

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 24th APRIL 2021

CMP/UR/190604/0033175

.....Complainant

KARISHMA P SHAH,

No. 29, 7th B Main Road,
Sharadha Colony,
Basaveshwara Nagar,
Bangalore Urban - 560079.

V/S

BINDU VENTURES,

.....Respondent

4th Floor, Bindu Galaxy,
No. 2, 1st Main, Industrial Town,
Rajajinagar, West of Cord Road,
Bangalore Urban - 560044.

An online complaint has been registered stating that the promoter has not registered the project under the provisions of the RERA nor issued occupancy certificate and Khata certificate and the association of allottees not formed.

Notices were issued to both the sides and hearing conducted on 17/12/2019, 27/12/2019, 10/01/2020, 29/01/2020, 13/02/2020, 27/02/2020, 10/03/2020, 06/10/2020, 16/10/2020, 03/11/2020 and finally on 12/01/2021 on which date the case was reserved for orders.

Sri. P.D. Surana and R. Harisha, Advocates have filed vakalat on behalf of the respondents.

Harishavardhan

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The complainant has submitted additional statement on 27/02/2020 and 23/11/2020.

Following submissions have been made by the complainant in the complaint.

- (i) The respondent executed a sale deed in favour of the complainant on 20/12/2017 in respect of premises bearing No. 303, 3rd Floor, Bindu Galaxy, No. 2, 1st Main Road, Industrial Town, Rajajinagar, West of Chord Road, Bangalore, for a sale consideration of Rs.41,00,000/- (Rupees Forty One Lakhs only). This premises was a commercial for the purposes of running a Chartered Accountants firm.
- (ii) The complainant obtained a housing loan of Rs.39,00,000/- from M/s. ICICI Bank. When such being the case the respondent on 08/02/2018 demanded a additional amount of Rs.4,92,000/-. This is inspite of not providing the basic amenities. Due to the highhandedness and physical power used by the respondents, the complainant had to vacate the premises on 01/10/2020.
- (iii) That the complainant has filed O.S. No. 1318/2018 against the respondent for disconnecting the basic amenities like Electricity, Water supply, Telephone, Sanitary Services etc.,
- (iv) Heavy penalties have to be levied against the respondent for not providing occupancy certificate and for not registering the project under the provisions of the Real Estate (Regulation and Development) Act 2016.
- (v) The respondent has violated the sanctioned plan and has also constructed additional lower basement, 4th Floor and 5th Floor unauthorizedly.
- (vi) For the mental agony which the complainant has suffered, the authority has to award a compensation of Rs.4,87,87,477.65/-

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(Rupees Four Crores Eighty Seven Lakhs Eighty Seven Thousand
Four Hundred and Seventy Seven and Sixty Five paise).

The complainant has therefore requested for a direction to the respondent to register his project, to pay a penalty, to provide Khatas and OC and also the respondent directed to pay the compensation as requested.

In response to the above, complainant and the respondent has submitted his written objections which in brief are as under:-

- 1) That the land in which the project is situated originally belonged to M/s Vensha Enterprises. They had applied for the plan sanction with the BBMP. The same was sanctioned vide order No. AD.COM/WST/0643/15-16, dated 20/10/2015. Thereafter the respondent purchased the land vide sale deed dated 19/11/2015.
- 2) The respondent constructed the entire commercial complex at his cost without taking any investments either from the purchasers or anybody. After constructing the units within the project, the respondent has sold all the units to the various purchasers and sale deeds were executed and registered before 11/07/2017 which is well before the Real Estate (Regulation and Development) Rules, 2017 came into force. Therefore the project does not require registration under the provisions of the Act.
- 3) After completion of the building, the basic amenities like electricity, water, sewerage etc., were obtained. But unnecessarily the BBMP issued notices to the respondent which have been challenged before the Karnataka Appellate Tribunal in Appeal No. 320/2018.
- 4) The Member Secretary of Central Valuation Fixation Committee vide gazette notification dated 08/02/2017 fixed the registerable value of the said building. The Authorities have done so after being satisfied that the building is complete in all respects. The Khata has also been issued for the said project.

