

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

COMPLAINT No. CMP/4815/2019

Dated 14/12/2020

M/s.KRSNA Laburnum Allottees Association

Complainant

Rep. by its President Mr. Ashwin
No.361, 1st Floor, 13th Main Road
Rajmahal Vilas Extension
Bengaluru-560 080

AND

Dr. K. Balaraman and Another

Respondent

No.559, RMV 2nd Stage
New BEL Road
Bengaluru-560 094

Project Name : KRSNA LABURNUM

Registration No. : PRM/KA/RERA/1251/309/PR/171214/001226

1. This is a registered project vide Registration No. PRM/KA/RERA/1251/309/PR/171214/001226. Registration of the project expired on 10.08.2018. Even assuming that extension u/s.6 of the Act was to be considered by the Authority, such extended period for completion of the project would also have expired by 10.08.2019. It is evident from the facts of the case that the registration of the project is lapsed and further necessary proceedings have to be conducted, to start with, in accordance with Sec.7 of the Act.

1

Ushnavardha

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

2. An Interim Order dt.23.06.2020 was passed by this Authority after considering the following issues and grounds for seeking certain reliefs:

- 1) Apartments are not delivered as per the due dates agreed to and there is in-ordinate delay.
- 2) The Project Promoter has obtained a loan from M/s. Shriram Housing Finance Ltd., by executing a mortgage deed. The Project Promoter has defaulted in repayments to the said creditor which has resulted in an adverse order passed by Debt Recovery Tribunal.
- 3) Since there is no hope of completion of the project in the near future by the Promoter, the Allottees may be allowed to take over the project.

3. The Interim Order had taken into account the following grounds and reliefs sought by the complainants:

“Grounds:

The impugned action of the respondents opposite to Law of natural Justice.

The respondents have committed fraud on home buyers, as the project remain as still ongoing project and the possession has not been delivered to the respective home buyers.

The Respondent No.2, has taken over the possession of the Project, by virtue of Mortgage deed executed by the Respondent No.1 in respect of Project “Krsna Laburnum” in contrary, illegal and arbitrary. Thereby, the Respondent No.2, being Financial Institution has stepped in to the boot of Respondent No.1, thereby the Respondent No.2, ought to have take the responsibility of construction and completion of “Krsna Laburnum” project.

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

The Respondent No.2 has not chosen to complete the project not opt to take responsibility to compensate the same and to safeguard the interest of the Complainant-Association Members.

Relief Sought:

It is humbly prayed that the Hon'ble Authority be pleased to pass suitable Order in favour of Complainant, against the Respondents, and

- 1. To invoke Section 7 of RERA Act 2016 for revoking the registration of the project and to de-bar the Promoter from accessing its Website and to name the Promoter in defaulter list by displaying the photograph of the Promoter on the Website of the Authority relating to project and also to freeze Bank Accounts of the project.*
- 2. Seeks direction to take over the project under Section 8 of the RERA Act for carrying out the remaining development work of the project with help of association of Allottees or competent Authority or in any other manner.*
- 3. In the FACT & circumstances, by taking the symbolic possession by the Respondent No.2, under - The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is completely in violation of Section 15 of the RERA Act. Hence, to direct the Respondent No.2, to follow the procedure laid down under K-RERA circular No.K-RERA/Circular/02/2019 dated 27.08.2019 (regarding procedure of transferring or assigning rights and liabilities of Promoters to third party Para 3 of circular is relevant to this case).*
- 4. Seek direction to create a charge of the aforesaid amount on the property of the project till the claims of Allottees are satisfied.*
- 5. Such other reliefs and furthers reliefs, as this Hon'ble authority deems fit to grant in the circumstances of the case, and in the interest of justice and equity.*
- 6. Interim order, if prayed for*
Pending final decision on the complaint the complainant seeks issue of the following interim order:
 - a) Restraining the Respondent No.2 from transferring the property of the project without consent of Allottees of the Project and approval of RERA*

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

Authority as per Section 15 of RERA Act 2016 during the pendency of the complaint.

- b) *Seek direction to constitute a committee to prepare a report on the project i.e., to list the sold and unsold units, list the inventories available for completing the project, list the outstanding issues.*
- c) *Seek direction to conduct the audit on the Project take over the project under Section 8 of the RERA Act for carrying out the remaining development work of the project under revocation.*

If interim relief is not granted, the very purpose of this complaint will become infructuous.

The Complainant-Association will be put to great hardship, irreparable loss and injury, if the interim relief is not granted. On the other hand there is no prejudice will be caused to the other side."

