

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 27th APRIL 2021

COMPLAINANTS	<p>1. <u>CMP/180613/0000914</u> HARESH PATIL, No. B-103, Samethana Lake Front Apartment, 1st Floor, Chikkatirupathi Road, Samethana Halli, Bangalore Rural – 560067.</p> <p>2. <u>CMP/UR/190314/0002325</u> REEMA ASHVITHA FERNANDES, Flat No. A-801, Samethana Lake Front Apartment, Samethana Halli, Bangalore Rural – 560117.</p>
PROMOTER NAME	<p>1. SRI. SUMERU HOUSING PRIVATE LIMITED 2. S NAGARAJAN, 3. KRISHNAN ANNASWAMY, Sl. No. 1 and 2 are residing at No. 33-44/1-2, 8th Main, 4th Cross, RMV Extension, Sadashiv Nagar, Bangalore – 560080.</p>
PROJECT NAME	SAMETHANA LAKE FRONT Samathana Halli, Bangalore Rural.

These complaints have been filed against the project “Samethana Lake Front Apartment” Samethana Halli, Bangalore Rural.

The complaint of Haresh Patil is that he paid 95% of the Sale consideration in November 2014 and the promoter has not so far registered a sale deed in his favour. Subsequently in February 2015 he came to know that the entire property is mortgaged to City Union Bank. The builder has not given the occupancy certificate. Therefore Mr. Haresh Patil has requested this Authority to direct the



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promoter to get the property discharged from mortgage and further direct the promoter to register the project in his favour.

The complaint of Reema Ashvitha Fernandes in brief is as under:-

1. That the developer / promoter has entered into an agreement of sale and an agreement of construction on 17/12/2013 with the complainant for the sale of apartment bearing No. A-801. The total sale consideration of Rs.29,47,660/- was paid to the promoter. A sale deed was also executed on 15/04/2016.
2. Thereafter it has come to the knowledge of the complainant that the land in which the project is situated has been mortgaged in 2018 for the purpose of availing the loan.
3. The promoter has also not delivered the premises as promised. He has practiced fraud on the complainant.
4. That promoter has not handed over NOC from Financial Institution, Fire Force Authority, Renewal from KSPCB and the Occupancy Certificate from the Competent Authority. The promoter has also not handed over the title deed for ownership.
5. The promoter also has not formed an association, has not refunded the corpus fund of Rs.25,000/- per unit, he has not provided organic convertor machinery and fire system.
6. On June 2019 the mortgage bank issued public notice to take possession of the scheduled property to recover the loan amount of Rs.2,47,80,397/- and also the interest thereon.
7. Since the promoter has played a fraud, we demand the return of the invested amount and also compensation after which the complainants will be reconvening the unit back to the promoter.

The case was taken up for hearing by issuing notices to both the sides. It was heard on 09/06/2020, 23/06/2020, and 02/07/2020. And after hearing it was posted for orders on 09/07/2020.

Vidhuvante

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On 02/07/2020, both the parties appeared over skype and the promoter submitted that the mortgage bank has issued NOC with respect to apartment No. A-801.

On 09/07/2020, the respondent was directed to file the following.

1. No due certificate from the bank.
2. An affidavit.
3. NIL encumbrances on the property.

The promoter vide his letter dated 27/07/2020 has requested extension of time till July end 2020 to produce the required letter from the bank.

On 13/07/2020, the respondent filed his written statements. The objections to the complaints in brief is as under:-

1. That the complaints are not maintainable, since the Real Estate (Regulation and Development) Act 2016, is not applicable for the project.
2. That the Hoskote Planning Authority has issued the Approval on 30/10/2009 and entire building was constructed within 2014. An occupancy certificate was also issued by the Tametha Halli Village Panchayat on 25/11/2014.
3. Mr. Haresh Patil has taken possession of the apartment on 06/02/2016. The complainant has the habit of filing frivolous complaints as he has done by filing a Civil Suit in O.S. No. 13/2020.

The promoter has got the apartment registered in favour of Reema Ashvitha Fernandes on 15/04/2016 and he is enjoying the possession of the said apartment.

As could be seen from the records that the Plan Sanction was accorded for the construction of a multi storage building comprising of 198 units, located in Sy. No. 66/2 and 66/3 of Samethena Halli Village, Hosakote Taluk by the Anekal Planning Authority vide its order No. LAO07 dated 30/10/2009. Thereafter a commencement certificate was issued on 30/10/2009. After completion of the



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project the Samethana Halli Grama Panchayat has issued Occupancy Certificate on 25/11/2014 by jointly inspecting the property along with the Hosakote Planning Authority.

The City Union Bank limited in whose favour the properties were mortgaged has vide its letter dated 19/01/2015 had issued NOC for the sale of Apartment bearing No. B-0103 in the project Samethana Lake Front in favour of Mrs. Ashiwini H Patil and Mr. Haresh D Patil. Further records do not disclose for a sale deed being registered in favour of Haresh Patil.

Similarly the City Union Bank Limited has given NOC with respect to apartment No. A-0801 in favour of Mr. Jayar Mounis and Mrs. Reema Ashvitha Fernandes vide its letter dated 28/12/2013. The encumbrance certificate dated 24/07/2020 indicates that the said apartment bearing No. A-0801 has been sold in favour of these said persons.

From the records it is clear that since the project was completed and occupancy received by the promoter on 25/11/2014, it is exempted from being registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016. However it is clarified that the promoter is still bound by the responsibilities cast on him under the provisions of the Act.

Considering the above factors, following order is passed.

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/180613/0000914 and CMP/UR/190314/0002325 are hereby allowed.

In exercise of powers conferred under Section 37 read with Section 11 of the Real Estate (Regulation and



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Development) Act, 2016, the respondent is hereby
directed to


- (i) To execute and register a sale deed with respect to apartment No. B-0103, if already not done in favour of Mr. Haresh Patil.
- (ii) To provide copies of Occupancy Certificates, copies of NOC from KSPCB and Fire Safety Department to the complainants.
- (iii) To form an association of allottees / homebuyers under the relevant provision of the applicable law.



(D. Vishnuvardhan Reddy)
Member-1
KRERA



(Adoni Syed Saleem)
Member-2
KRERA


(M.R. Kamble)
Chairman
KRERA

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