

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building, Parkside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY

Dated 13th of July 2020

Complaint No. CMP/180223/000507

ANJUM AGGARWAL

.....Complainants

No. 1398, 4th Cross,
Muninagappa Layout,
Kavalabyrasanahalli Post,
RT Nagar Post,
Bengaluru Urban – 560032.

AND

KARNATAKA POSTAL AND TELECOM EMPLOYEES

HOUSING CO-OPERATIVE SOCIETY LTD.,

.....Respondent


No. 7, Sandesh Bhavan, 3rd Main,
1st Stage, Postal Colony,
Sanjay Nagar,
Bengaluru – 560094.

This complaint has been filed against the Project “Sandesh Nagar – 2” situated in Nelamangala Town. This is a residential site layout. The complaint, in brief, is as follows:-

- (i) The complainant became an associate member of the Respondent Society on 14/05/2011, in order to secure the site measuring 40*60 feet. The Respondent society assured to complete the project and handover the site within September / October 2012.







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- (ii) The BMRDA has approved Sandesh Nagar – 2 layout plan on 17/10/2013. And the respondent collected Rs. 11,52,000/- as full payment of the site by 13/02/2014. The respondent society got the seniority list approved from the Registrar of the co-operative societies on 19/03/2014 and the name of the complainant is found at Serial No. 202. But the society on other hand violated the seniority and has allotted the sites to his juniors and not to him.
- (iii) Therefore the respondent society must be directed to allot and register the site measuring 40*60 feet in the approved layout.

Notices were issued and enquiry was conducted.

The secretary of the respondent society appeared on 07/01/2020 and promised to complete the phase – 2 marking and development works by March 2020. The case was posted for further hearing on 21/01/2020, on which date the complainant was present and the respondent was absent. The case was further posted for hearing on 04/02/2020, on the said date also the complainant was present and requested for the relief whereas the respondent was absent.

It is seen from the record that the layout plan approved by the Nelamangala Town planning Authority on 17/10/2013. Further the Nelamangala Town planning Authority has approved the layout for further 35410.02sqmts. Similarly on 21/01/2019

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the layout for further land of 25798.73 sqmts has been approved by the same planning Authority. The registrar of co-operative societies vide its order dated 19/03/2014 has approved a list of 1174 members with a direction to allot the sites and register the same in favour of those who have paid the complete sale consideration and submitted the necessary documents.

The respondent society by its letter dated 10/05/2019 has not said anything with respect to the merits of the case. However it has stated that a writ petition has been filed in the Hon'ble High Court of Karnataka bearing No. 473147/2017 questioning the applicability of the Real Estate (Regulation and Development) Act, 2016. From the records it is seen that no stay order has been issued by the Hon'ble High Court of Karnataka.

Hence in order to pass an order following issues are required to be answered:-

- (i) Whether the Real Estate (Regulation and Development) Act, 2016 is applicable to the affairs of the co-operative society.
- (ii) What relief could be given to the complainant?

Reply to the Issues:-

Issue No. 1:- YES

Issue No. 2:- As Per Order



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ISSUE No. 1:- The preamble of the Real Estate (Regulation and Development) Act, 2016 states that it is “an act to establish the Real Estate Regulatory Authority for regulation and promotion of the Real Estate Sector and to ensure sale of plot, apartment or building as the case may be or sale of real estate project in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the Adjudicating officer and for matters connected there with or incidental thereto”.

Further under Section 2 (zk) (ii), a promoter is defined to be “a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon.

Further the explanation to Section 2 reads as under:-

“For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots or different persons, both of them shall be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the Rules and Regulations made thereunder.”

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Section 2(zn) defines real estate project as meaning “the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of plan into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be and includes the common areas, the development works, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto.”

A housing co-operative society is a promoter under the provisions of the Act and its projects of making a layout for the purposes of allotment of sites definitely falls within the meaning of “Real Estate Projects”.

The layout has been approved by the town planning authority on different dates i.e., on 17/10/2013, 22/05/2018 and on 21/09/2019. Section 3 of the Act requires registration of the projects which are “ongoing” on the date of commencement of this Act and for which completion certificate has not been issued. Obviously the project was an ongoing as on the date of commencement of Section 3 of the Real Estate (Regulation and Development) Act, 2016. The said Section came into force with effect from 01/05/2017. Hence the project Sandesh Nagar – 2 is required to be registered under the provisions of the Act and hence Real Estate (Regulation and Development) Act, 2016 applicable to Housing co-operative societies.



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ISSUE No. 2:- The relief sought by the complainant is to direct the respondent society to allot and register site measuring 40*60 feet in Sandesh Nagar Layout.

The complainant has paid a sum of Rs. 11,52,000/- as full payment of the site. As could be seen from the proceedings the Registrar of Co-operative Societies has approved the list of society member who are to be provided with sites. A copy of the list is not produced by the complainant. However it is alleged that even after the approval by the Registrar of Co-operative Societies, he has been denied a site and his juniors are allotted the same.

Moreover the system of allotment of sites is ruled by the byelaws of the society which have been approved under the Karnataka Co-operative societies Act, 1959. The complainant ought to have filed a representation before the Authority under the Co-operative Societies Act, 1959.

However in view of Justice and Equity, the following order is passed.

ORDER


The competent Authorities under the Karnataka Co-operative Societies Act, 1959 are hereby directed to allot a site to the complainant or to take further steps to ensure that the project promoter issues refund of the entire amount the amount paid along with interest, within a period of 90 days.

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Separate proceedings shall be commenced against the respondent KARNATAKA POSTAL AND TELECOM EMPLOYEES HOUSING CO-OPERATIVE SOCIETY LTD, Bengaluru for not registering the real Estate project under Section 3 and 4 of the Real Estate (Regulation and Development) Act, 2016.


(D. Vishnuvardhana Reddy)
Member - 1
KRERA


(Adoni Syed Saleem)
Member - 2
KRERA


(M.R. Kamble)
Chairman
KRERA

