

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 6th of October 2020

COMPLAINANTS :-

1. **CMP/180716/0001041**
RAJARAM V PATEL,
Apt. No. 906.
 2. **CMP/180719/0001053**
JYOTHI SILIGER,
Apt. No. 1205.
 3. **CMP/180716/0001042**
ASHOK S YARGATTIMATH,
Apt. No. 602.
 4. **CMP/180706/0001012**
SIDDALINGESHWAR S SANGOLI,
Apt. No. 904
 5. **CMP/180625/0000957**
PRAKASH VAMANRAO DIWAN
Apt. No. 703.
- All Residents of Zenith Lotus County,
Mandoli Road, Godsewadi,
Tilakwadi, Belagavi – 590006.
6. **CMP/180704/0001002**
VISHWESHWAR S UPPIN
Apt. No. 306, Mahesh Residency,
Gururwar Peth, Tilakwadi,
Belagavi – 590006.

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7. CMP/180716/0001043

SATISH G GANACHARI,

House No. 29, Sy. No. 219, Lalith Guru,
Adarsha Nagar M, Vadeganni,
Belagavi - 590006.

AND

RESPONDENTS:

1. SRI SATISH VAMAN GIRI.

Lotus Landmarks (I) Pvt. Ltd.,
KH 1, Richmond Park Opp. Orchid School, Baner Road,
Baner. Pune,
Maharashtra - 411045.

2. M/S VEGA SPACES.

Godse Nagar,
Belagavi.

The Above said complaints have been filed against the project Zenith, situated at RS No. 124/1, Mandoli Road, Belagavi, Karnataka, stating that developer has defaulted on the various works that he promised to carry out as per the orders of the Adjudicating officer made on 10/10/2018 and also sold the project to one M/s VEGA SPACES without consent of the RERA.

Smt Shobith N.Shetty, Pavithra D.S & Roshini Babitha Pereira Advocates have filed Vakalat on behalf of the respondents.

Notices were issued to both the parties and proceedings are conducted.

Facts of the Case.

The project by name "Zenith, Lotus Landmarks Pvt. Ltd. was registered on 25/11/2017 and its end date was 31/12/2018. The complainants Dr.

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Prakash V. Diwan and others have filed petition against the M/s Zenith, Lotus County, Belgavi, stating that one Mr. Satish Giri, MD, Lotus Landmarks and developer of Lotus County Belgavi has defaulted on the various works that he promised to carry out as per orders of Adjudicating officer vide order No. CMP/180704/0001002, dated: 10/10/2018. All works are at stands still.

He has also sold the project to one M/s VEGA SPACES vide an internal agreement between the two of them. He has not obtained consent of the residents or K-RERA. The vacant land (one acre) reserved for garden/ senior citizen area/ children park has been plotted by them jointly and are being sold. They have also stated that Mr. Satish Giri has been very arrogant with the home buyers and the incumbent promoter M/s Vegas Spaces has unleashed terror in the campus with threats of dire consequences, disconnection of water and power to harass the allottees. They have further requested for the following reliefs.

- 1) To cancel the RERA registration M/s Lotus Landmarks Pvt. Ltd., represented by Mr. Satish Giri – Managing Director
- 2) To Penalize Mr. Satish Giri by black listing him and his firm for carrying out construction activities in Karnataka.
- 3) To convict Mr. Satish Giri for contempt of Hon. RERA Court.
- 4) To evict the unauthorized entity M/s Vega Spaces to the premises of Lotus County, Belgavi, Karnataka.
- 5) To restrain Mr. Satish Giri, M/s Lotus Land marks from selling the vacant land.
- 6) To restrain Mr. Satish Giri, M/s Lotus Landmarks from entering into or handing over the project illegally to M/s Vega Spaces or and other entity.
- 7) To direct the promoter to complete the project.

