

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 12th of February 2021

CMP/191006/0004429

.....Complainant

R. SIVAKUMAR,

No. A812, Glacier Block,
Brigade Gardenia REI Layout,
7th Phase, JP Nagar,
Bangalore Urban - 560078.

V/S

HV VENTURES PROJECT PVT. LTD.,

.....Respondent

No. 25, Shankar Matt Road,
Basavanagudi,
Bangalore - 560004.

This complaint has been filed against the project "Habitat Aura" situated in Sy. No. 49/1, 49/2, 50 and 52/3 of Arekere Village, Begur Hobli, BSTQ, Bangalore Urban.

The complaint in brief is as under:-

1. That the complainant is the absolute owner and in possession of site bearing No. 676, Khata No. 437/676, situated in 3rd block, 2nd phase, BTM 6th phase, measuring 85.45 sqmts formed by BDA in Sy. No. 49/1, 49/2, 50, 52/1, 52/2, 52/3, 53/1 of Arekere Village, Begur Hobli, Bangalore South Taluk.
2. The said property was purchased by one Mr. S Harish Kumar from the BDA in open Auction on 05/09/2007 and a sale deed was also registered in his favour on 28/08/2009.

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That the complainant purchased the said land vide a registered sale deed dated 02/11/2011.

3. That Sri. Ravindra Reddy, V Nagara, Smt. Gullamma filed a writ petition bearing No. 57428-430/2013 (LA-BDA) questioning the acquisition proceedings in respect of the said land before the Hon'ble High Court of Karnataka, which by its order dated 06/03/2014 quashed the acquisition proceedings.

The complainant then preferred a writ appeal in No. 1598/2015/LA-BDA, questioning the quashing of the land acquisition proceedings.

The Hon'ble High Court of Karnataka vide its order dated 03/03/2015 has directed the parties to maintain status quo.

4. The respondent herein are claiming to have purchased the said land from Sri. Ravindra Reddy, V Nagara and Smt. Gullamma. And the respondent herein have registered the project by suppressing all these information before the Real Estate Regulatory Authority.

5. To cancel the registration so granted.

Notices were issued and enquiry conducted. The case was held on 20/12/2019, 21/01/2020 and 04/02/2020 on which date the case was reserved for orders.

Sri. G V Sudhakar, Advocate has filed Vakalat on behalf of the complainant and Samit. S, Advocate has filed Vakalat on behalf of the respondent.

Following are the submissions of the respondent.

1. The complainant has no locus standi to file the said complaint and it is actuated by ulterior motives.
2. The pre-requisites for filing a complaint as per Section 12 of the Act is that the complainant should have advanced deposit to the promoter which is not done in this case.

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3. The complainant is basing his arguments on the interim order passed in writ appeal, to which the respondent is not a party. The said interim order has been granted with respect to site bearing No. 575, Khata No. 676 situated at 3rd block, 2nd phase, BTM 6th stage, Bangalore.
4. The interim order has been granted by the Hon'ble High court of Karnataka for the property situated within Sy. No. 53/1 of Arekere Village, which has no relation whatsoever with the location of the project land situated in 49/1, 49/2, 50 and 52/3 of Arekere village.
5. The respondent took due diligence before purchasing the land by publishing its intention to purchase in various English and Kannada language news papers. Inviting objections if any for the purchase. The complainant did not file any objections to the same.
6. After so purchasing the land, the project has been registered with the RERA.
7. That this Hon'ble Authority may be pleased to dismiss the complaint.

After hearing the Advocates on the both the sides and after perusing the records, following issues are required to be framed and answered.

1. Whether the complaint filed under Section 12 of the Act is maintainable.
2. Whether the complainant proves that the site which he claims is part of the land in which the project registered with RERA is situated.

Our answers to the above issues are as follows.

Issue No. 1):-

Section 12 of the Real Estate (Regulation and Development) Act, 2016, stipulates that wherever an advance or deposit is made in response to an advertisement for sale and subsequently it is found to be false promise, a complaint can be filed with the Authority.



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In this case the complainant excepting making a allegation that there is suppression of fact on behalf of the respondent and claiming that his site is part of the project land has not produced any documents to prove the same. He has also not produced proof to show that he has paid the advance. The complainant also had not filed any objections to the paper publication of the respondent intending to buy the said land in which the complainant claims that his land is also situated.

Therefore the complainant so filed is not maintainable and is liable to be dismissed.

Issue No. 2:-

The complainant has not produced any evidence to show that his site is situated in the project land namely Sy. No. 49/1, 49/2, 50 and 52/3 of Arkere Village, Begur Hobli, BSTQ, Bangalore Urban. Hence the complainant has no locus standi to file the complaint.

In view of the above discussion, following order is passed.

ORDER

The complaint bearing No. CMP/191006/0 004429, filed under Section 12 of the Real Estate (Regulation and Development) Act, 2016 is hereby dismissed as not maintainable.

(Not Signed)
(D. Vishnuvardhana Reddy)
Member – 1
KRERA

(M.R. Kamble)
Chairman
KRERA

(Adoni Syed Saleem)
Member – 2
KRERA

The dissent order of Member-1 in the case of Project "Habitat Aura"

1. The facts of the case, the materials placed before the Authority by the complainant and respondent are perused. The following issues are required to be considered by the Authority with regard to the disclosures made by the respondent-promoter while registering the project, for the purpose of disposing of this complaint.

