

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

FIRST ADDITIONAL BENCH

Dated 16th of March 2021

MEMBERS PRESENT:

1. M.R. KAMBLE, CHAIRMAN, K-RERA
2. ADONI SYED SALEEM, MEMBER-2, K-RERA

COMPLAINT NUMBERS & COMPLAINANTS	1	<u>CMP/191225/0005040</u> AKKAMAHADEVI HIEMATH No. A-203, Lakshmi Devi Enclave, 1 st C Main Road, Ganganagar Extension, Bangalore - 560032.
	2	<u>CMP/200101/0005110</u> CHITTUR RENUKA RAMAKRISHNAN, No. 221, 1 st Floor, Jwalamalini Nilaya, 6 th Main Road, Amarjyothi Layout, Dommaluru, Bangalore Urban - 560071.
	3	<u>CMP/200102/0005123</u> AVINASH S Flat No. 003/004, Paramount Regency, No. 5, Hennur Main Road, Kachakanahalli, Lingarajapuram, Bangalore Urban - 560084.
	4	<u>CMP/200104/005136</u> APARNA PRASANNA No. 202, Srinivas Nilaya, 14 th Main Road, Subramanya Nagar, Bangalore Urban - 560021.
	5	<u>CMP/200105/0005143</u> MILIND MADHAVRAO HALYAL AND MRS. KANCHAND MILIND HALYAL, No. 52, Reliance Mansions, B Block, 36-39, Hariram Aildas Layout, Prashanth Nagar, Vijaynagar, Bangalore - 560040.

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RESPONDENT / PROMOTER NAME	UNISHIRE SKYSCAPES LLP No. 36, Railway Parallel Road, Nehru Nagar, Bangalore Urban - 560020.
PROJECT NAME	UNISHIRE PREMIA Sy. No. 24/3, Srirampura Village, Yelahanka Hobli, Jakkur Double Road, Bangalore North, Bangalore Urban.

All these complaints have been filed against a registered project namely "Unishire Premia" which has been registered vide certificate dated 16/05/2018, in certificate bearing No. PRM/KA/RERA/1251/309/PR/180516/001678. The date of commencement of the project was 31/07/2017 and date of completion of the project is 31/07/2019.

Following are the grievances as per the registered online complaints.

1. That the some of the complainants entered into Sale agreements in 2015 and some of them entered into agreement thereafter. The promoter had promised to deliver the completed apartment within 2016; however the apartments are still incomplete. All the developmental works have come to a stand and still since three years.
2. The promoter is blaming the lender namely M/s. Reliance Nippon Life Asset Management for the delay. The promoter is alleging that the lender is not releasing the apartments from mortgage so that they can sell them and raise funds to complete the said project. Further it is alleged that the promoter is diverting all payments made by the homebuyers, when contacted the lender is demanding more money than what was agreed as sale consideration for the release of the mortgages.

Quoting the above reasons the complainants have asked for a direction to the promoter to complete the project within three months, failing which RERA should take over the project and deliver the apartments to the buyers.



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Notices were issued and the case was heard on 07/10/2020, 20/10/2020, 28/10/2020, 13/11/2020, 28/01/2021 and 09/02/2021 on which date the complaints were reserved for final orders.

A draft final order was prepared and sent to Member-1 on 18/03/2021. The said file was not sent back to the Chairman Section either with signature to the final draft nor any dissenting opinion was given. Hence on 26/03/2021, Member-1 was requested to send back the file. Since the matter was pending for more than a year and since the three Members Authority was not in a position to finalize the final order, the case was posted before the First Additional Bench and the matter was heard on 07/04/2021 and it was reserved for orders.

During the course of hearing it was brought to the notice of the Authority that a tri-partite agreement was entered into by the promoter, M/s. Reliance Nippon the lender and the contractors S A Enterprises for completion of similarly placed three projects namely "Unishire Esplanade", "Unishire Terreza" and "Unishire Verzure". In order to expedite completion of the project "Unishire Premia", an interim order was passed by majority of the members of this Authority on 11/01/2021 directing the promoter to similarly formulate a tri-partite agreement. It was also directed by the said interim order that the promoter should complete the project at the earliest and deliver the possession to the homebuyers. It was also directed to reimburse to the ESCROW account of "Unishire Premia", the funds which were diverted.

The promoter has neither obeyed nor has filed any compliance report to the interim order dated 11/01/2021.

During the course of hearing, following facts were brought to the notice of this Authority.

