

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

FOURTH ADDITIONAL BENCH

Dated 9th APRIL 2021

PRESENT:

Adoni Syed Saleem, Member -2, K-RERA.

COMPLAINT NO.	CMP/180314/0000575
COMPLAINANT	RAJENDRA KUMAR KVN, No. C-33, Sahyadri Building, Anushakthi Nagar, Mumbai - 400094, Maharashtra.
RESPONDENT	SIPANI PROPERTIES PRIVATE LIMITED, SIPANI BLISS PHASE - 2, No. 439, 18 th Main, 6 th Block, Koramangala, Bangalore Urban - 560095.
PROJECT NAME	SIPANI BLISS - II, Situated in Sy. No. 151/1 and 152/2 of Madivala Village, Marsur Post, Kasaba Hobli, Anekal Taluk, Bangalore District - 562106.

The complainant in his complaint has brought to the notice of this Authority the following issues.

1. That he booked an apartment bearing No. 908 in the 9th Floor of B Block in the residential apartment complex known as "Sipani Bliss Phase - II" and that he has paid so far an amount of Rs.16,50,000/- as against Rs.7,41,281/- and hence he has to be refunded a sum of Rs.9,10,000/- along with interest.



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2. The promoter promised to deliver the possession within July 2016 with a grace period of six months. However he did not handover possession on the said date. Hence he has to be paid the compensation.
3. The promoter has devised an agreement of sale format which is contradictory to the model agreement of sale format. Hence the promoter had not followed the model agreement of sale as prescribed by the Government.
4. That the promoter has not provided lifts for the blocks B, C, D and E.
5. The actual area of the apartment is 489.18sqft whereas it should have been 530sqft as promised in the agreement of sale.
6. Though occupancy certificate was issued on 18/06/2018, the project was still incomplete. Hence the occupancy certificate cannot be relied.
7. The promoter ought to refund the money along with interest, compensation and special compensation for the mental agony suffered by him.

Notices were issued and an enquiry was conducted on 15/06/2019, 20/07/2019 and 31/08/2019. M/s. Sundara Swamy and Ramadas, Advocates have filed Vakalat on behalf of the Respondent. The General Manager of the Respondent has filed written objections on 22/06/2018.

The objections in brief of the respondent are as under:-



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1. That the complaint has been filed not only before this Authority but also other departments of the Government and this complaint is lacking in merit. This complaint is making false allegations against the respondent and hence is liable to be dismissed.
2. That the project Sipani Bliss – II has been registered under the provisions of the Real Estate (Regulation and Development) Act, 2016, on 03/08/2017 vide registration No. PRM/KR/RERA/1251/308/PR/171017/000947.
3. The building has been constructed as per the approved plan and has not been deviated as alleged by the complainant. Out of 311 units 211 units have been sold.
4. The complainant booked an apartment measuring 530 sqfts (+ open terrace of 175 sqft) of Super built up area. The agreed sale price was Rs.17,81,385/- inclusive of the Car parking, BWSSB, BESCO and other amenities charges. The complainant had failed to pay the balance amount and he was informed to get the property registered on 31/10/2017 by paying the balance. The promised date of completion was July 2016 with six months grace period. The complainant was asked to come for registration and obtain possession on 31/10/2017 by paying the balance amount, which the complainant failed to do so. However the respondent is willing to pay Rs.5/- sqft per month as per the agreement for sale for



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compensation for delayed period of ten months which is from 01/08/2016 to 31/10/2017.

5. The model agreement of sale being relied by the complainant is only a draft rule published vide notification dated 10/07/2017 which was in the form of a bill. Hence on the date of sale agreement (10/09/2015) the model was not applicable.
6. The respondent had offered a discount of Rs.1,25,000/- which was accepted by the complainant himself.
7. The respondent had not charged any excess service tax or GST. The cost of apartment including the private terrace area is Rs.17,81,385/- whereas the complainant is asking for an outrageous some of Rs.5,00,00,000/- as compensation which is 30 times more than the cost of the apartment itself.
8. That there is no mistake in the floor level of the toilet. However as the toilet of the complainant's flat is located above the kitchen area of the flat below, there is slight elevation in other toilet's floor level. Similarly this is the case with other apartments bearing No. C-901, E-905, B-904, B-908, A-901, D-904 and D-908. This has been the common practice in the field of construction.

Citing the above grounds, the respondent has requested to dismiss the complaint.

Perused the complaint, statement of objections and the other documents available in the file.



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As per the agreement of sale dated 10/09/2015 the complainant has entered into an agreement with the respondent for the purchase of apartment bearing No. 908 in the 9th Floor of Block B in the said project. The apartment is supposed to be a super built up area of 530sqft. The agreed sale consideration is show as Rs.16,91,884/-. On the date of signing of the agreement the complainant has paid a sum of Rs.1,78,138/-. The delivery of possession is stated to be July 2016 with a grace period of six months. It is stated in the agreement that for delay in handing over possession the respondent has undertaken to pay compensation at the rate of Rs.5/- Sqft per month.

It is also seen from the records that the complainant has borrowed a loan to pay the sale consideration.

The model agreement of sale being referred to by the complainant was not officially brought into force by the Government of Karnataka on the date on which the complainant entered into an agreement of sale.

This Authority had instructed the Executive Engineer to conduct a spot inspection and furnish a report. Accordingly he has inspected the apartment and furnish the report on 09/10/2019. His observations in brief are as under:-

- (i) That the sale consideration is shown as Rs.17,81,384/- in the agreement of sale and subsequently by mutual



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agreement the sale consideration has been reduced to Rs.16,61,884/-.

- (ii) That during the course of enquiry, the complainant has changed his prayer from time to time.

From the proceedings it is clear that the complainant has failed to prove any deviations in the constructions or the excess payment either towards the sale consideration or the taxes as claimed by him.

With respect to delay compensation he has to file a separate complaint under Section 18 of the Real Estate (Regulation and Development) Act, 2016 before the Adjudicating Officer of this Authority.

In view of these, following order is passed.

ORDER

In exercise of powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/180314/0000575 is hereby partially allowed.

The respondent is hereby directed to immediately take steps to execute and register the sale deed in favour of the complainant by collecting dues if any on account of the sale consideration, within a period of 30 days from the date of this order.



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The respondent is further directed to provide lifts in blocks B, C, D and E at the earliest.

The complainant is directed to file separate complaint under Section 18 of the Act before the Adjudicating Officer of this Authority for claiming delay compensation.



(Adoni Syed Saleem)

Member - 2

K-RERA

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