

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
PRESIDED BY SRI K. PALAKSHAPPA
DATED 30th SEPTEMBER 2020

Complaint No.	CMP/UR/190214/0002137
Complainant	H. Shyama Shetty Padmalekha Kodi Sastan Road, Gudnmi village -576226 Udupi taluk Rep. by Sri Harishkumar M.S. Advocate
Opponent	M/s Provident Housing Limited No 130/1 Ulsoor Road, Bengaluru -560042

J U D G M E N T

1. H. Shyam Sheety the complainant has filed this complaint no. CMP/UR/190214/0002137 under Section 31 of RERA Act against the project "Provident Sunworth" developed by 'M/s Provident Housing Limited., seeking for the relief as under:

Complainant had entered into an agreement of sale on 10-09-2014 with the Respondent for purchase of the undivided interest for a sum of Rs.10,82,000/- and construction of the flat bearing No.SUN-II-5G-506 on the fifth floor in the 5G Block/ Wing of the residential complex known as 'Provident Sunworth' to be constructed on the land bearing Sy.No. 1 to 26 of Venkatapura Village, Kengeri Hobli, Bangalore South Taluk measuring 51 acres 9.6 guntas (excluding Kharab lands 39 Guntas of B Kharab which is spread over in different extents in the entire land parcel) for a sum of

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Rs.31,24,000/-. Complainant has paid a sum of Rs.24,71,208/- as advance and was ready to pay the balance amount. But Respondent did not complete the construction within the agreed period. Such being the position, in the year 2017, Complainant has come to know through the news papers and also media about the action taken by the Government to take the possession of the land bearing Sy.No. 1 to 26 of Venkatapura Village, Kengeri Hobli, Bangalore South Taluk measuring 51 acres 9.6 guntas of the Respondent on the ground that the same is a government land. Immediately, Complainant approached the office of Respondent to verify about the title and also order/report of the Deputy Commissioner. But they did not furnish any of the documents and on the other hand Complainant has come to know that Respondent has filed the WP No.34278/2016 (GM-RES) before the Hon'ble High Court of Karnataka in order to get the protection from the dispossession. Shocked by the same the Complainant herein has decided to cancel the agreement of sale as the Respondent has failed to disclose the true picture and also title over the property in question. Hence the Complainant has sent a cancellation letter. Such being the position the Respondent has paid only a sum of Rs.17,86,914/- by deducting a sum of Rs.6,84,494/- towards cancellation charges, VAT and Sales Tax that too after selling the flat to some third party. The said action of Respondent is not correct and

Relief Sought from RERA : Return of balance amount with interest

2. After registering the complainant notice has been issued to the parties, the complainant has appeared through his advocate where as the respondent has appeared through his representative and filed his reply. At this stage it is better to say some points. Since this complaint was filed against an unregistered project, Secretary has initiated preliminary enquiry regarding non registration of the project. However for the disposal of the complaint the same was transferred to Adjudicating Officer for disposal.

P. S. S.
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3. Notice has been issued to the parties. It was posted to 19/03/2020 but on account of lock down the case was not called. As per the office order the cases was to be called through Skype and hence notice has been issued to appear through Skype on 06.07.2020. On that day the complainant remained absent where as developer has appeared and submitted his arguments. Later advocate for the complainant has appeared and submitted his arguments.
4. Heard the same
5. The point that arise for my consideration is
 - a. Whether the complainant proves that he is entitled for relief as sought in the complaint?
 - b. If so, what is the order?
6. My answer is affirmative in part for the following

REASONS

7. In this case the complainant is the customer of the developer is not in dispute. The complainant has entered agreement of sale with the developer on 10/09/2014 in respect of flat bearing No. SUN-II-5G-506. By going through the compliant it reveals that the developer has returned the main portion of the amount but retained Rs. 6,84,494/-towards cancellation charges, tax which is nor correct according to the complainant.
8. Shri. Karthik representing the developer has filed his objections which reads as under:

In response to the complaint filed by the complainant, the company submits and states as follows:

