

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 13th of JULY 2020

COMPLAINT NO:-

1. **CMP/170901/0000015**
JAGADEESH T,
No. A 1404, Atlantis Liberty Square,
Bengaluru Urban - 560062.
2. **CMP/171005/0000107**
J H SHAH,
Vraj Kuteer, No. 293,
2nd Main, 4th Cross,
Bengaluru Urban - 560080.
3. **CMP/171005/0000109**
MS. SEJAL J SHAH,
Vraj Kuteer, No. 293,
2nd Main, 4th Cross,
Bengaluru Urban - 560080.

.....Complainants

AND

**M/S MANTRI DWELLINGS
PRIVATE LIMITED,**
No. 41, Mantri House,
Bengaluru Urban - 560001.

.....Respondent

These complaints are filed against the project "Mantri DSK Pinnacle" situated at Khata No. 1143/60/1, Hulimavu village, Arkere Sub-division, Bommanahalli zone, Bengaluru. Since the facts of the cases are similar in nature and also since the respondent is common, the cases have been taken together and a common order is passed.

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The brief facts of the complaints is as under:-

- (i) That the complainants entered into a sale agreement on 23/12/2010 and a construction agreement dated 27/12/2020 for the allotment and purchase of apartments in the above said project. The complainants paid substantial amount towards the purchase of the same.
- (ii) That the promoter promised to handover possession of the completed apartment on 31/03/2014 and as per clause 14.5 of the construction agreement and in case of delay the respondent agreed to pay a sum at the rate of Rs. 3/- per sqft for the saleable area from 31/03/2014 till the date of possession.
- (iii) The building is not yet complete and possession has not been handed over inspite of several reminders to the respondent.
- (iv) Directions are sought against the respondent to complete the construction and deliver possession of the apartment within reasonable time and to direct the payment of penalty as per clause 14.5 of the construction agreement and to pay Rs. 15,00,000/- towards the loss of rentals and Rs. 1,00,000/- as damages for mental stress and agony and Rs. 30,000/- as cost of these proceedings.

After receipt of the complaints, this Authority observed that the project "Mantri DSK Pinnacle" has not been registered under the provisions of the Real Estate (Regulation and Development) Act, 2016. Accordingly a notice was issued to the respondent as to why further action should not be taken.



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The case was posted for hearing and notices were issued to both the sides.

On 08/08/2019, Mr. Sunil P Prasad, Advocate, M/s Tapasya Law Chambers, Bengaluru has filed vakalat on behalf of the respondent. The advocate for respondent has filed statement of objections on 12/09/2018.

On 12/09/2019, V Vignesh has filed vakalat on behalf of the complainant J H Shah and Sejal J Shah. Written statement has also been filed on behalf of these complainants.

The statement of objections in brief filed by the respondent is as follows:-

- (i) That the complaint is not maintainable.
- (ii) That the project is exempted from registration as per Rule 4 (iv) of the Real Estate (Regulation and Development) Rules, 2017. The project was complete and even the architect had given a completion certificate, hence it was not an "ongoing project" as on the date of the Act came into force. The application to issue occupancy certificate was filed on 06/06/2017. But however there was delay in obtaining the occupancy certificate. As per clause 5.6.1(a) of Bangalore Mahanagara Palike, Building Byelaws 2003, the occupancy certificate is deemed to have been given, notwithstanding the fact that the occupancy certificate was issued on 11/03/2019. Therefore the Provisions of chapter 3 of the Act does not apply. The project is exempted from registration.

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- (iii) The construction was delayed due to reasons beyond his control like delay on the part of Authorities in issuing licenses, labour strikes, non availability of building materials, pendency of a dispute relating to property, BBMP's insistence of reserving 10% for sital area for park and open space, relinquishment of certain portion of the land for the purpose of roads and etc., to the BBMP, delay in getting modified plan. Though the building was completed in 2015-16 the modified plan sanction was delayed and so also the issue of occupancy certificate.
- (v) The complaints have to be rejected since they have been filed against un registered project and also for want of jurisdiction as they were required to be filed before the Adjudicating officer.

The advocate for the complainants J H Shah and Sejal J H Shah have taken the following additional grounds vide statement filed on 26/09/2019.

- (i) The application filed by the respondent for the issue of occupancy certificate was not in accordance with byelaw 5.6.2 of Bangalore Mahanagar Palike byelaws 2003. The fire clearance certificate was issued on 27/09/2017 and hence the building was not completed on the date of filing of the application for occupancy certificate. Hence the project was ongoing.
- (ii) Obviously there is delay in completing the building and hence as per the construction agreement, the promoter is liable to pay compensation.