Notices were issued to both the parties and heard the matter on 16/9/2019, 11/10/2019, 5/11/2019, 14/12/2019, 3/12/2019 and on 27/12/2019. During the enquiry complainants have submitted a copy of order passed of the Adjudicating Officer, K-RERA and a copy of the Memo

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filed before Adjudicating officer, e-mail copies of various communication sent to the builders, photos of the pending works, photos of hording advertisement by M/s. Vega Spaces and pamphlets.

SNS law chambers have filed vakalat on behalf of MR. Satish Vaman Giri.

The respondent in his written Statement stated as under:-

- 1) Lotus Landmarks Pvt Ltd had registered a Sale Deed of all customers of "Zenith" Building including the complainant and handed over the entire building to the clients. It was further stated that the "Zenith" Building situated at R.S.No.124/1, Godsewadi, Belgavi is completely ready for more than 18 months and we have received NOC of all concerned departments and have applied for the completion certificate of the building on 13/12/2018, which is still awaited.
- 2) Project was registered with KRERA on 30/7/2017 and supposed to completed by 31/12/2018. And the project is handed over to the homebuyers much before the completion date and all homebuyers have stated in their "Sale Deed" that they have inspected the flats and building and are completely satisfied with it.
- 3) Complainants have not paid the amounts as per the stages of the construction in accordance with the agreement. Stage of construction is at present is complete and Complainant has not paid the amount as per the understanding. An amount of Rs.23,76,314/- (Rs. Twenty Three lakh Seventy Six Thousand Three Hundred Fourteen only) of the installments plus interest of delayed payment Rs. 12,25,314/-. Totaling Rs.36,01,628/- in arrears are due and payable by the complainant.
- 4) Out of 84 Flats in "Zenith" building, sale deeds have been executed in favour of 68 homebuyers including all the complainants before the registration with RERA.

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- 5) The complainants deliberately have not co-operated and have taken legal action to create problems and avoid payment of dues. One of the complainant Mrs. Jyothi Illigar has done an illegal work in her flat without informing the promoter. The complainants have made false complaint that promoters cut the electricity of their flat. Rather promoters are supplying electricity to their flat from commercial meter and are paying Rs.4000/- per month whereas complainants are compensating Rs.650/- losing Rs.3350/-. They have already applied for permanent individual meters and work is on by the HESCOM contractor.
- 6) Complainants have falsely complained that STP is undersized, where as it is constructed as per the Pollution Control Board norms and they have inspected it and have given a completion order and have issued consent for operation. Complainants asked for compensation for delayed possession whereas their possession was made quite earlier than the promised date i.e. on 25th Jan 2017 but possession was given on 20th June 2016.
- 7) All flats owners other than the present 7 complainants are very happy to reside in the building and co-operating in upkeep of the building. The complainants deliberately are not co-operating and have taken recourse to legal remedies to create problems and to avoid payment of dues to the promoter.
- 8) The respondent in his written statement prayed that the complaints may kindly be dismissed with cost.

In order to dispose of this petition following issues need to be addressed.

1. Whether the promoter has completed the works as promised under a settlement memo dated 08/09/2018 filed before the Adjudicating officer.
2. Whether the promoter has paid the penalty as per the order dated 27/08/2019.

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3. Whether the transfer of the project in favour of M/s. Vega spaces has been effected as per law?
4. What order?

Our findings with respect to the above is as under:-

1. No,
2. No,
3. No,
4. As per the order.

Perusing the order dated 10/10/2018 of the Adjudicating officer, it is seen that under a settlement memo, the promoter had agreed to complete 34 items of work within 04/08/2019. Some of the important items of work whichever pending on that day were as follows.

1. Electric meters
2. Landscape garden and jogging track
3. Rain water harvesting structure
4. Sewage treatment plant
5. Provision for water tank and transformers
6. Fire escape
7. Corporation water connection
8. Piped gas connection and others

The contention of the complainants is that the developer has not completed any of the above including the other which he had promised. That with effect from April 2019 M/s Vega Spaces has taken over the project. As could be seen from the photographs produced by the complainants is that no safety measures are taken for the electrical connections for 440 volts, only frame has been provided for individual electric meters.