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30/06/2020

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1. *The project was completed in 2017 and Occupancy certificate for the project was issued by the Bengaluru Development Authority (BBMP) on 27.04.2017, a copy of which has been attached and marked as Annexure -1. Complainant has knowingly and deliberately suppressed this material fact with an intention to mislead the authority. By submitting the complaint, the complainant has falsely represented that the subject matter of the complainant falls within the jurisdiction of the authority, where none exists.*
 2. *The law relating to registration of projects is well established and section 3(1) of the Real Estate (Regulations of Development) Act 2016 (the Act) read with rule 4 of the Karnataka Real Estate (Regulations of Development) Act 2017 (the Act) enacted by the state of Karnataka make it abundantly clear that only those project that have not received completion certificate and/or occupancy certificate are to be registered under the Act, and consequently be treated as on-going projects. Jurisdiction of Real Estate Regulatory Authority is therefore limited to such projects and explicitly excludes the completed projects that have received Occupancy certificate from a relevant local planning authority.*
 3. *Rule 4(iv) of the rules states that registration of a real estate project is exempted where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of completion/occupancy certificate. As occupancy certificate was received on 27.04.2017 this project is exempted from registration.*
9. It is also submitted that the developer has received the Occupancy certificate on 27.04.2017 which is prior to coming into

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under section 59. Accordingly the projects which have not been registered, but are registrable in case of violation of Section 3 comes within the domain of the authority and authority is well within its power to initiate legal proceedings and also to entertain complaints regarding violation of the provisions of the Act. The authority cannot take a stand that the project is unregistered, accordingly authority has no jurisdiction to entertain the complaint. Where the complainant will go? The complainant may make a complaint to the authority regarding non registration of the project as well as may request the authority for compliance of obligations by the promoters in case the promoter violates any of the provisions of the act. The rules and the regulations made there under. The authority in such case cannot take a stand that the let project be got registered and only there after entertain the complaint. If a complaint in such cases is not entertained by the authority a scrupulous promoter or builder or developer may not register the project to avoid jurisdiction of the authority. This will frustrate the very purpose of the Act regarding giving relief to the complainant and ensuring compliance of the obligations by the promoters, real estate agents and allottees.

The act provides for obligations of the promoter, real estate agent and allottees both during the registration phase as well as post expiry of validity of registration i.e., after the completion of the project. The obligations post-expiry of the validity of registration are to be ensure by the authority in both in the case of parties which were registered and validity of registration expired as well as for the project were completion certificate was obtained prior to coming it to force of this Act and exempted from registration. The obligations from the promoter after completion of the project such as handing over of possession and executing a registered

conveyance deed within specific period, workmanship and structural defect rectification liability without any limitation period etc. are applicable for all the real estate projects, both registered as well as exempted from registration.

11. From the above discussion it is clear that merely because the project is exempted from the registration does not take away the right of the complainant.
12. I failed to understand the stand taken by the developer who has said nothing about the plea taken by the complainant. In the present case only the issue regarding non repayment of part of the amount which was withheld by the developer stating that he has withheld the same towards cancellation charges. In this regard I would say that the developer has transacted with the complainant even after coming into force of this act. It means the cause of action to file this complaint was alive even after the coming into force of this act. Hence, the question of maintainability as contended by the developer has no basis. Further he said nothing so far as allegations are made towards deduction of amount. In what way he is deducted the part of the amount is not explained. In the absence of specific defense, the contention of the complainant has to be honored. When he has cancelled the booking then the developer ought to have returned the amount in full or he ought to have given reasons for deduction. But the developer has denied the case of the complainant on the ground of receipt of OC. It is not correct on his part why he has withheld the amount when his project was not on the free litigated land. He has returned major portion of the amount but withheld some portion without any reason. He failed to give reasons for the same. In his absence now I have to go to the same. The developer has received the money in the year 2014 and he has utilized the same for his

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project. After cancellation of booking he has returned the money without any interest. The present amount was with held as cancellation charges and towards tax. In this regard I would say that the developer will again collect the amount towards the tax from the new buyer. Hence, he has to return the same to the present complainant. The developer has already benefited with the money and earned benefit out of the money when it was with him. The major portion of the money which has been returned to the complainant was without interest and hence the same is also to be returned. With this observation I allow this complaint in part.

13. Before passing the final order I would like to say that as per Section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 14/02/2019. Since this complaint was filed against the unregistered project, the file was with the Secretary who has taken necessary steps against the developer with regard to the registration of his project. Later the complaint has been transferred to this authority on 18/12/2019 for disposal in accordance with law. Afterwards this authority has issued notice to the parties. The developer has appeared and filed the objections. In the meanwhile on account of natural calamity COVID-19 the Government has declared lock down completely from 24/03/2020 till 17/05/2020 and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.

P. S. S.
30/04/2020

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/UR/199214/0002137 is hereby allowed in part.
- b. The developer shall return Rs. 6,84,494/-to the complainant within 60 days from today. If not, it will carry interest @ 2% above the MCLR of SBI commencing from 61st day till the realization.
- c. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 30/09/2020).

K. PALAKSHAPPA
Adjudicating Officer

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