

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

Date 20th March 2020

Complaint No.	CMP/180719/0001055
Complainant	Mr. Suman Prasad B-708, Knightbridge Apts., ITPL Main Road, Kundalahalli, Bengaluru - 560037.
Respondent	Mr. Suresha. M. Reddy Eshanya Projects Pvt. Ltd., Bengaluru -560064 ABSENT

J U D G E M E N T

1. Mr. Suman Prasad, the complainant has filed this complaint bearing Complaint no. CMP/180719/0001055 under Section 31 of RERA Act against the respondent Suresha M Reddy, seeking refund of amount. The facts of the complaint is as follows:

November 2015: I booked 2 plots, 30x40 sqft each and allotted plot#31 and 32. Each plot costing 4.5 lakhs. I paid 4 lakhs as booking amount via cheque drawn on HDFC Bank, the remaining 5 lakhs was to be paid at the time of registration which was verbally communicated as June 2016. The builder Mr Suresha also confidently stated that he was expecting the conversion to be approved by March 2016. It may be noted that till this date even the conversion has not happened leave alone registration. At the time of booking only a form was asked to be filled without any agreement. A receipt for the payment was given. From June 2016 till today, a lapse of close to 3 years have occurred and the builder Suresha Reddy has just been making excuses for delay. Follow up communication happened over phone and whatsapp. Most of the

[Signature]
20/03/2020

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time Mr Suresha was unreachable which appears that he was purposely not picking up the phone. After waiting for the entire year 2016 and 2017 I got exhausted chasing him and gave him the ultimatum to cancel my booking on 12th April 2018. Mr Suresha asked that I send a formal notice of cancellation and allow one month time. After duly sending him the notice I followed up after a month and his response was he needed more time which went till end of June, then it was first week of July. Finally, Mr Suresha refused to refund and when I insisted that legal action would be taken. He responded that I'm welcome to proceed with legal action.

Relief Sought from RERA : Refund of booking amount with 18% interest

2. In pursuance of the notice issued by the authority, the Complainant appeared himself and respondent has not at all appeared.
3. Heard arguments.
4. The points that arise for my consideration are:
 - a) Whether the complainant is entitled for relief as prayed in the compliant?
 - b) If so, what is the order?
5. My answer to the above points are in the affirmative for the following

REASONS

6. This complaint is filed by the complainant against unregistered project by name 'Eshanya Projects Pvt. Ltd.,' wherein the complainant has entered into agreement of sale towards purchase of 2 plots bearing No. 31 & 32. In this regard, the advance amount of Rs.4,00,000/- has been paid on the time of booking through cheque drawn from HDFC Bank for which receipt has been given by the developer. It is the allegation of the complainant that the developer has agreed to refund the amount along with interest in case he failed to complete the project within six months. At the time

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20/07/2020

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of hearing the complainant has filed the written arguments therein he said that, there is no progress in the development.

7. I would like to say that this project is not at all registered with RERA. Therefore, as per Sec.3 of the Act, the authority has got issued notice U/s 3 of the Act, for which the developer has given reply on 29/11/2017, as under:

"Sir, in reference to the said notice (No.RERA/63/2017/18) dated 20/11/2017 issued by Real Estate Regulatory Authority, as per section 1 of the Act and Section 3 of the RERA act 2016, behalf of Eshanya Green Valley Project, I hereby bring to the notice of the authority that Sy.No.118, 115/2, 115/3, 108/1, 108/2 of Nashikunte Hosur Village, Nandi Hobli, Chikkaballalpur taluk and district is still under the process of availing approvals from the Chikkaballalpur district authority for converting of the said land from agriculture to non-agriculture use and approvals from the district town and country planning authority (DTCP). Due to the delay in the process we have not yet been able to register the project under guidelines prescribed under section 3 of the Real Estate Regulatory Act.

Whereas Regulatory Authority Act would be done immediately the application for the registration for Real Estate after necessary approvals granted, I would take the privilege the mandatory details of the authority as prescribed by the act.

I hereby request the authority to kindly consider and accept my valid reason for not registering out project yet under the RERA Act and please oblige.

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20/12/2017

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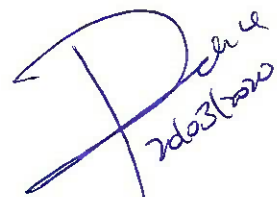
8. Again on 06/08/2018, the same developer has given one more representation wherein he has contended as under:

Sir, in reference to the said notice No.RERA/152/63/2017/18) dated 24/07/2018 issued by Real Estate Regulatory Authority, as per section 3 of the RERA act 2016, as authority said above the notice No. RERA/152/63/2017/18) dated 24/07/2018 behalf of Eshanya Green Valley Project,, we have received the notice from the RERA on 03/08/2018.