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- 5) The alleged sale deed executed by the respondent in favour of the complainant has been challenged in O.S. No. 3531/2019 by the respondent in a Civil Court in Bangalore. The Respondent has made out a case that the sale deed in favour of the complainant is invalid.
- 6) The BESCOM has estimated the cost of power supply vide its letter dated 08/03/2017 and is also issued a letter on 19/04/2017 stating the completion of the work.
- 7) The complainant had filed O.S. No. 1318/2018 for the issue of temporary injunction against the respondent which was refused by the City Civil and Session Judge, Bangalore on 17/02/2018. The suit was dismissed on 27/04/2018.
- 8) The complainant had filed SC No. 782/2018 in the Court of Small Causes Bangalore requesting for restoration of Electricity, Water Supply to his premises bearing No. 303. This was rejected by the Civil Court on 10/12/2018.
- 9) The complainant has filed CRP No. 8/2019 which is still pending before the Hon'ble High Court of Karnataka.
- 10) The complainant and her father have obtained the sale deed from the respondent illegally and is not sustainable in law. The respondent has filed O.S. No. 3531/2019 in the City Civil Court for cancellation of the Sale deed.
- 11) The complainants father had issued a cheque of Rs.25,00,000/- in favour of the respondent which was dishonored and hence the respondent has filed a CC No. 11251/2018 before the 42nd Additional Chief Metropolitan Magistrate.

In view of the above submissions, the respondent has requested for dismissal of the above said complaint.

Heard both the parties, perused the records and also the documents filed in support of the respective claims.

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In order to decide the claims of the complainant, it is necessary to address the following two issues.

- 1) Whether the complaint is maintainable?
- 2) Whether "Bindu Galaxy" project had to be registered under the provisions of the Real Estate (Regulation and Development) Act, 2016?

Our answers to the above two issues are in the negative for the following reasons.

Issue 1: The complainant claims to be the purchaser of an office premises bearing No. 303, 3rd Floor of the said project. As per the Absolute Sale Deed dated 20/12/2017, M/s. Karishma P Shah the complainant had purchased a office unit bearing No. 303 in the said project for a sale consideration of Rs.41,00,000/-. It is stated that the entire amount has been paid.

The plaint filed by the Respondent in O.S. No. 3531/2019 makes a statement that the actual sale consideration was Rs.86,25,000/- notwithstanding the registration of Sale deed for Rs.41,00,000/-.

After the payments of Rs.41,00,000/-, the complainant was supposed to pay a further sum of Rs.25,00,000/- which was mutually agreed and for which the complainant issued a cheque dated 01/03/2018 bearing No. 185477 drawn on Bank of India, Main Branch Bangalore. Since this cheque was dishonored and since the complainant did not respond to the legal notices, the respondent has filed the said suit requesting for the Court to pass a decree for cancellation of sale deed dated 20/12/2017. The said suit is pending finalization.

The complainant Ms. Karishma P Shah had filed a suit bearing No. SC 782/2018 before the VIII Additional SCJ and XXXIII ACMM. The complainant herein in this Civil Suit had requested for mandatory injunction praying to

Karishma P Shah

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direct the respondents to restore Electricity and water supply to the suit schedule property. The Hon'ble Civil Court vide its order dated 10/12/2018, not only refused the prayer for injunction but also observed at para 19 as under:-

“From this it reveals that there is serious dispute with regard to the possession and ownership of the suit schedule property. Moreover the relief in the plaint and the application are one and the same. Hence, the plaintiff not made out ground stated anything that whether the sale deed is genuine or not and the court is of the opinion that the plaintiff is not entitled for the equitable relief of injunction.”

When the very sale deed under which the complainant is claiming rights of a homebuyer is under scrutiny of a Civil Court, the question of maintainability of a complaint by such homebuyer is doubtful and it is proper not to grant any relief to the said complainant and such a complaint cannot be entertained.

No.2: Though the BBMP has approved the plan vide order No. AD.COM/WST/0643/15-16, dated 20/10/2015, on an inspection by the BBMP Authorities many deviations were observed. Hence a provisional order dated 25/06/2014 was issued detailing the violations. Since no response was available from the promoter herein (Respondent), the BBMP vide its order dated 19/07/2014 confirmed the provisional order on deviations. Similarly orders were subsequently issued for disconnection of Power supply, Water supply, restrained against Khata Change.

The building was subjected to assessment of revenue by the BBMP and the Assessment was paid for the year 2017-18 with a further notice to pay the balance of tax within 06/05/2017.

Vishnuvardhan

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The Department of Stamps and Registration has also fixed the registerable value of the building "Bindu Galaxy" after inspection of the completed building and has fixed the value vide its order dated 08/02/2017.

All the records go to show that the building "Bindu Galaxy" was a completed structure and not an "ongoing" project on the date of enforcement (i.e., 01/05/2017) of Section 3 of the Real Estate (Regulation and Development) Act, 2016.

Considering the above said factors, following order is passed.

ORDER

The complaint bearing No. CMP/UR/190604/0003176, filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is hereby dismissed as not maintainable.


(D. Vishnuvardhana Reddy)

Member -1
KRERA


(Adoni Syed Saleem)

Member-2
KRERA


(M.R. Kamble)

Chairman
K-RERA

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