4. Prior to passing the Interim Orders dt.23.06.2020, the Authority had heard the parties on various dates and had directed the Respondent-Promoter to submit the following information and documents to enable the Authority to pass appropriate orders.

1. *Quarterly compliances of all quarters u/s.4(2)(l)(D) of the Act*
2. *Statutory clearances/N.O.Cs required for obtaining O.C.*
3. *A copy of the plan/Modified Plan, as approved by the Competent Authority*
4. *Status of development works, internal as well as external and the items of pending work as on date*

5. Since the Respondent-Promoter failed to comply with all the directions of the Authority, an Interim Order dt.23.06.2020 was passed and the following directions were issued to the Respondent-Promoter:

[Handwritten signature]

4

[Handwritten signature]

[Handwritten signature]

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

"INTERIM ORDER dt.23.06.2020

1. The Respondent-Promoter has not submitted statutory compliances u/s, 4(2)(l)(D) of the Act from the date of registration, which is, 10.08.2017 to till date. Consequently there is no information available with regard to the progress of the project. Even though a direction was issued during the hearing dated 30.01.2020, there is no compliance to this requirement till date. In view of this penalty proceedings are hereby initiated u/s. 60 of the Act. The Respondent-Promoter is hereby given an opportunity to offer an explanation, within seven days from the date of receipt of this order, as to why penalty u/s.60 of the Act should not be levied. The Respondent-Promoter is once again directed to submit the statutory compliances u/s. 4(2)(l)(D) of the Act in respect of all the quarters within one week from the date of receipt of this order.
2. As per the materials available on record, the Respondent-Promoter has modified the sanctioned plan on the basis of which agreements were entered with Allottees. As a registered project, any such proposed modifications to be made to the sanctioned plan, after the commencement of the Act, the Respondent-Promoter was required to obtain prior consent of two-third of the Allottees u/s. 14 of the Act. However the consent of two-third of the Allottees is not obtained, prior to executing the modifications to the original sanctioned plan. This is considered as a serious violation. This violation attracts penalty u/s.61 of the Act and therefore the Respondent-Promoter is hereby given an opportunity of furnishing explanation within one week from the date of receipt of this order.
3. The Respondent-Promoter has not submitted the status of mortgages with Shriram Finance and any other lenders. It is once again directed to submit the requisite information, documents and disclosures within one week from the receipt of this Interim Order.
4. The Respondent-Promoter is further directed to submit the latest status of completed and pending internal and external development works, status of statutory clearances, status of all the requisite amenities as indicated in the sale agreements, status of completions certificate/occupancy certificate. An affidavit is required to be submitted with regard to the time and resources required to complete the project in all respects and to be eligible for obtaining occupancy certificate. Latest certificates by project Architect, Engineer and Chartered Accountant have to be furnished. Copies of the Bank Accounts

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

which are directly or indirectly connected with the project and project promoter, including Escrow Account of the project have to be submitted.

5. *On account of in-ordinate delay, the Allottees are entitled to compensation in accordance with Section 18 of the Act. The Respondent-Promoter is hereby directed to submit an audited statement of compensation payable to the Allottees as on 30.06.2020. The Respondent-Promoter is further directed to submit an undertaking, within a week from the date of receipt of this order that the compensation payable u/s.18 of the Act shall be paid within 60 days from the date of receipt of this Order.*
6. *It is noted that the project registration has expired on 10.08.2018. In view of this, the Respondent-Promoter is hereby given an opportunity to explain as to why further action should not be initiated in accordance with the provisions of Section 7 & 8 of the Act. A written submission in this regard may be made within one week from the date of receipt of this order.*
7. *All the information, statements, documents and explanations called for from 4 to 6 above have to be submitted within one week from the date of receipt of this order. Failure to do so would attract the penalty proceedings u/s.63 of the Act."*

6. The Respondent-Promoter had preferred an appeal, against the above Interim Order, before the Hon'ble Karnataka Real Estate Appellate Tribunal (K-REAT). Vide order number 257/2020 and dt.11.08.2020, the Honble K-REAT issued the following directions:

"13. In the light of the submissions made by the learned counsel appearing for the parties, the appeal stands disposed of as under:

- (1) The interim order passed by this Tribunal on 7.7.2020 granting stay for the impugned order passed by RERA at Sl.No.5 is made absolute and ordered to be continued till disposal of the main complaint pending before RERA.*
- (2) The interim order passed by this Tribunal on 7.7.2020 Staying the impugned order passed by RERA at Sl.No.2 stands vacated by granting five weeks time to the appellant to state before RERA in writing as to what happened to the*

mbanp

lilkinivadeu

[Handwritten signature]

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

application stated to have been filed by them with BDA for modification of their earlier sanctioned plan in respect of KRSNA project.