It is seen from the correspondence that the Karnataka State Pollution Control Board has issued a notice on 25/03/2019 to the promoter stating

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that they have violated the terms and conditions of consent issued under the water (Prevention and Control of Pollution) Act, 1974 and that violation of the same attracts penal provisions of the Act. It is stated in the show cause notice that discharge of uncontrolled emissions and effluent are injurious to health of Flora, Fauna and human beings and damage the environment.

The contention of the present promoter that there is no privity of contract between the complainants and the promoter cannot be accepted. The contention that out of 84 flats in the project 68 sale deeds have been registered including in the name of the complainants and the rest are handed over to the landlord does not in any case absolve the promoter of his responsibilities under the Act.

As could be seen from the photographs presented by the complainant, there is a whatsapp message stating "Sir, had a word with Vega people. I have handed over entire project including finance to them. Please have a word with Sai". As to how the M/s Vega Spaces has come into the picture is not forthcoming from the records. The respondent is also not transparent and has also not stated as to under what circumstances the memorandum of understanding / joint development agreement with, M/s. Vega Spaces has been made and come in place of Lotus Landmarks (I) Pvt. Ltd., The successor promoter namely M/s Vega Spaces is also bound by the responsibilities and liabilities cast upon the promoter under the provisions of the Real Estate (Regulation and Development) Act, 2016. Obviously the transfer of the project has taken place without the consent of the homebuyers and without the permission of this Authority.

As could be seen from the certificate of registration dated 25/11/2017, certain conditions have been imposed by this Authority while sanctioning the project Zenith under Registration No. PRM/KA/RERA/1249/447/PR/171125/000482. Condition 2(v) of the registration certificate dated 25/11/2017 states "the promoter shall comply with the provisions of the Real Estate (Regulation and Development) Act, 2016

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and the Karnataka Real Estate (Regulation and Development) Rules, 2017 and regulations made thereunder”.

The respondent has not placed any evidence to show that he has fulfilled his promise of completing the works which he had undertaken before the Adjudicating officer on 08/09/2018 as could be seen from the order dated 10/10/2018 of the Adjudicating Officer.

The Real Estate (Regulation and Development) Act, 2016 has cast onerous responsibilities on the promoter. One such provisions under the Act is Section 11. Suffice it to quote Section 11 (4) of the said Act which reads as under:-

The promoter shall-

- a) Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the Rules and Regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent Authority as the case may be;
- b) Be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;
- (d) Be responsible for providing and maintaining the essential services, on reasonable charges till the taking over of the maintenance of the project by the association of allottees.

Obviously, neither the respondent No. 1 nor the alleged successor respondent No. 2 have fulfilled the above requirement of Section 11(4).

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The respondent has also not paid the penalty as ordered by the Adjudicating Officer in his orders dated 27/08/2019.

Section 15 (1) of the Real Estate (Regulation and Development) Act, 2016 reads as "The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority.

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or building as the case may be, in the real estate project made by the erstwhile promoter."

Nothing in the records go to show that the respondent namely SRI BATISH AMAN GIRI, Lotus Landmarks (I) Pvt. Ltd., has made any efforts to obtain written consent from two-third allottees or taking prior approval of this Authority. There is clear violation of Section 15 of the Real Estate (Regulation and Development) Act, 2016 in transferring the project without the consent of two-third of allottees and without the permission of this Authority.

In view of the above, following order is passed.

ORDER

In exercise of powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaints are hereby allowed.

The Following directions are issued to the respondent-promoter to comply with the duties and obligations in accordance with Section 11(4) read with Section 34(f) of the Act.

- (i) The respondent – promoter is directed to complete all the incomplete internal and external development works and provide the requisite amenities in accordance with

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the sale agreements within a period of 60 days from the date of receipt of this order. The settlement memo dated 08/09/2018 shall also be complied with during the above period.

