

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 19th MAY 2021

CMP/191226/0005009

.....Complainant

HARISH S DATTATREYA,

No. A1406,

Vasathi Avante Apartment,

Rachenahalli,

Bangalore Urban – 560077.

V/S

VASATHI HOUSING LIMITED,

.....Respondent

Plot No. 41, H. No. 8-2-269/S/41,

Sagar Society, Road No. 2,

Banjara Hills,

Hyderabad – 500034,

Telangana.

This complaint has been filed against a registered project “Vasathi Avante”, Sy. No. 84/1, BBMP Khata No. 37/1/84/1, Rachenahalli Village, K R Puram Hobli, Bangalore North, Bangalore Urban.

In his online complaint the complainant has stated that the project is still incomplete, he should be directed to complete the project or handover the project to a third party. He has further stated that the promoter should be restrained from alienating all unsold inventory, return the deposit and the funds to be transferred to the association.

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Notices were issued and an enquiry conducted on 14/07/2020, 29/07/2020, 14/08/2020, 21/08/2020, 28/08/2020, 25/09/2020, 13/10/2020, 27/10/2020, 27/11/2020 and finally on 06/01/2021 on which date the case was posted for orders.

The matter was heard over SKYPE. Mr. Ranganatan, appeared on behalf of the complainant and submitted that civic amenities are not provided. On 21/08/2020, the respondent has provided a list indicating the completed works and the works which are yet to be complete.

On 27/11/2020 the promoter appeared over SKYPE and submitted that the landowners are not co-operating for the completion of the project and also they are threatening.

In view of the claims and counterclaims on the status of the works, the Engineer of the Authority was directed on 25/09/2020 to visit the project and inspect the status of the works and submit a report. On 27/11/2020, the Executive Engineer attached to this Authority submitted his report.

The report of the Executive Engineer has provided the following relevant information:-

1. That on the date of inspection the complainant Harish S Dattatreya and Basavraj Badasad both homebuyers were present. The promoter Mr. P. V. Ravindra Kumar who is reported to be the Chairman and CEO was also present during the inspection.
2. At the time of registration it was mentioned that it was proposed to construct 110 apartments whereas actually there are 380 apartments. Out of them 222 apartments are completed and 158 are yet to be completed, though the end date as per the registration certificate is 31/12/2018.

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3. Though occupancy certificate has been obtained on 14/07/2020, the civic amenities are yet to be completed. It was promised in the broacher to provide tennis court, half basket ball court, badminton court, parks for elderly person, jogging tracks and solid waste management facilities. These are yet to be started.
4. Each block had to be provided with two lifts. Therefore as against six lifts for the three blocks only two lifts are functioning.
5. The motors and pumps provided for STP are defective and are not functioning. The man holes are not covered. The sewerage water is let into the rain water drain, which in turn leads to secondary drain which leads to storm water drain, which ultimately causes pollution.

The Executive Engineer has also furnished photographs of the status of the project.

Heard both sides and perused the documents.

It is seen that the project "Vasathi Avante" has been registered under the provisions of Real Estate (Regulation and Development) Act, 2016 vide registration certificate dated 08/12/2017. The estimated cost of the project is shown to be Rs.152.86/- Crores. The sanctioned plan of the BBMP shows that it's a project comprising of 380 apartments. The date of completion of the project as per the registration certificate is 31/12/2018.

The promoter has obtained an occupancy certificate dated 14/16.7.2020 with respect to all the three blocks namely Block A, B and C. But the factual report filed by the Executive Engineer of this Authority has furnished in detail as to how the project is still incomplete. Hence the occupancy certificate cannot be believed.

Though the project was supposed to be completed within 31/12/2018 in all aspects as per the registration certificate, actually it is still incomplete

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as on 05/10/2020, that is date of inspection of the project by the Executive Engineer of this Authority. The details of the works to be carried out in the project have been furnished in the report.

Condition No. (V) and (VI) of the registration certificate dated 08/12/2017 reads as under:-

“(V) The promoter shall comply with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Karnataka Real Estate (Regulation and Development) Rules, 2017 and Regulations there under;

“(VI) The promoter shall not contravened the provisions of any other law for the time being in force in the area where the project is being developed.”

Functions and Duties of the promoter are provided under Section 11 of the Real Estate (Regulation and Development) Act, 2016.

Section 11 (4) of the Act reads as under:-

“(4) 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 all 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: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per

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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;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(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 the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the

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project): Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;”

Therefore the promoter is obliged to fulfill the promises made in the agreement for sale and construct and handover the possession within the promised date. He has to obtain the occupancy certificate, he has to enable the formation of association / society / co-operative society of the allottees within a period of three months, execute a registered conveyance in favour of the allottees and the undivided proportionate title in the common areas to the association of allottees. The promoter is also bound to maintain at his own cost the premises till it is handed over officially to the association of allottees.

As could be seen from the file, the promoter has failed in his duty to complete the project in time and it appears he has not fulfilled his part of the obligation towards the landowners.

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As could be seen from the report of the Executive Engineer 158 flats are incomplete as internal and external works have not been done. Of these 158 apartments, 138 apartments belong to the landowners share.

The project has not been completed in all respects within the due date that is 31/12/2018, as indicated in the registration certificate. The promoter of the project has also not obtained extension of the project as required under Section 6 of the Act. Hence the registration of the project expired on 31/12/2018. The promoter of the project has carried on his business activities and the project work despite lapse to registration, which is the contravention of the Act. The promoter has failed to report that the registration of the project has lapsed and has failed to take corrective measures in the interest of the allottees from whom funds have been collected.

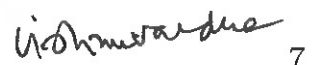
In view of the above facts, it is deemed necessary that this Authority requires to pass the following order.

ORDER

The complaint bearing No. CMP/191226/0005069, filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is hereby allowed.

In exercise of the powers conferred under Section 37 read with Section 11 of the Real Estate (Regulation and Development) Act, 2016, following directions are issued to the promoter.

- (i) To complete all the internal and external works with respect to 158 apartments (including 138 apartments belonging to the landowner).



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- (ii) To execute and register sale deeds in favour of the homebuyers who have paid the total sale consideration and to put them in possession.
- (iii) The leakage and seepage from the roof slab should be plugged immediately. The promoter will be held responsible in case the leakage leads to short circuit etc.,
- (iv) To provide two lifts per block as promised and to get the AMC's renewed immediately.
- (v) To immediately take steps to cover the man holes around the complex and near the sewerage treatment plant and cover the service ducts which are reported to be left open for dumping the garbage.
- (vi) To take steps to make the water treatment plant and solid waste treatment plant fully functional. Further directions are issued to prevent contamination of underground water bodies due to the letting out of sewerage water in the open drain.
- (vii) To complete the club house, super market, mini shopping arcade and other amenities including the parks for elderly persons as was promised in the broacher.
- (viii) To take steps to provide centralized gas bank.

The complainant is advised, if necessary to file separate complaint before the Adjudicating Officer under Section 18 of the Act to claim delay compensation.



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The promoter is hereby directed to file a compliance report on the above within a period of 90 days from the date of this order.

The promoter of the project is hereby given an opportunity to submit a written explanation as to why penalty at the rate of 2% of the project cost should not be levied under Section 61 of the Act. An opportunity of hearing is also provided on 10/06/2021, before which date any written submissions may be made in this regard.

The case is posted for further hearing after a period of 90 days for which separate notices may issued to both the sides.


(D. Vishnuvardhana Reddy)
Member -1
KRERA


(Adoni Syed Saleem)
Member-2
KRERA


(M.R Kamble)
Chairman
K-RERA

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