I hereby bring to the notice of the authority that our project which is proposed to be launched and still under the process of availing approvals from the Chikkaballapur district authority for converting of the said land from agriculture to non-agriculture use and approvals from the district town and country planning authority (DTCP). Due to the delay in the process we have not yet been able to register the project under guidelines prescribed under section 3 of the Real Estate Regulatory Act.

Whereas the application for the registration for Real Estate Regulatory Authority Act would be done immediately after necessary approvals granted, I would take the privilege the mandatory details of the authority as prescribed by the act.

In reference to the said notice No.RERA/LA 1101/63/2017/18) dated 31/05/2018 issued by Real Estate Regulatory Authority and called for hearing in front of the Secretary, RERA on 08/06/2018 at 3.30 pm. In this regard we are not able to attend/appear for the hearing on above said date and timing, because we have received the final notice No.RERA/LA 1101/63/2017/18) dated 31/05/2018 on 08/06/2018 at 4.30 pm. In this regard, honestly we had given explanation to the RERA through our company letterhead and got acknowledgment from the authority on 14/06/2018, why we have not register our Eshanya Green


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Valley Project in RERA. In regard, today we are submitting the acknowledgement copy to the authority.

I hereby requesting the authority to kindly consider and accept my valid reason for not appear attend for the hearing in front of the Secretary RERA and please oblige."

9. By looking into the stand taken by the developer, it reveals that he has collected amount from the allottee even though his plan was not sanctioned. Then the developer shall not started to collect the amount which is not correct since he has collected the amount from the customers by representing them that he going to launch the project as mention in the above paragraphs the complainant has produced one document which is a mail sent to the developer were he contended as under:

*I booked 2 plots, 30*40 sqft each and allotted # 31 & 32. Each plot consisting 4.5 lakhs. I paid lakhs as booking amount via cheque drawn on HDFC Bank, the remaining 5 lakhs was to be paid at the time of registration which was verbally communicated as June 2016. The builder Mr. Suresh also confidentially stated that he was expecting the conversion to be approved by March 2016. It may be noted that till this date even the conversion has not happened leave alone registration. At the time of booking only a form was asked to be filed without any agreement. A receipt for the payment was given.*

From June 2016 till toady, a lapse of close to 3 years has occurred and the builder Suresh Reddy has just been making excuses for delay. Follow up communication happed over phone and whatsapp. Most of the time Mr. Suresh was unreachable which appeared that he was purposely not picking up the phone. After waiting for the entire year 2016 and 2017 I got exhausted chasing him and gave him the ultimatum to cancel my booking on 21st April 2017 Suresh

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20/08/2017

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asked that I send a formal notice of cancellation and allow one month time. After duly sending him the notice I followed up after a month and his response was he needed more time which went till end of June, then it was first week of July. Finally, Mr. Suresha refused to refund and when I insisted that legal action would be taken. He responded that I'm welcome to proceed with legal action.

10. The developer has failed to consider the request made by the complainant. Further by going through the letter addressed by the developer to this authority discloses that the developer was having an intention to launch a particular kind of project and collected the amount. Now he cannot escape from the liability regarding the amount paid by the complainant and like other consumers. He cannot take any kind of defense as against the claim made by the complainant. Therefore I say that the developer shall refund the amount with applicable interest. With this observation, I proceed to pass the following.
11. 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. The said 60 days to be computed from the date of appearance of the parties. This complaint was filed on 16/08/2018. Since this complaint was filed against unregistered project. The file was with the Secretary who has taken the necessary steps against the developer with regard to the registration of his project which is in question. Later this complaint has been transferred to this authority on 14/01/2020 for disposal in accordance with law. Afterwards, notice has been issued to the parties. The complainant has appeared and filed his documents where as the developer never appeared. Hence, question of delay does not arise. With this observation, I proceed to pass the following.

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ORDER

The complaint No. CMP/180719/0001055 is hereby allowed.

- The developer hereby directed to return Rs. 4,00,000/- to the complainant.
- The developer is hereby directed to pay simple interest @ 9% P.A. from the date of payment till 30/04/2017 and @ 2% above the MCLR of SBI commencing from 01/05/2017 till the realisation. (MCLR be calculated the rate which is prevailed as on today)
- The developer is also directed to pay Rs. 5,000/- as cost of this petition.
- Intimate the parties regarding the Order.

(Typed as per Dictates, Verified, Corrected and Pronounced on 20th March 2020)

(K.PALAKSHAPPA)
Adjudicating Officer

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