- (ii) The respondent – promoter is not permitted to undertake any such activities which are not in accordance with the approved plan of the project on the basis of which registration was granted u/s. 5 of the Act. In case of any violations of the conditions of the registration, penal consequences as per the provisions of the Act would be applicable.
- (iii) For contravening the provisions of Section 15 of the Act, penalty proceedings shall be initiated separately against the promoter.


(M.R Kamble)
Chairman
KRERA


(Adoni Syed Saleem)
Member – 2
KRERA

Continuation of the Proceedings of the Authority

Dissenting Order of Member-1

1. For the reasons stated hereunder, Member-1 is of the view that Part (iii) of the majority decision is required to be modified as under:

“ (iii) The Respondent-Promoter is hereby directed to furnish written submissions, within a period of 15 days from the date of receipt of this order, explaining why penalty u/s.61 of the Act should not be levied for contravening the provisions of Sec.15 of the Act.”

2. Member-1 has taken a consistent stand on the issue of timing and stage during which the applicable penalty proceedings ought to be initiated. The following principles govern such a proposition and make it mandatory that K-RERA, in its capacity as a Regulatory Authority has



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to enforce the provisions of the Act, by invoking the appropriate penalty provisions to deal with contraventions and violations.

- i. It is mandatory that penalty proceedings for contraventions and violations of the Act are initiated, as early as possible, consequent to establishing a *prima facie* case of violations of the provisions of the Act. Such a step would enable the Authority to take cognizance of the implications of violations of the provisions of the Act, while addressing the issues under consideration.
- ii. The penalty proceedings have to be initiated in the same file. There is no legal justification to de-link the penalty proceedings, from the proceedings already initiated either on account of complaints or by suo motu action by the Authority/K-RERA, by opening a separate file on the proposed penalty proceedings, since both the proceedings are legally inter-connected and the factual matrix is same for both the proceedings.
- iii. The requirement of providing an opportunity of hearing, in accordance with the principles of natural justice, can be complied with much more effectively by conducting the entire proceedings with a holistic approach.
- iv. It is a matter of record that, in cases wherein penalty proceedings have to be initiated prior to conclusion of the proceedings, already initiated, Chairman has been insisting to de-link the penalty proceedings and returning the file to the Chairman. Member-2 has been in agreement with such a stand of Chairman. It is noted in such files by the Chairman that the files will be forwarded to Administrative Section for taking necessary action on the penalty proceedings. Penalty proceedings are not administrative matters and therefore it is not permissible that the officers working in the Administrative Section deal with such Quasi-Judicial proceedings. All Quasi-Judicial proceedings shall be initiated and concluded by the Three Member Authority,

Ushwardine

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with the assistance of the Registry. Any administrative interference is wholly unwarranted.

v. Penalty proceedings have to be necessarily initiated with the prior approval of the Three-Member Authority. By forwarding the files to Administrative Section for further action would surely make the penalty proceedings *void ab initio*. Chairman is well aware of the legal implications of such diversion of files and proceedings from the Quasi-Judicial Authority to administrative set-up which is under his exclusive control and supervision. Nevertheless, such administrative actions are taken for the reasons best known to Chairman. This is one of the important reasons why penalty proceedings ought to be initiated, in the main file itself, under signature of the Three-Member Authority and prior to conclusion of the other proceedings so as to safeguard the Regulatory and Quasi-Judicial jurisdiction of K-RERA.

vi. As directed by Hon'ble K-REAT in the case of Jade Invent in Appeal (K-REAT) No.77/2020 (old appeal no 79 of 2019), Jade Invent Vs K-RERA, dt 19th February, 2020, K-RERA has to separate the administrative and Quasi-Judicial functions, in accordance with the constitutional scheme of separation of powers and the established rule of law and procedures.

vii. The complainants are also entitled to know the outcome of all the issues raised by them, in totality, including the applicable penalty proceedings and therefore they shall form a part and parcel of the proceedings which were initiated based on the complaints. Any stand taken that the complainants do not have any local standi with regard to the penalty proceedings and therefore the penalty proceedings shall be de-linked and shall not be initiated till conclusion of the proceedings on the complaints is not a legally tenable proposition. For instance, penalty proceedings initiated, in matters of non-registration of the projects or non-compliance with the functions and duties of the

