

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 25th AUGUST 2020

Ref:	CMP/190822/003713
Complainant	Shri. Raghurami Vasipalli C-406, Mantri Tranquil Apartment, Kanakapura Main Road, Gubbalala Village, Bengaluru - 560 062.
Promoter / Project Name:	M/ND Developers (P) Ltd., No. 25, Sri Balaji Nilaya, 3 rd Main, 5 th Cross, Dollars Colony, N S Palya, BTM Layout, 2 nd Stage, Bengaluru - 560 076.

The complainant by name **Shri. Raghurami Vasipalli**, Bengaluru has filed a complaint under Section 31 of the Act with a prayer to direct the developer to execute the Agreement of Sale for a villa C-15 at the Project "**ND Around the Mangoes**", situated at No. 63/1, 64, 65/1, 65/2 & 66/1, Gunjur Village, Warthur Hobli, Bengaluru East, Bengaluru (bearing Project Registration No. PRM/KA/RERA/1251/446/PR/171103/001346) to which complaint acknowledge number has been allotted as CMP/190822/003713. This application was filed on 22/08/2019.

Facts of the Complaint:

The above said complainant has requested the Authority to direct the developer to execute the Agreement of Sale. In this regard he alleges as under:

"I booked villa C-15, in THIS PROJECT, with ND DEVELOPERS (sales by: G-corp developers pvt. ltd., after given initial booking amount, they haven't come forward for agreement registration, waited so long, but now they are not responding properly."

Relief sought from RERA : *"I want agreement registration done"*

As per Section 31 (1) of the Act, 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 promoter, or real estate agent, as the case may be.

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In the present case, the relief sought by the complainant is for want of agreement of sale to be executed by the developer which is not covered under Section 12, 14, 18 & 19 of the Act. Hence, the Authority has heard this case. The project "**ND Around the Mangoes**" situated at 3/1, 64, 65/1, 65/2 & 66/1, Gunjur Village, Varthur Hobli, Bengaluru East, Bengaluru is a registered project with K-RERA vide Registration Certificate dated 03/11/2017 issued by IRERA valid from 18/08/2017 and end date is 14/08/2020.

Authority issued notices to the complainant and the developer of the project to appear before the Authority. The case was heard on 26/11/2019, 10/12/2019, and on 17/12/2019. The complainant and the advocate for the respondent were present during the hearings except on 26/11/2019, the complainant remained absent. Both have submitted the documents and written statements in support of their case.

In the present case, the following facts are perused:

1. Complainant booked Villa No. C-15 measuring 4220 sq. ft. in the project with the earlier developer M/s G Corp Developers Private Limited by paying booking amount of Rs. 10 lakhs against the sale consideration of Rs.3,63,56,045/-.
2. The then developer M/s. G Corp Pvt. Ltd. vide provisional allotment letter dated 21/09/2016 has acknowledged the receipt of the booking amount and agreed to enter Agreement of Sale subject to payment of Rs.79,56,411/- on or before 14/10/2016.
3. The complainant failed to pay the amount of Rs.79,56,411/- as mandated in the provisional allotment letter dated 21/9/2016 within the stipulated time.
4. The then developer of the project M/s. G. Corp Pvt. Ltd. approached M/s N D Developers Pvt. Ltd. (the present respondent in this case) for a new development manager to complete the remaining developmental works of the project and accordingly, M/s Mondo Builders Pvt. Ltd. which functions with brand name of Konzept Ambience was

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appointed. These arrangements were executed through an Agreement for Development Management Services dated 25/01/2017.

