

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Dated: 21st DECEMBER 2020

Complaint No.	CMP/200227/0005553
Complainants :	S. Nath Flat no # 1-605 , Mantri Alpyne, Banshankari 5 th Stage, Uttarahalli, Kengeri Main Road, Bengaluru -560061. In person
Opponent :	Unishire Promoters private limited, No. 36, Railway Parallel Road, Nehru Nagar, Bengaluru-560020 Rep. by Sri G.S. Venkata Subba Rao Advocate.

J U D G M E N T

1. This complaint is filed by the complainant under Section 31 of RERA Act against the project "Unishire weave" developed by Unishire Promoters private limited. The gist of the complaint is as under:

Booked Flat no T2 -C-103 on 13/11/2014 and paid total Rs. 49,14,468 to unishire with a delivery date of 30+6 months. Builder stopped construction since February 2017, so claiming for full refund with compensation.

Devi
21/12/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

*Relief sought from RERA: Refund with compensation
from Unishire promoter.*

2. In pursuance of the summons issued by this authority the complainant has appeared, where as respondent being the promoter appeared through his advocate
3. The matter was posted for filing objections on 03/04/2020 but due to lock down the case was not called on that day. After lock down was lifted the hearing date was fixed on 16/06/2020 and finally the case was called on 20/10/2020 through Skype and reserved for judgment after hearing the complainant.
4. The point that arise for my consideration are:
 - a) Whether the complainant proves that he is entitled for refund of the amount as sought in his complaint?
 - b) If so, what is the order?
5. My answer is affirmative in part for the following.

REASONS

6. The complainant is the buyer who has filed this complaint. The buyer has entered in to agreement with the developer on 13/11/2014 in respect of flat No. T-4-A-101.
7. As per the agreement the developer has agreed to complete the project within 42 months from the date of getting the commencement certificate including the grace period. The developer has received the commencement certificate on 10/08/2016. 42 months from the date of CC means the

[Signature]
20/10/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

developer ought to have completed the project on or before 10/02/2020 but it is not completed. In this regard the complainant has said as under:

I made a total payment of Rs. 49,14,468/- in various instalments starting date from 18.09.2014 to 16.03.2017, Unishire Builders against allotted unit No. T4-A 101 by entering into an agreement vide certificate No. IN-KA 38696251796766P enclosed herewith. Now project construction work has been stopped by the builder since last three years and only 50% work has been completed since August 2014.

Therefore, I approach to your court with a plea that to refund full amount of Rs. 49,14,468 with 20% bank interest since there is no hope of completion nor builder has any intention of completion of this project – Unishire Weave.

8. Against which the on behalf of the developer a memo has been filed in lieu of objection statement which reads as under:

The corporate Debtor submits that at the outset in view of change in the position of law after filing of the above application by the operational creditor the application as brought is not maintainable and the same is liable to be dismissed in limine.

The Corporate Debtor submits that admittedly the operational creditor is a home buyer in the project of the corporate debtor and the name of the project is called Unishire Verzure.

The corporate Debtor submits that the project of the corporate debtor called Unishire Verzure is undertaken for development and putting up construction of residential flats in landed property

Done
21/12/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

bearing Sy. No. 1 situated at Venkateshpura Village, Yelankha Hobli, Bengaluru North Taluk having acquired the same by way of a Joint Development Agreement from the land Owners.

The Corporate Debtor submits that it was supposed to commence the project after obtaining commence certificate from Bruhath Bengaluru Mahanagara Palike and it as such has commenced the project.

It is submitted that when the project was half way through there was certain statutory obligations cast on the corporate debtor on account of introduction of GST & Real Estate (Regulation and Development) Act, 2016. The Corporate Debtor was required to obtain necessary statutory clearance and also make GST complaint. On account of introduction of Real Estate (Regulation and Development)Act, 2016 the Corporate Debtor was also required to register the project under the Act and several such exercise had consumed sufficient time.