Lishmavardus

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promoter u/s.11 of the Act, have a direct nexus with the allottees' rights. This applies to Sect.14,15 and so on. As a general proposition, the allottees' complaints cannot be de-linked from such penalty proceedings.

viii. By non-initiation and by not concluding the penalty proceedings early, the deterrant effect intended by such penalty proceedings is completely lost. The sectoral regulator like RERA, which is set-up to discipline and regulate the sector on account of innumerable number of scams and unacceptable levels of mismanagement, has to enforce the Act in such a manner that there is a domino effect in the entire sector. In the instant case there is a clear *prima facie* case of violation of Sec.15 of the Act and therefore it is mandatory that penalty proceedings are initiated as soon as a *prime-facie* case is made out.

ix. In view of the above, Member-1 reiterates that the initiation of penalty proceedings is required to form a part and parcel of the proceedings of the case itself. In fact, in the Interim Order passed in the case of M/s. KRSNA Laburnum Allottees Association, Complaint No. CMP/4815/2019, this procedure was implemented. The Hon'ble K-REAT in the same case vide Appeal No. 257/2020 has also upheld the legality and timing of initiation of penalty proceedings, in spite of the fact that K-RERA had passed only an interim order. This is a judicial precedent applicable and to be followed by K-RERA. There is no reason why the Authority is not willing to implement the same procedure consistently in all cases of defaults and contraventions.

Hence the dissenting order.

3. (i) It is imperative that this order is uploaded on the website of the Authority as well as communicated to all the allottees of the project so

Vishwanath

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as to comply with the principles of transparency and quasi-judicial accountability.

(ii) Any person aggrieved by this order has a right of appeal before the Karnataka Real Estate Appellate Tribunal (K-REAT), in accordance with Sec.44 of the Act.


(D. Vishnuvardhana Reddy)
Member-1, K-RERA

Perused the dissenting opinion of Member-1. The manual complaint in this case was filed on 20/08/2019 seeking several remedies against the promoter. The complainants have also requested this Authority to issue directions to the promoter to provide certain basic amenities like electric meters, fire escape, STP etc., The Authority comprising of three Member held its sittings on 16/09/2019, 11/10/2019, 05/11/2019, 4/12/2019, 03/12/2019 and on 27/12/2019. On none of these hearings the dissenting Member - 1 neither raised the issue of levying penalty nor expressed the view to issue a penalty notice.

It should be in the interest of speedy disposal of the case that a finality has to be achieved by passing of an order to address urgent issues in the nature of basic amenities to the complainants. In case the penalty proceedings are clubbed together, there will be no finality to the issues raised by the complainants. Hence by giving reliefs to the complainants by means of a final order, it is felt by the majority that the ends of justice will be met. Noting prevents this Authority to initiate separate proceedings against the promoter for levy of penalty which requires issue of show cause notice and following a detailed procedure.

Hence by majority we pass the following order.



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ORDER

In exercise of powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaints are hereby allowed.

The Following directions are issued to the respondent-promoter to comply with the duties and obligations in accordance with Section 15(4) read with Section 34(f) of the Act.

- (iv) The respondent – promoter is directed to complete all the incomplete internal and external development works and provide the requisite amenities in accordance with the sale agreements within a period of 60 days from the date of receipt of this order. The settlement memo dated 08/09/2018 shall also be complied with during the above period.
- (v) The respondent – promoter is restrained from selling any vacant plan which is part of the project and he is not permitted to undertake any activities which are not in accordance with the approved plan of the project on the basis of which registration was granted u/s. 5 of the Act.

In case of any violations of the conditions of the registration, penal consequences as per the provisions of the Act would be applicable.

- (vi) For contravening the provisions of Section 15 of the Act, penalty proceedings shall be initiated separately against the promoter.


(Adoni Syed Saleem)
Member
KRERA


(M.R. Kamble)
Chairman
KRERA

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