created financial problems and unnecessary delay in registration and handing over of the flat.
- (ii) After registration of the apartment there was considerable delay in handing over the keys. Though registration was done on 27/04/2018, the keys were handed over in July 2018.

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- (iii) Though 18% GST was collected on the maintenance but no GST bill was given. After checking with the GST council, Government of India, it was declared that GST was not applicable.
- (iv) The parking space is not yet allotted.
- (v) The society building and other amenities are not completed though it was stated in the sale deed that these work had to be completed before October 2019.
- (vi) An additional Rs. 20,000/- is taken on Sri. Amma Charity by promoter and told orally will be adjusted into total sale value but never settled before registration.
- (vii) It was also stated that Rs. 15,000/- rebate would be given on total sale value but it is not yet adjusted.

Notices were issued to the respondent promoter. Sri. B.S Sathyanand, Advocate filed vakalat on behalf of the respondent and subsequently has filed statement of objections. The brief objections are as under:-

- (i) The complaint is not maintainable and has been filed with an intention to harass the respondent.
- (ii) The complainant booked a flat bearing No. 301 under CSR Plan, wherein the allottees were supposed to pay an additional sum of Rs.20,000/- for Sri. Amma Charitable trust. That on 10/03/2017 the complainant paid the said amount of Rs.20,000/-.
- (iii) A sale agreement dated 06/04/2017 signed wherein it was stated that one year maintenance charges of Rs. 41,220/- has to be paid in addition to the sale consideration.

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- (iv) The complainant was put in possession of the said flat on 05/04/2018 and sale deed was executed on 27/04/2018. In so far as the entire construction is concerned occupancy certificate dated 03/08/2018 was obtained from the competent Authority.
- (v) That at no point of time he had undertaken to from the association. It is for the apartment owners to take a call.
- (vi) In so far as the advance money is concerned, there is no question of receiving a GST bill since the flat owners association is yet to be formed. From 01/06/2018 the maintenance of the building has commenced and the bill including GST is being issued to all the flat owners including the respondent.
- (vii) It is for the registered association, when once it is formed, to take a call on the allotment of car parking slots.
- (viii) There is no question of giving Rs. 15,000/- discount as the complainant is responsible for delay payment of installments.
- (ix) The complainant is still due a sum of Rs. 2,37,713.25/- paise being the interest amount towards delayed payment. The complaint has been filed with an intention to divert the issues. The complaint is frivolous in nature and hence it has to be rejected.

Perused the file and considered both the points raised in the complaint and also the statement of objections.

a) Rs. 20,000/-, collected by the Promoter at the time of booking the Apartment, under the head CSR Contribution by the Allottee:

As per the Indian companies Act, 2013, only such companies which satisfy the following eligibility criteria are permitted to undertake CSR activities:

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- (i) Minimum net worth of Rs. 500 Crores
- (ii) Turnover of Rs. 1000 Crores or more
- (iii) Having a net profit of at least Rs. 5 Crores.

On the basis of the information available in the public domain, there is no evidence to suggest that the Promoter of the project is eligible to undertake CSR activities. Promoter has also not furnished any evidence in this regard during the hearing proceedings. Regulatory Authority can not ignore any such additional collection of funds from the Allottees, which do not form part of sale consideration. In case such a legally impermissible window to collect additional payments from the Allottees, by the promoters which do not form a part of sale consideration is left open, it would cause hardship to the homebuyers, more so in cases wherein Homebuyers are entitled to get any compensation or refund due to the delays or non-performance or such other defaults committed by the promoters. Such an unfair trade practice can not be approved by this Authority. In view of this, the Promoter is hereby directed to refund the said amount of Rs. 20,000/- to the Allottee, within two month from the date of this order.

b) Rebate of Rs. 15,000/-:

The Complainant has claimed that he is eligible for a rebate of Rs. 15,000/-, which is not allowed to him. On a perusal of the copies of the e-mails, it is seen that there was an offer of rebate of Rs. 15,000/- which was linked to the schedule of payment given by the Promoter. Since the complainant has not provided the requisite evidences and established that he was entitled to the rebate, we are unable to issue any direction or grant any relief on this issue.