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Perused the complaints, additional statement of the complainants and also the statement of objections filed on behalf of the respondent.

Following issues are required to be answered in order to dispose of the complaints.

- (i) Whether the complaints are maintainable and whether this Authority has jurisdiction to entertain the same.
- (ii) Whether the project is required to be registered under the provisions of the Act.
- (iii) Whether there is delay in completing the project and handing over the apartments to the complainants.
- (iv) If there is delay, what should be the compensation to be paid by the promoter to the complainants.

Our answers to the above issues is as under:-

Issue No. 1: In the affirmative

Issue No. 2: Yes, in the affirmative

Issue No. 3: In the affirmative

Issue No. 4: As per the order.

Following are the reasons for arriving at the answers for the issues.

The issues raised in these complaints is for the violations of Section 3, 4 and 18 of the Real Estate (Regulation and Development) Act, 2016.



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Section 31(1) of the Real Estate (Regulation and Development) Act, 2016 reads as "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 there under against any promote allottee or Real Estate Agent, as the case may be.

According to Section 34(a) of the Real Estate (Regulation and Development) Act, 2016, the Authority is entrusted with the powers to register and regulates the Real Estate project and real estate agents registered under this Act. According to Section 34(f), the Authority is also entrusted with the responsibility to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and rules and regulations made there under.

Section 37 of the Real Estate (Regulation and Development) Act, 2016 reads as "the Authority may, for the purpose of discharging its functions under the provisions of this Act or Rules or Regulations made there under, issue such directions from time to time, to the promoters or allottees or real estate agents as the case may be, as it may consider necessary and such directions shall be binding on all concerned".

Section 38 of the Real Estate (Regulation and Development) Act, 2016 empowers the Authority to impose penalty or interest in regard to any contravention of obligations cast upon the promoters.

Though the powers to direct the promoters to return of amount, interest and compensation is invested with the adjudicating officer under Section 18 of the Real Estate (Regulation and Development) Act, 2016, the Authority is not precluded from exercising the same.







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Hence the contention of the respondent, that the Authority lacks jurisdiction and hence the complaints are not maintainable cannot be accepted.

Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 stipulates that "all projects that are ongoing 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.

Section 3 of the Real Estate (Regulation and Development) Act, 2016 came into force with effect from 01/05/2017. Hence all ongoing projects were required to be registered within 31/07/2017. Certain exceptions have been given from registration under Rule 4 of the Real Estate (Regulation and Development) Rules, 2017. Rule 4 (iv) accords exemption "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".

In this case the completion certificate by the architect has been given on 20/04/2017. The promoter has filed an application dated 06/06/2017 to BBMP for the issue of occupancy certificate.

But as could be seen from the records the fire clearance has been issued by fire force and emergency department vide No. GBC(1)/13-2006, dated 27/09/2017. The clearance from Karnataka State Pollution Control Board has been given vide consent No. 04 / PCB / RSEC / BNG South/ CFO / 2018-19 / 32, dated 12/11/2018. Therefore it is clear that the application for the issue of occupancy







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certificate was filed before the competent Authorities for an incomplete project and secondly as on the day when the provisions of Section 3 of the Act came into force the project was incomplete and hence it was ongoing. Therefore the promoter was bound to get it registered under the provisions of Section 3 read with Section 4 of the Real Estate (Regulation and Development) Act, 2016.

The agreed date of possession was 31/03/2014. But as could be seen from the above facts the project was not completed within that stipulated time. Hence there was delay in completion of the project and handing over the apartments to the complainants.

The promoter is liable to pay compensation to the complainants for the period of delay in view of Section 18 of the Real Estate (Regulation and Development) Act, 2016.

Hence the following order.

ORDER

The above said complaints are allowed under Section 31 read with Section 18 of the Real Estate (Regulation and Development) Act, 2016.

The promoter is hereby directed under Section 37 of the Act to get the project registered under the provisions of the Act, within 30 days from the date of receipt of this order.

The promoter shall pay compensation to the complainants at the following rates.

- (i) At the rate of 9% from 01/04/2014 upto 31/04/2017 and







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- (ii) At the rate of 10.75% from 01/05/2017 to till the date of handing over of the possession.
- (iii) The promoter of the project is required to submit explanation with regard to the failure to register the project as on 'ongoing project', as per the first proviso to Section 3(1) of the Act, and further submit an explanation as to why penalty under Section 59(1) of the Act should not levied? Submissions and explanations may be furnished within 30 days from the date of receipt of this order


(D. Vishnuvardhana Reddy)
Member - 1
KRERA


(Adoni Syed Saleem)
Member - 2
KRERA


(M.R. Kamble)
Chairman
KRERA