1. That in July 2015 the Unishire Urbanscape Private Limited entered into a consolidated loan agreement for advancement of 126 crores with M/s. Reliance Nippon Asset Management Company for its six projects namely,



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Terreza, Premia, Verzure, Esplanade, Palazzo and Xperience. Along with this a separate ESCROW agreement was signed which allowed the lender M/s. Reliance Nippon Asset Management Company to operate it unilaterally.

2. Out of the funds of "Unishire Premia" Project a major portion of service of debts, to the tune of thirty five crores, was paid to the lender.
3. Undue delay on the part of M/s. Reliance Nippon which controls the entire business of the promoter including the issue of NOC and operation of the ESCROW Account.

In view of the above, complainants have sought a direction to the lender M/s. Reliance Nippon Asset Management Company.

The project Unishire Premia as has been said above is registered under the provision of Section 4 of the Real Estate (Regulation and Development) Act, 2016 and a certificate of registration was also issued on 16/05/2018. The said project is stated to be valid from 31/07/2017 and was to be completed on 31/07/2019. The promoter has filed an application seeking extension of the project from 31/07/2019. This Authority has not extended the validity of the said project. As per the conditions stipulated in the certificate of registration, it is relevant to quote the following (V) and (VI) conditions. Which reads as under:-

No. (V) "The promoter shall comply with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Karnataka Real Estate (Regulation and Development) Rules, 2017 and Regulations made thereunder.

No. (VI) "The promoter shall not contravene the provisions of any other Law for the time being in force in the area where the project is being developed".

Section 4(2)(l)(D) of the Real Estate (Regulation and Development) Act, 2016 reads as under:-



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"That seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation.— For the purpose of this clause, the term "schedule bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934".

As could be seen from the above, the promoter is duty bound to open a separate account for the development and construction of each project. 70% of the amounts realized from the real estate project from the allottees has to be deposited in the said account and the promoter is entitled to withdraw money from the said account only to cover the cost of the project in proportion to the completion of the same. The power of withdrawal is dependent upon obtaining certificates from an engineer, architect and also a chartered accountant. Further

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the promoter is bound to get the accounts audited within six months after the end of every financial year by a practicing Chartered Accountant.

The promoter has not filed evidence to prove that the above said provision of law has been complied with.

On the other hand a new ESCROW agreement has been signed which has handed over the control of ESCROW account into the hands of its financier namely M/s. Reliance Nippon Asset Management Company. This has done as a sequel to the borrowing of Rs.126 Crores in a consolidated loan agreement for all the six projects including "Unishire Premia".

Functions and duties of the promoter are explained in Section 11 of the Real Estate (Regulation and Development) Act, 2016. Section 11(4) of the said Act reads as under:-

"The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to



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make it available to the allottees individually or to the association of allottees, as the case may be;

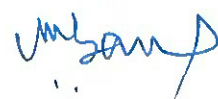
(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial



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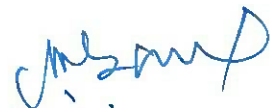
institutions, which are related to the project) Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;"

However it is seen from the records that after collecting a substantial amount of sale consideration, charges have been created over the apartments.

On an analysis of each step taken by the promoter, it is clear that he has not fulfilled the responsibilities expected of him under the provisions of the Real Estate (Regulation and Development) Act, 2016. Before passing of this final order this Authority had given a fair opportunity to the respondent to complete the project at the earliest and hand it over to the homebuyers. This was done by means of our interim order dated 11/01/2021. The promoter has completely failed to do so.

It is also seen from the records that the promoter has filed an extension application on 31/07/2019. Though the project has commenced in 2017, till today it is not completed even after four years. It is doubtful as to whether the



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promoter will complete the project even if extension of one year is given to him. The conditions which the promoter has created does not instill confidence in the Authority that he will be in the position to complete the project and handover possession of the apartments to the homebuyers.

Hence in view of the above, this Authority is constrained to pass the following order.

ORDER

It is hereby decided to explore under Section 8 of the Real Estate (Regulation and Development) Act, 2016, the possibilities of handing over and completing the remaining development works of the project "Unishire Premia" by the association of allottees / homebuyers of the said project.

The promoter is hereby directed to free the ESCROW account from the control of the financiers and further he has to operate the same and complete the project.

The association of allottees / homebuyers of the said project are hereby directed to file formal proposal to take over the same from the promoter and complete it in accordance with law.

It is hereby ordered to initiate proceedings for the conduct of forensic audit of the project "Unishire Premia".


(Adoni Syed Saleem)
Member-2
(K-RERA)


(M.R. Kamble)
Chairman
(K-RERA)

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