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Vijay
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c) G S T:

Complainant has contended that he is not liable to pay G.S.T on the maintenance, by referring to certain clarification issued by GST council.

Authority has taken cognizance of the decision of the GST council to the effect that GST is payable, only in cases where the maintenance charges per flat per month exceed Rs.7,500/-. It is established by the complainant, prima-facie, that the monthly maintenance charges are less than Rs. 7,500/-. In view of this the Promoter shall refund the GST collected from all the Allottees.

In case the GST collected is fully remitted to the Government account, the Promoter is directed furnish a detailed apartment wise account, the amounts collected per month and the amounts remitted to the government account, with requisite documentary evidences, within one month from the date of this order. Copies of Certificates from a Chartered Accountant shall be furnished to all the allottees and an undertaking with a copy of the Chartered Accountant Certificate shall be filed before this Authority. Failure to do so would be treated as the non-compliance of the direction of this Authority and further proceedings shall be initiated. Further such failure shall be constructed as undue enrichment of the promoter at the cost of the allottees as well as the government exchequer and the Promoter would be liable to face further consequences as per the GST laws, as applicable.

- d) As per the email evidence date 6th, January, 2020 furnished by the complainant, as per the minutes of the meeting between the promoter and Allottees date 20/07/2019, out of the 63 pending issues, 38 were resolved, 10 were under progress and the balance would be looked into. The

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Promoter is directed to complete all the pending development works as per the specifications and ensure that all the requisite amenities are completed at the earliest. Promoter shall also enable the formation of the Residents association as required under the Act.

(e) According to "receipt of Flat handing over the owner" dated 05/04/2018 it is stated that the complainant has received the keys of the apartment.

At clause H (Page 5) of the sale agreement dated 06/04/2017 it was agreed between the parties that the purchaser shall be liable to pay interest for the delayed period.

As per the clause 1(a) of the sale agreement dated 06/04/2017, under the heading "Consideration and terms of payment it is stated "the developer has agreed to sell and the purchaser had agreed to purchase Schedule "B" property for the consideration mentioned in annexure "A", free from all kinds of encumbrances, subject to the following terms and conditions detailed in this agreement".

Schedule B of property as per the sale agreement reads as "474.83sqft of undivided right, title and interest and ownership in land in schedule A property. All that piece and parcel of 3 bedroom apartment bearing No. C301, measuring 1145sqft of super built up area, situated on 3rd floor of block C of "Sumo Sonnet" being developed/constructed on schedule "A" property, coupled with 79332 sqft of share of un divided right, title and interest of land in the schedule A property, together with

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one reserved car parking and proportionate right in all common facilities and amenities connected with and attached thereto.”

Similar is the description of the property being sold as cited in the absolute sale deed dated 27/04/2018. That is to say the property and sale includes the reserved car parking.

In view of the aforesaid reasons the following order is passed.

ORDER

The complaint bearing No. **CMP/190827/0003975** is hereby partially allowed u/s 18 r.w.s 31 of Real Estate (Regulation and Development) Act, 2016.

In exercise of the powers conferred under Section 37 of the Real Estate (Regulation and Development) Act, 2016, the promoter is hereby directed to immediately allot a specific car parking area to the complainant, without waiting for the formation/registration of the association of allottees.

Similarly the promoter is further directed to allot the car parking facility to other allottees in the said project immediately.

The Promoter is also directed to comply with the following directions:

(a). Refund of Rs. 20,000/- additionally collected from the complainant, as the alleged CSR Contribution within two months.

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19/05/2020.

Umesh
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(b). Refund the G.S.T amounts collected from all the allottees, in case the said amounts are not fully paid to the Government Account. In case the GST on maintenance charges collected from the allottees are fully remitted to the Government account, a certificate from the Statutory Auditors has to be obtained and copies have of the same have to be furnished to the allottees. A copy of the Chartered Accountant certificate has to be submitted before this Authority within sixty days.


(D. Vishnuvardhana Reddy) 19/05/2020 .
Member-1
KRERA


(Adoni Syed Saleem) 19/5/20
Member-2
KRERA


(M.R. Kamble) 19/5/2020 .
Chairman
KRERA