2. The submissions of the complainant are as under:

- (i) That the vendor of the complainant, namely, one Sri S. Harish Kumar had purchased the property in question in an option conducted by BDA during 2007. BDA had executed the sale deed in favour of Sri S. Harish Kumar in 2009. The complainant had purchased the said property and registered a sale deed in November 2011.
- (ii) That the lands falling under several survey numbers such as Survey No.49/1, 49/2, 50, 52/1, 52/2, 52/3 and 53/1 were acquired by Bangalore Development Authority and residential sites were formed by BDA. The residential site purchased by the complainant is located in the same survey numbers which are forming part of the layout developed by BDA.
- (iii) That the respondent promoter has registered a project with this Authority proposing to develop the project on the lands with the same survey numbers which were acquired by BDA. It is submitted that the land owners of the said survey numbers had challenged the acquisition proceedings by BDA and vide order dt.06.03.2014, the learned single judge of the Hon'ble High Court of Karnataka had quashed the acquisition proceedings by BDA. However, the said order was challenged in writ appeal, which was admitted and status quo was ordered by the division bench of the Hon'ble High Court of Karnataka. Since the matter

Signature

has not reached finality, the respondent-promoter does not have absolute title for the lands on which the project is being developed.

3. According to the respondent-promoter, the residential site of the complainant falls under survey No. 53/1, whereas the respondent's project is developed in the lands falling under Survey No.49/1, 49/2, 50 and 52/3 and therefore the complaint is not maintainable.

4. The undersigned, vide notings dt.18.05.2020, had made the following observations:

"9. It is not feasible to pass orders in this case, unless an enquiry is conducted and a report is obtained.

10. Despite the fact that there is a question of maintainability of the complaint, the authority may exercise Suo Motu jurisdiction to conduct an enquiry u/s 35 of the Act, in order to protect the interests of the allottees.

11. The complainant has alleged that the Project location and area for development overlaps with his BDS site. It is also alleged that the project is being developed in the Survey Nos, which were already acquired by BDA and converted into residential sites by BDA.

12. It is seen from the documents such that the Survey Nos. of lands acquired by BDA have been subject matter of litigation between the owners of the said Survey Nos. and BDA. It is alleged that the promoter of the project has not disclosed all the facts and litigation history while obtaining the Registration.

13. The documents submitted and the written submissions filed by the respondent project promoter do not fully explain and establish that the project area and extent has no overlap of BDA acquired Survey Numbers.

14. In view of the above, it is pertinent to examine the approved plan of the project with reference to the Survey Nos. of lands acquired by BDA and arrive at the correct position about the location, Survey Nos. and area falling under the project development of the promoter respondent, in order to safeguard the interests of the allottees.

15. The Engineering section of the Authority has to be directed to conduct the enquiry and submit a report, within a month. Based on the enquiry report, further proceedings can be issued by the Authority."

Lishanur

5. As can be seen from the above notings, the dispute required a further enquiry by the Authority u/s. 55 of the Act and Engineering Section of the Authority was required to carry out further enquiry and submit a report to the Authority. However, further enquiry was not carried out by the Authority and only notices were sent to the parties, vide notings of the Chairman dt.27.05.2020. It is seen that the respondent-promoter furnished its submissions in the Office of the Authority on 09.06.2020 and the complainant has furnished his submissions in the Office of the Authority on 17.06.2020. A draft order is proposed by Member-2 on 08.12.2020.

6. It is not clear as to why the Authority is not carrying out the requisite enquiries with BDA as well as the necessary field enquiries to verify the correct factual and legal position? Every project promoter has to comply with Sec.4 of the Act read with Rule 3, 4 and 15 and the Authority has to enforce the provisions of the Act and the applicable rules scrupulously in order to safeguard the interest of the allottees. Every promoter is legally bound to submit all the documents and make all the disclosures transparently while seeking registration as per Sec.4 of the Act.

7. In this case, all the requisite materials are not available on the file and what is uploaded by the promoter is known to the Chairman and Secretary of the Authority and not in the knowledge of the Members. It is required that Chairman/Secretary place all the documents in the relevant files and make available to the Members as is required for the functioning of the Three-Member of the Authority. It is the Authority which has to look into all the aspects of registration, since registration is not an administrative matter.

Lishmawade

8. This complaint falls u/s.35 of the Act and the Authority is legally bound to carry out the necessary enquiry. The manner in which the proceedings are concluded are not in accordance with the provisions of the Act.

9. Hence the above dissenting order.


(D. Vishnuvardhana Reddy)

Member-1

D. Vishnuvardhana Reddy, Member-1 not agreeing to the order proposed has passed a dissenting order. The majority of the Members do not agree to the same, in view of the following facts.

The complainant in his online complaint has stated that "WP57428-57430/2013-allowed de-notification of land in Arekere Sy.No.49/1, 49/2, 50, 52/1, 52/2, 52/3, 53/1. Later in WA1598/2015 this was challenged and orders for stat-scope given. Project is coming in few of the above mentioned survey numbers."

The reliefs sought by the complainant is to "Withdraw RERA approval, court case pending."

During the enquiry proceedings the complainant could not demonstrate that his land is part of the project land for which this Authority has given approval.

The Real Estate (Regulation and Development) Act, 2016, permits Adjudication of disputes between the allottees and the promoters. Section 2(d) of the Act defines an allottee as:-

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the



person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

Apparently the complainant does not fall within the definition of the allottee. Apart from these conducting an enquiry with respect to determination of the title of the complainant is not within the scope of this Authority. Merely because the complainant claims that his land is part of the project land without producing documentary proof of it cannot be a ground for revoking the registration once granted. Hence the dissenting opinion of Member-1 is not acceptable.

By majority, therefore this Authority passes the following order.

ORDER

The complaint bearing No. CMP/191006/004429, filed under Section 12 of the Real Estate (Regulation and Development) Act, 2016 is hereby dismissed as not maintainable.


(Adoni Syed Saleem)
Member - 2
K-RERA


(M.R. Kamble)
Chairman
K-RERA

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