(3) 2nd Respondent Bank is granted four weeks time to produce up-to-date statement of accounts relating to the project (KRSNA) loan availed by the appellant by serving a copy of the said statement of accounts on learned counsel appearing for the appellant.

(4) The RERA is directed to dispose of the complaint filed by Allottees Association (R1) in Complaint No. CMP/191130/0004815 on merits and in accordance with law after giving sufficient opportunity to all the parties concerned."

7. Thereafter, further hearings were conducted by the Authority and additional opportunities were given to the Respondent-Promoter to comply with the provisions of the Act and the directions of the Authority. However, the Respondent-Promoter did not furnish, *inter alia*, the following:

(i) The approved plan was limited to eight floors only and therefore the registration of the project with this Authority is restricted to only eight floors of the building. The promoter of the project was required to obtain the modified approved plan from the plan sanctioning authority for construction of four more floors, i.e. 9th to 12th floor of the project, prior to putting up the construction of the additional floors, which was not done. The question of obtaining the consent of two-thirds of the existing allottees for the proposed modification and increasing the number of residential units would arise only after the requisite approval for modified plan issued by the licensing authority, namely, BBMP. Despite adequate opportunities, the modified







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

approved plan has not been submitted. Since the respondent-promoter had not submitted the modified approved plan for the additional four floors put up on the approved structure limited to only eight floors, the Authority is left with no alternative but to conclude that the respondent-promoter has extended the project with additional four floors, which are not authorized by the plan approving authority, namely, BBMP. The sale of residential units by the respondent-promoters, in the unauthorized four floors, is legally impermissible under the applicable statutes as well as under the Act. Consequently, the action of the respondent-promoter is found to be prejudicial to the interest of the home-buyers who have invested their money in the said unauthorized floors.

- (ii) The Project-Promoter has not submitted the quarterly updates which are essential for the purpose of review of the project progress and to ascertain the pending internal and external developmental works, amenities and the financial resources required to complete the project. The direction given on this aspect in the Interim Order dt.23.06.2020 is not complied with. Despite further opportunities, consequent to the order of the Hon'ble KREAT, the respondent-promoter has not submitted the correct status of the project progress and the proposed action for completion of the project in all respects.







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

(iii) It is evident from the facts of the case that the respondent-promoter has not taken steps for explaining the reasons for delay in completion of the project and seeking extension of time to complete the project; has not obtained the requisite approval of the plan sanctioning authority for the additional four floors; has not submitted any feasibility report to first complete the approved part of the project comprising of eight floors, with the details of resources required and the sources of funds for completion of the said authorized part of the building.

(iv) The Executive Engineer deputed by the Authority has carried out the inspection of the project on 09.10.2020 and submitted a report on 29.10.2020. The approved part of the project building consisting of eight floors has 31 residential units. The respondent-promoter has put up additional four floors consisting of 16 residential units, which are unauthorised. However, for the purpose of cashflow to complete the building, the respondent-promoter has taken into account the entire sale consideration of all the apartments, including the unauthorized part of the project building. Authority cannot take cognizance of unauthorized part of the building for the purpose of sources of funds to complete the building.



9





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

- (v) The materials placed before the Authority by the complainants vide written submission dt.07.10.2020 indicate that twelve of the allottees has obtained orders of compensation from the Adjudicating Officer and the aggregate amount works out to Rs.7,82,36,093 as on August 2020. In the statement enclosed with the above submission (Supra) indicates that after setting off Rs.47,45,000, being the amounts payable by the twelve allottees to the respondent-promoter, Rs.6,66,28,505 is payable by the respondent-promoter to the said allottees.
- (vi) The written submission dt.07.10.2020 also furnishes a list of incomplete development work of the project and some of them include, non-installation and non functioning of the lifts, no progress of work of the mazzanine floor, non-installation of the doors and windows, substantial pending electrical work, water and electricity provision and several such internal development works and amenities.
- (vii) The promoter-respondent is duty bound to furnish the correct status of the project, as certified by an Architect, Engineer and Chartered Accountant in accordance with Sec.4(2)(l)(D) of the Act. There is also a statutory obligation on the promoter to furnish audited accounts of







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

the project for the periods ending 2018 and 2019, wherein the Chartered Accountant auditing such accounts has to furnish a verified statement with regard to the amounts collected for the project from the allottees and the utilization of such funds in the project. The respondent-promoter has not submitted these statutory compliances despite the directions given vide Interim Order dt.23.06.2020 and even thereafter. Considering the facts of the case and after taking the contraventions of the Act as well as the non-cooperation of the respondent-promoter into account, it is imperative that the Authority initiates further enquiry into the amounts collected from the allottees and the utilization of the funds realized from the allottees for the completion of the project. Accordingly, the Authority hereby orders a forensic audit of the accounts of the project in terms of Sec.35 of the Act.

