

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 30th of August 2019

COMPLAINT No. CMP/190128/0001986

SUMAN SASMAL

....Complainant

No. C1-1601, South City Apartments,
Arekere Mico Layout,
Bengaluru Urban – 560076.

VERSUS

MAHINDRA HOMES PRIVATE LIMITED

....Respondent

Represented by its Additional Director,
Mr. Rahul Gupta,
No. 37/2A, Bannerghata Road,
Arekere, Bengaluru Urban – 560076.

The complaint has been filed against the above said promoter for his project “Mahindra Windchimes Phase – 1” situated at 37/2A, Bannerghata Road, Arekere.

The complaint in brief is as follows;

- (i) That the complainant entered into a sale agreement for the purchase of a 3 BHK apartment for a sum of Rs. 1.5 Crores during November 2015.
- (ii) If a nominal 8% interest is added against his mile stone payment, then the cost will work to Rs. 1.75 Crores. However, he was constrained to sell the same in 2018 for a



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sum of Rs. 1.57 Crores. There was no price protection according to the complainant.

- (iii) Inspite of request the assignment fee was reduced only by 50% and he had to pay an assignment fee of 1.05 Lakhs to the respondent just to change records in their books. This was an costumer unfriendly Act.
- (iv) The respondent is required to pay the difference of purchase price (apply 7.5 interest on money collected) minus the minimum price at which such a property was sold by Mahindra. Plus refund of 1.05 lakh that he had to pay as assignment fee.

Notices were issued for hearing. On 15/06/2019, the complainant was present and Sri. Sandeep Lahiri, Advocate filed vakalat on behalf of the respondent and requested time to file written arguments and objections. The complainant submitted that there is no price protection. The case was then posted for hearing on 29/06/2019. The complainant was present and Mr. Sandeep Lahiri, Advocate filed statement of objections on behalf of the respondent. The objections in brief are as follows;

- (i) The relief sought by the complainant does not fall within the perview of the Real Estate (Regulation and Development) Act, 2016 and hence it is not maintainable.
- (ii) The complainant has assigned and sold the apartment on his own accord. He has also made substantial gains.
- (iii) The complainant is no more an allottee.
- (iv) Upon the complainants request only the respondent reduced the assignment fee from Rs. 100 per sqft to Rs. 50 per sqft.

by

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- (v) The complaint has to be dismissed by awarding exemplary clause in favour of the promoter.

Heard both sides and perused the records.

The agreement of sale dated 28/12/2015 was entered into between the complainant, his wife Mrs. Soma Sasmal and the respondent promoter. At para 15 of the sale agreement, it is stated "it is specifically understood that the sellers shall at their option permit assignment on charging an assignment fee of Rs. 100 per square foot of the super built up area of the apartment along with applicable taxes and duties and to be intimated by the sellers before granting such permission.

In the construction agreement dated 28/12/2015 between the same parties the same assignment clause as in the sale agreement is reiterated.

There is a tripartite agreement between the promoter, complainant and the prospective buyer namely Mr. Potnuru Venkataramana. At para 4 of the same it is stated that the complainant has paid a sale consideration of Rs. 1,49,42,173/- (Rupees one crore forty nine lakhs forty two thousand one hundred and seventy three only). It further states that the prospective buyer has agreed to purchase the property for a sale consideration of Rs. 1,57,00,000/- (Rupees one crore fifty seven lakhs only).

The assignment fee of Rs. 100 per square feet was mutually agreed upon between the complainant and the promoter. At the time of actual assignment, and after negotiation the promoter reduced the assignment fee to Rs. 50 per square foot.



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The grievance of the complainant that there is no price protection and he had to sell the apartment at a lower price of Rs. 1,57,00,000/- cannot be accepted for the simple reason that out of his own choice he had agreed to sell the apartment at that rate. Nobody prevented the complainant to wait and obtain a better price in future.

The complainant has failed to prove as to which provision of the Act, the promoter has violated. The complainant has also failed to demonstrate that he suffered loss as a result of the promoter's action.

In view of the above, following order is passed.

ORDER

The complainant has failed to prove violation by the promoter of any of the provisions of the Real Estate (Regulation and Development) Act, 2016.

Hence the complaint bearing No. **CMP/190128/0001986** is hereby rejected under Sec. 31 of the Real Estate (Regulation and Development) Act, 2016.

(Adoni Syed Saleem)

Member - 2
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