9. By going through this it is clear that the developer has filed this objection statement in a proceedings held at NCLT but he has not filed any objections to the allegations made by the complainant. It further means the developer wanted to say to this authority to the effect that the developer is facing the trial before NCLT. Except the same the developer has not filed any other evidence to deny the case of the complainant. I would say that the developer cannot shirk his responsibility by saying that the matter is pending before the NCLT since the Hon'ble Apex Court has made it clear in the decision.

Denie
21/06/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

10. As per S.18 of the act this authority is only the competent authority to decide such issue. The petitions filed before the NCLT is for liquidation which cannot be decided by this authority. In the same manner this authority has to decide the issue here regarding the dispute of refund of amount. In case the complaint is allowed by this authority then this authority will ask the complainant to approach NCLT for realisation. When that being the case the submission made by the developer holds no water. Since the proceedings shall go as per law. But in case of conflict the code will prevail. In this regard the following decision it taken

IN THE SUPREME COURT OF INDIA CIVIL
ORIGINAL/APPELLATE JURISDICTION

WRIT PETITION (CIVIL) NO. 43 OF 2019

Pioneer Urban Land and Infrastructure petitioners Limited &
Anr.

Versus

Union of India & Ors. ...Respondents

In fact, in Bank of India v. Ketan Parekh (2008) 8 SCC 148, this Court held that Section 9A of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as the "Special Court Act") must be considered to be legislation that is subsequent to the Recovery Act, since Section 9A was introduced by amendment, into the Special Court Act after the Recovery Act. Needless to add, both statutes contained non-obstante clauses. This Court held: 85 "28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise

Done
21/12/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-1994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993." (emphasis supplied)

28. It is clear, therefore, that even by a process of harmonious construction, RERA and the Code must be held to co-exist, and, in the event of a clash, RERA must give way to the Code.

RERA, therefore, cannot be held to be a special statute which, in the case of a conflict, would override the general statute, viz. the Code.

11. As per the observation made by the Hon'ble Apex Court it is clear that the proceeding before this authority is independent from the proceedings before the NCLT. The prayer of the complainant in the present case is pertaining to his grievance where as the relief sought before the NCLT is in the nature of

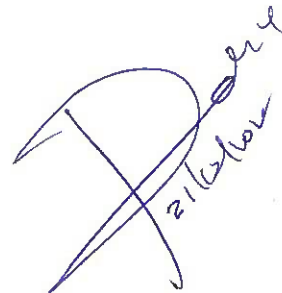
Devi
21/6/2020

rem. In view of the said observation made by the Hon'ble Apex court I have no any other way except to proceed with the present case.

12. I would like to say that the developer has executed the agreement of sale on 24.05.217. In clause No. 4.4 (a) there is a clause regarding completion of the project wherein it is said that the completion shall be calculated from the date of commencement certificate. In the present case the developer had already taken the commencement certificate on the date of execution of this agreement even then he has introduced this clause and there by a confusion has arisen. I further refer to the attitude of the developer that he never disclosed at the time of hearing as to receipt of commencement certificate. Therefore the complainant is entitled for the relief refund but he has to approach the NCLT for recovery of the same. Hence, I proceed to pass the following.

12. As per Section 71(2) of the Act the complaint shall be disposed of within 60 days. This complaint was filed on 27/02/2020 where the parties have been called to appear in the month of April 2020.

13. In the meanwhile on account of natural calamity COVID-19 the government has declared lock down completely from 24/03/2020 till 17/05/2010. In view of the office order the case was called through Skype and finally heard the parties and as such this judgment could not be passed within the due time and as such it is with some delay. With this observation, I proceed to pass the following.



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

ORDER

- a) The complaint filed in CMP/200227/0005553 is hereby allowed in part.
- b) The developer is hereby directed to return Rs. 49,14,468/- to the complainant.
- c) The developer shall pay the simple interest @ 9% on the respective amount paid on the respective date till 30/04/2017 and @ 2% above the MCLR of SBI commencing from May 2017 till the realization.
- d) The complainant has to approach the NCLT for realization of the amount.
- e) The developer is also directed to pay Rs. 5,000/- as cost of this case.
- f) Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 21.12.2020).

(K.PALAKSHAPPA)

Adjudicating Officer.