- (viii) It is evident from the fact of the case that the promoter has contravened the provisions of the Act and also violated the terms and conditions of approval given by the Authority while granting registration of the project. Further the registration granted u/s.5 of the Act has expired on 10.08.2018 itself. As can be seen from the Interim Order dt.23.06.2020, the respondent-promoter was given adequate opportunities to explain satisfactorily as to why the







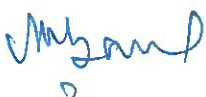
ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

Authority should not take further action in accordance with provisions of Sec.7 of the Act. The objections submitted by the respondent-promoter vide submissions dt.29.07.2020 have been perused. The objections filed neither satisfactorily explains the reasons for non-completion of the approved part of the project nor provides a clear plan for completing the approved part of the project with the sources of funds which can be legitimately and legally collected and utilised. The respondent-promoter has also not come up with any clear proposal for completing the approved part of the project with a credible proposal of sources of funds. These facts make it imperative for the Authority to invoke the provisions of Sec.7 of the Act and take further necessary action as contemplated under the provisions of the Act.

- (ix) The Association representing the allottees has submitted a proposal that it would take over the project, as permissible u/s.8 of the Act, and complete the project. The proposal submitted has been examined and it is found that the proposal is intended to complete the entire building, consisting of twelve floors, out of which four floors, namely, 9th, 10th, 11th and 12th do not have the approval of plan sanctioning authority. The said proposal also takes into account amounts receivable from the allottees of the four unauthorized floors. The



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

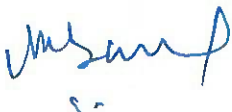
Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

registration of the project is limited to the approved part of the building only and accordingly the residential units forming part of the unauthorized floors are outside the scope of the registered project. The jurisdiction of this Authority, u/s.7 and 8 of the Act is limited to the registered part of the project only. Further proceedings will be conducted in accordance with the provisions of the Act.

INTERIM ORDER

- (I) a) The respondent-promoter of the project and the allottees are hereby informed that for the reasons stated herein above the registration of the project is hereby revoked in terms of Sec.7 of the Act. Consequently the promoter is debarred from accessing the website in relation to this project. Further, the Secretary of the Authority is directed to specify the names of the promoters of the project, display the photographs on the website of the Authority and further inform RERAs of other States and Union Territories about the revocation of the registration of this project, with the details of the promoters.
- b) The Secretary of the Authority is directed to communicate to the Manager of the Bank Branch, wherein the project Bank Account is maintained, that the Authority has directed that the said project Bank account is frozen with immediate effect in accordance with the powers







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

conferred on the Authority u/s.7(4)(c) of the Act. The Secretary of the Authority is further directed to obtain a copy of the Bank account of the project from the inception to till date.

The Secretary of the Authority is also directed to furnish copies of the compliance of all the above to the Members of the Authority, within two weeks from the date of issue of this order.

- (II) The Authority shall facilitate the remaining development works to be carried out in accordance with the provisions of Sec.8 of the Act.
- (III) The Authority hereby directs that a forensic audit shall be carried out into the accounts of the project, u/s.35 of the Act. The respondent-promoter is directed to submit the accounts of the project, bank account copies and such other relevant information and documents so as to carry out the forensic audit by a firm of Chartered Accountants, for which another supplementary order will be issued. The Secretary of the Authority and Controller of Finance are hereby directed to place the list of empanelled CA firms before the Three-Member Authority for further necessary orders.
- (IV) The respondent-promoter is hereby given an opportunity to offer explanation, within 30 days from the date of receipt of this order, as to why penalty u/s.61 of the Act should not be levied for

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

contravention of the provisions of Sec.4(2)(l)(d) read with Sec.11(1) of
the Act.

(V) The respondent-promoter is once again directed, within 30 days from the
date of receipt of this order, to show cause as to why penalty u/s.63
of the Act should not be levied for not complying with the directions of
the Authority as per the Interim Order dt.23.06.2020.


(M.R. Kamble)
Chairman


(D. Vishnuvardhana Reddy)
Member 1


(Adoni Syed Saleem)
Member 2

