

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 BEFORE BENCH 6

Dated 17TH NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINANTS.....

1. CMP/UR/200902/0006494
MR. AJAY KUMAR
485 B, 16TH CROSS
IDEAL HOMES TOWNSHIP
RAJARAJESHWARI NAGAR
BANGALORE-560098.

2. CMP/UR/200902/0006499
MR. AJAY KUMAR
485 B, 16TH CROSS
IDEAL HOMES TOWNSHIP
RAJARAJESHWARI NAGAR
BANGALORE-560098.

3. CMP/UR/200903/0006497
MRS. PRAVEENA AJAY
485 B, 16TH CROSS
IDEAL HOMES TOWNSHIP
RAJARAJESHWARI NAGAR
BANGALORE-560098.

4. CMP/UR/200904/0006508
MR. UDAY KUMAR
690/697, 19TH MAIN ROAD
IDEAL HOMES TOWNSHIP
RAJARAJESHWARI NAGAR
BANGALORE-560098.

5. CMP/UR/200903/0006507
MRS. VIDYA UDAY
485 B, 16TH CROSS
IDEAL HOMES TOWNSHIP
RAJARAJESHWARI NAGAR
BANGALORE-560098.

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**6. CMP/UR/200904/0006500
MS. ANANDITHA AJAY
485 B, 16TH CROSS
IDEAL HOMES TOWNSHIP
RAJARAJESHWARI NAGAR
BANGALORE-560098.
(In Person)**

V/S

RESPONDENT.....

**1.SOFTWARE ENGINEERS & DOCTORS
HOUSING CO-OPERATIVE SOCIETY LTD
514, 2ND CROSS, 5TH MAIN
AMARJYOTHI LAYOUT (WEST WING)
DOMLUR
BANGALORE-560071.**

**2.K. HARIKRISHNA
3.G.C. NAGARAJU
4.CHARULATHA JAIN
5.K.V. SRINADHA VARMA**

**NO.514, 2ND CROSS, 5TH MAIN
AMARJYOTHI LAYOUT (WEST WING)
DOMLUR
BANGALORE-560071.**

**(By Sri.C.G. Gopaldaswamy and
Sri.D. Manmohan, Advocates)**

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J U D G E M E N T

1. All the above complaints have been filed under section 31 of the RERA Act against the project "OAK DALE GREENS" developed by Software Engineers & Doctors Housing Co-operative Society Limited for the relief of refund with interest.
2. **This project has not been registered under RERA.**

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3. All these matters are taken up together for disposal as they are arising out of the same project, have common issues and in order to avoid repetition.

Brief facts of all the complaints are as under:

4. In October 2009, the complainants had actually booked a plot in each of their family members name measuring 50' x 80' at Rs.679/- per square feet in the Phase-I of the project of the respondent and was assured by the respondent that the possession of the plots will be handed over within ten months i.e. latest by 19/7/2010 .
5. The complainants have paid the sale consideration amount to the respondent as under:
- | | |
|------------------------------|-------------------|
| a) Ajay Kumar (CMP/6494) | - Rs.52,02,500-00 |
| b) Ajay Kumar (CMP/6499) | - Rs.28,02,500-00 |
| c) Praveena Ajay (CMP/6497) | - Rs.52,02,500-00 |
| d) Uday Kumar (CMP/6508) | - Rs.52,02,500-00 |
| e) Vidya Uday (CMP/6507) | - Rs.52,02,500-00 |
| f) Ananditha Ajay (CMP/6500) | - Rs.28,02,500-00 |

(being 95.73% of the total sale consideration amount for each plot) on various dates to the respondent as on April 2014. Despite the total sale consideration amount had been paid to the respondent, the respondent failed to handover the possession of the plots even after 12 years and thus failed to abide by the terms and conditions of the advertisement pamphlet. The complainants contend that the respondents are Housing Co-operative Society and that the complainants are the members of the society since 24/10/2009. The respondents enrol members, collect deposits for allotment of sites, procure land and after obtaining necessary NOCs from the competent authorities prepare seniority list and allot sites as approved

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by the Registrar of Co-operative Societies. The complainants further contends that the respondent induced them to go for a bigger dimension site i.e. 100' x 80' at the same cost, upon which the complainant opted for 100' x 80' plot which has been acknowledged by the respondent. The complainants have also paid the difference amount to the respondent. The complainants visited the project during 2010, 2012 and 2014 and didn't find any progress in the project. Despite BDA approval had been obtained the project remained incomplete. The respondents without the consent of the complainants included their names with those who applied for allotment of a site in Phase-II. The respondent gave several reasons for the delay in the completion of the project.