5. During the time of transition from the old developer to the new developer, the complainant was given an opportunity to pay the remaining amounts of Rs.79,56,411/- on or before 14/10/2016 to execute the Agreement of Sale. For the provisional allotment letter dated 21/09/2016, the complainant neither paid nor responded favourably.
6. After the RERA Act came into effect, M/s. N D Developers Pvt. Ltd. – the respondent in this case has registered the project “ND Around the Mangoes” situated at 3/1, 64, 65/1, 65/2 & 66/1, Gunjur Village, Varthur Hooli, Bengaluru East, Bengaluru vide registration certificate dated 03/11/2017.
7. The complainant again requested the respondent vide email dated 06/08/2018 for execution of Agreement of Sale without paying the balance sale consideration of Rs. Rs.79,56,411/-, to which the respondents agreed but not to the price prevailing in the year 2016 but, at the revised rates. The complainant has not responded to the proposal.
8. The complainant in furtherance to his communication to the respondent vide email dated 06/08/2019, showed interest to purchase a villa B-8 at the present price through whatsapp message dated 04/10/2018 and later informed the respondent promoter not to proceed with his request with respect to villa B-8.
9. After receipt of the intimation from the complainant showing his unwillingness to purchase a villa, the respondent issued a Demand Draft dated 02/07/2019 bearing No. 000819 drawn on HDFC Bank Limited to the complainant, returning the advance amount.

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10. As per the terms of the provisional allotment letter dated 21/09/2016, the promoter could have forfeited the entire booking amount received from the complainant. However, the respondent has returned the booking amount which was not received by the complainant.
11. During the hearings, the complainant has neither produced any document to show that he has responded to the provisional allotment letter from the promoter nor has brought out clear records justifying his case before this Authority.

After hearing the arguments from both the parties and perusal of the documents provided by both the parties, we have no hesitation to say that the present complaint is not sustainable.

(Adoni Syed Saleem)

Member - 2
KRERA

(M.R. Kamble)

Chairman
KRERA

Dissenting Order of D. Vishnuvardhana Reddy, Member-1:

The following issues have not been considered in the order of the other two Members of the Bench and therefore the dissenting views of Member-1 are recorded as under:

Refund to the Complainant and compliance with Section 15 of the Act : This is a case wherein there is a change of Promoter of the Project. The e-mail correspondences and other materials on record also indicate that the original Promoter, namely, one G-Corp exited the Project and the new Promoter stepped in. The Complainant was neither consulted nor his consent was obtained by the erstwhile Promoter. The right of the erstwhile Promoter to forfeit the initial amount of Rs.10 lakhs paid by the Complainant is not a fair and just proposition, in view of the fact that the Promoter who had collected the initial deposit had decided to unilaterally exit from the Project, for its own

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reasons. In view of this the right of the Complainant to get the refund from the successor Promoter of the Project is not extinguished.

The successor Promoter was well aware of the fact that when the Project is taken over, it was also taking over the liabilities of the Project. It appears that the third party transfer, as envisaged u/s.15 of the Act was taking place, at a time when the Act had come into force. Since the Respondent has not submitted all the documents connected with the transfer, the correct dates are not available on record. The application for registration of the Project is dated 18.08.2017, which is beyond the time of 3 months permitted from the date of commencement of the Act. The registered documents and other related documents for transfer of the rights to third party would indicate the correct dates of transfer for the purpose of Section 15 of the Act. In case, all the requirements of transfer of the Project were not completed by 30th April 2017, the erstwhile Promoter was legally bound to register the project u/s.3 of the Act. Only thereafter an application u/s.15 of the Act was required to be made for seeking the transfer of the rights in the Project in favour of the third party.

In view of the above, the complaint is entitled to a relief at 1 below. Further the Promoter is required to submit the documents and evidences to support a conclusion that the provisions of Section 15 of the Act are not violated, which is incorporated at 2 below:

1. The Complainant is entitled to the refund of Rs.10 lakhs paid by him to the erstwhile Promoter.
2. Further proceedings are required to be carried out so as to enquire into the correct dates of transfer of the Project by the erstwhile Promoter to the new Promoter and any violation of Section 15 of the Act.






(D. Vishnuvardhana Reddy)
Member-1,
K-RERA

In view of the majority opinion, following order of the Authority is passed.

ORDER

In exercise of the powers conferred on this Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint filed by the complainant **Shri. Raghurami Vasipalli** bearing No. CMP/190822/003713 against the developer **M/s N D Developers (P) Ltd.**, Bengaluru of the Project "**ND Around the Mangoes**", situated at No. 63/1, 64, 65/1, 65/2 & 66/1, Gunjur Village, Varthur Hobli, Bengaluru East, Bengaluru Bengaluru is hereby **DISMISSED**.


(Adoni Syed Saleem)
Member - 2
KRERA


(M.R. Kamble)
Chairman
KRERA