

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 FIRST ADDITIONAL BENCH
OF THE AUTHORITY

Dated 1st MARCH 2021

COMPLAINT NUMBER - CMP/200907/0006502 & 6518

Mr. B. PRASHANTH,

No. 79/99, 4th Main Road,

Bapuji Nagar, Government Electric Factory,
Bangalore South.

Bangalore Urban - 560026.

.....Complainant

V/S

PRAVEEN MOHAN

No. 326, 5th Main, 10th Cross,

Vinayaka Layout,

Nagarabhavi,

Bangalore Urban - 560072.

.....Respondent

Both these complaints have been filed against the project "Tirumala Park Central" belonging M/s. Tirumala Constructions, A partnership Firm represented by its partner Mr. Praveen Mohan.

The complaint Bearing No. CMP/200907/0006502 has been filed against the said project with respect to the alleged sale agreement dated 19/07/2019 for the purchase of an apartment bearing No. G-1 in the said project.



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Similarly the complaint bearing No. CMP/200907/0006518 has been filed against the said project with respect to the alleged sale agreement dated 19/07/2019 for the purchase of an apartment bearing No. G-3 in the said project.

Facts and circumstances of both the complaints are similar and hence they have been clubbed for the purposes of hearing and disposal.

Notices were issued and enquiry conducted. Mr. S.A. Maruthi Prasad, Advocate has filed Vakalat on behalf of the complainant.

Additional statement has been filed on behalf of the complainant and the respondents advocate has also filed his written statements.

The case was heard on 15/10/2020, 03/11/2020, and 10/11/2020 over SKYPE. Both the advocates appeared over SKYPE and submitted their arguments.

Following submissions in brief have been made on behalf of the complainant with respect to the alleged purchase of apartments bearing No. G-1 and G-3.

1. Believing the representations made by the respondent, the complainant entered into a sale agreement with respect to apartment bearing No. G-1 and G-3 on 19/07/2019.
2. The total sale consideration was fixed at Rs.1,82,00,000/- (Rupees One Crore Eighty Two Lakhs only) for each apartment. Accordingly the complainant has paid the sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) on 19/07/2019 by a cheque. Further the complainant transferred through RTGS Rs.1,50,00,000/- on 24/07/2019. Further the complainant

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once again on 24/07/2019 paid Rs.1,50,00,000/- through RTGS.

3. The complainant also had entered into a sale agreement for apartment bearing No. G-2 and also paid the sale consideration. But however without the knowledge of the complainant, the respondent sold away the apartment bearing No.G-2 by a registered Sale Deed Number 03957/2019-20, dated 11/11/2019 to a different person.
4. The Respondent has not registered the project
5. The Authority is hence requested to direct the respondent not to create a charge on apartment bearing No. G-1 and No. G-3.

The Advocate on behalf of the respondent has submitted as under:-

1. The complaint is not maintainable as it is filed under Section 11(4)(h) and Section 37 of the Real Estate (Regulation and Development) Act, 2016.
2. That the respondent has not entered into any Sale Agreement with the complainant. The very fact that in the alleged Sale Agreement dated 19/07/2019, there is an acknowledgement that a sum of Rs.50,00,000/- is paid through Cheque dated 22/07/2019 demonstrates that the sale agreement is the fictitious one.
3. Mr. Prashanth. B, the Complainant is the director of the firm by name M/s. Super Royal Holiday India Private Limited. Through his personal account he has transferred a total amount of Rs. 6 Crores to the respondent firm on 24/07/2019 through various cheques dated 24/07/2019. On the same day Mr. Praveen, a

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partner of M/s. Tirumala Construction as in turn transferred the above said amount of Rupees to M/s. Super Royal Holiday India Private Limited represented by its director Prashanth. B.

4. The alleged agreement is not registered, no stamp duty has been paid and no witnesses have signed and hence cannot be believe.
5. The respondent once again contends that there was no sale agreements between the complainant and himself with respect to the apartment bearing No. G-1, G-2 and G-3. Hence he requests the Authority to dismiss the complaints.

From the complaint we are made to understand that it has been filed under Section 3, 11(4), 37 of the Real Estate (Regulation and Development) Act, 2016. Notwithstanding the said statement, the complaint is considered to have been filed under Section 31 of the said Act.

For a person to file a complaint under the provisions of the Act, he has to be an allottee. Allottee is defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, which reads as under:-

"Allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

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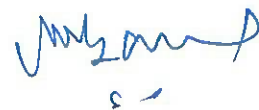
Though the complainant has produced Xerox copy of the two agreements dated 19/07/2019, alleging that the respondent has signed them in respect of apartment G-1 and G-3. The Sale consideration which is shown to be having paid by the complainant to the respondent is totally disputed by the respondent. On the other hand the respondent has stated that an amount of Rs.6 Crores under various cheques dated 24/07/2019 has been transferred from the personal account of the complainant to the account of the respondent firm which in turn has been returned to the firm M/s. Super Royal Holiday India Private Limited, in which the complainant himself is the director. Hence from the records it is not clear as to whether there were in fact Sale transactions with respect to apartment No. G-1 and G-3. When such being the case, the complainant cannot be considered as an allottee as defined under the provisions of the Act. From the transactions we can infer that he may be an investor with the respondent firm.

The respondent it appears as filed an application seeking registration of the project but as not completed the process. The project is yet to be registered.

Hence the following order is passed.

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaints bearing No. CMP/200907/0006502 & 6518 are hereby rejected as not maintainable.



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The respondent is hereby directed to immediately take steps to complete the process of registration of the project under the provisions of the Real Estate (Regulation and Development) Act, 2016.


(Adoni Syed Saleem)

Member-2

K-RERA


(M.R Kamble)

Chairman

K-RERA

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