

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 24th AUGUST 2020

Complaint No. CMP/181216/0001762 &
CMP/190217/0002158

SHRI ASHOK SHANKARAPPA KULLI

.....Complainant

No. 1, 4th Main, Byreshwara Nagar,
1st Stage, Bengaluru - 560072.

AND

1. NIRANJAN C JAIN

.....Respondents

(Respondent in Cmp. No. 1762)

2. VIJAY KUMAR

(Respondent in Cmp. No. 2158)

Both office bearers of

REMCO (BHEL) HBCS Ltd.,

No. 364, 5th Main, RPC Layout,

Vijayanagar 2nd Stage,

Bengaluru - 560040.

Both these complaints have been made against the project 'Everjoy Properties', belonging to REMCO (BHEL) HBCS Ltd.,

According to the complainant the project is situated in Kyalasanahalli Village, Jigani Hobli, Anekal Taluk, Bengaluru District.

In his complaints the following facts have been stated.

- (i) The project of the respondent is situated in survey No. 80, 83 to 89 and 90 of Kyalasanahalli Village, Jigani Hobli, Anekal Taluk, Bengaluru District, is a fraudulent project of the respondent.







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- (ii) The complainant is an employee of REMCO. The respondent society entered into a MOU with M/s Celebrity Housing. The president and other office bearers of the Respondent society have indulged in irregularities and have diverted funds.
- (iii) By misrepresenting of facts approval of the BMRDA was obtained on 11/10/2018. The housing society is playing fraud and misleading the members of the society.
- (iv) That the project has not been registered under the provisions of the Real Estate (Regulation and Development) Act, 2016.

Alleging the above facts, the complainant has asked to restrain the respondent society from dealing with the property, to attach the property, to appoint an administrator of the society and to initiate criminal proceedings against Sri. Shankar G Beleri and Mr. Vijay Kumar represent the society.

Notices were issued to both the sides and hearing conducted. H V Devaraj and B V Girija, Advocates have filed vakalat on behalf of Vijay Kumar, Respondent No. 2. They have also filed written statements on behalf of the respondents. The written statement in brief is as under.

- (i) That the complainant is not aggrieved person within the meaning of Section 31 of the Act. Even a person having a remote interest cannot be permitted to be a party in the case as held by the Hon'ble Supreme Court of India.
- (ii) The claim of the respondent with respect to allotment of site in Adigarakalahalli, Sarjapur Hobli, Anekal Taluk was examined by the Hon'ble High Court of Karnataka in W.P. No. 11085-86/2016 which was filed by the complainant. The Hon'ble High Court by its judgement dated 23/04/2016 had directed the complainant to pay the requisite site value and directed the society to register the site identified by the

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complainant. The complainant had neither paid the sital value nor has identified a site to be registered in his favour.

- (iii) The civic amenities situated in both the projects at Kyasanahalli and Adigarakallahalli have been relinquished in favour of the respective local authorities by the respondent society, very much before the Real Estate (Regulation and Development) Act, 2016 as come into force. Hence the respondent is not bound to register the projects under the provisions of the said Act.

To decide the case, following issues are required to be addressed.

1. Whether the complainant can be considered to be an aggrieved person and whether his complaint is maintainable under the provisions of the Act.
2. Whether the respondent is duty bound to register the layout project at Kyasanahalli and Adigarakallahalli under the provisions of the Act.
3. If not, what order?

Our answers to be above issues are as under:-

ISSUE No. 1:- NO

ISSUE No. 2:- NO

ISSUE No. 3:- As per the order.

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







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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.

Explanation:- For the purpose of this sub section "Person shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

The complainant herein has nowhere in the complaint stated that he is an allottee of the society. Nowhere in the complaint he has demonstrated as to which provision of the Real Estate (Regulation and Development) Act, 2016 has been violated. Hence the complainant cannot be considered as an aggrieved person.

The respondent has produced the following relinquishment deeds.

1. Registered Relinquishment deed dated 27/05/2006, bearing No. 7903/06-07 registered in the office of the sub-registrar, Anekal. By virtue of this deed, the respondent society has relinquished land for civic amenities, park, roads in Sy. No. 80,87,88,89 and 90 of Kyalasanahalli village, Jigani Hobli, Anekal Taluk in favour of BMRDA.
2. By virtue of registered relinquishment deed bearing No. 1295/13-14 dated 28/05/2013 registered in the office of the sub-registrar, Attibele, Anekal Taluk, land reserved for park, civic amenities and roads situated in the layout formed in Adigarakallahalli Village, Sarjapur Hobli, Anekal Taluk, has been relinquished in favour of Anekal Planning Authority.

Rule 4(1)(i) of the Real Estate (Regulation and Development) Rules, 2017, reads as under:-

1. Upon the notification for commencement of Sub-section (1) of Section 3, promoters of all on-going projects which are not

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received completion certificate shall, within the time specified in the said sub-section, make an application to the regulatory authority in the form and manner as specified in Rule 3.

Explanation:- For the purpose of this Rule "On-going Project" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of notification of these rules namely :-

- (i) In respect of layouts where the streets and civic amenities sites and other services have been handed over to the local authority and planning authority for maintenance.

Obviously, the relinquishment deeds in favour of the local authorities have been registered during the year 2006 and 2013 that is very much before the coming into force of the Real Estate (Regulation and Development) Act, 2016 and the Rules of 2017.

Considering the above facts and circumstances of the case, the following order is passed.

ORDER

The complaints bearing No. CMP/181216/0001762 & CMP/190217/0002158 are hereby rejected as not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

The layout projects of the respondent situated in Kyalasanhalli and Adigarakallahalli Village are hereby exempted from the provisions of Section 3 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 4 of the

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Real Estate (Regulation and Development) Rules,
2017.

The complainant is at liberty to approach
the appropriate Authority for relief, if any.


(D. Vishnuvardhana Reddy)
Member - 1
KRERA


(Adoni Syed Saleem)
Member - 2
KRERA


(M.R. Kamble)
Chairman
KRERA