6. Further the respondent through its letter informed the complainants that the total site value is proposed to be increased by Rs.200/- to Rs.250/- per square feet and demanded payment of difference amount to finish the project. The respondent called the complainants for a meeting with regard to provisional allotment of sites and furnishing KYC details. After a complaint to the Hon'ble Consumer Forum, the respondent vide its letter dated 22/10/2019 demanded the complainants to pay additional amount to complete the project. The complainants have issued a legal notice to the respondent on 13/11/2019.
7. The complainants submit that the demand of respondent for Rs.1,200/- per sq.ft is unjustifiable and even after lapse of 12 years there is no significant development in the project. The respondent is just extorting the money in the name of development works. The complainants smelt something fishy and sought copies of approval plan and bye laws. The complainants were shocked to see copies of two approved plans in which 100' x 80' sites were not at all existing and even 50' x 80' sites were odd sites and limited in number. The complainants further submits that the respondent had registered the land in the name of the President and the Secretary instead of

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registering in the name of the Society. The land procured was also not converted land. The escalation cost is now thrown on the customers and are made to suffer on account of this.

8. The complainants submit that **this project is not registered under RERA though it is still an ongoing project.** The respondent is nowhere close to handing over possession of the plots and has refused any form of compensation to the complainants. Due to the enormous delay caused by the respondent, the complainants have suffered huge monetary losses and suffered mental agony. Thus the complainants have approached this Authority requesting for full refund with interest, cost of litigation and compensation for mental agony. Hence, these complaints.

9. After registration of the complaints, in pursuance of the notice, the respondent appeared before the Authority through its counsel and has contested the matter by filing statement of objections as under:

The respondent submits that the respondents 2 to 5 are the Directors and Paid Secretary of the first respondent and they do not have any personal stakes or derived any profits and do not have any joint liability along with the first respondent and they should be deleted from this case. The respondent contends that the formation of the layout is completed. The complainants during one of their visits demanded that all the six sites should be adjacent to each other, as it was learnt that they were supposed to construct a Kalyana Mantapa. The complainants were informed that there were only six sites of the dimension 100' x 80' available and the respondent wanted to accommodate them in the first layout plan itself. However, the BDA altered the proposed layout plan to align the roads in the respondent's layout with the roads in the Kempegowda Layout that the BDA was forming, which was beyond the control of the respondent. The respondent contends that during the Annual General Meetings of the Society they had displayed the approved 1st plan and the proposed 2nd plan.

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At that time the complainants did not raise any objections regarding the escalation of cost of the sites or about the delay in completing the layout project. The respondent submits that the complainants were called for provisional allotment/selecting sites by members of their own choice depending on the seniority, but the complainants remained absent. The respondent further submits that it was and has been always ready and willing to allot the available sites according to the approved plan measuring closely to 100' x 80' to the complainants.

The respondent submits that delay in the execution of the project and escalation in the costs was unintentional and beyond the control of the respondent and because of changes in the law or force majeure events. Moreover, the BDA did not clear the plan, the land of the layout was a granted land and phodi and durasth process had not been done, due to NGT and Koliwad Committee orders, the Government of Karnataka was getting the survey of all the lakes in Bangalore and had to wait for a long time to get a Surveyor allotted for the land to be surveyed for Phodi and Durasth process, frequent change of BDA Commissioner, the land was not conducive for the formation of the layout without major land excavation and some bad elements instigating the original owners of the lands that the respondent has procured and created fake documents, stopped ongoing civil work, vandalizing the work done etc. The respondent denies the allegations made by the complainant as false. The respondent submits that the complainants are not entitled for any relief as claimed by them and request the authority to dismiss the complaints in the interest of justice and equity.

The respondent has submitted that they have applied for registration of their projects under RERA on 4/10/2022 (for 2nd Layout Plan) and on

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17/10/2022 (for 1st Layout Plan) through online and the same is under process.

10. In support of their defence, the respondent have produced documents such as BDA letter dated 7/9/2013, correspondences made with BDA and other competent authorities, BESCO letter dated 3/10/2019, copy of complaint No.312/2019 in the Karnataka State Consumer Disputes and memo of calculation as on 16/9/2022.
11. In support of their claim, the complainants have produced documents such as advertisement pamphlet, Share certificate and ID Copy, payment receipts, approved plan of Phase 1 and Phase 2, Bye-Laws and Regulation, letter correspondences with the respondent, statement of amounts paid to respondent by the complainant, actual photos of layout as on 31/10/2020, legal notice dated 13/11/2019 and memo of calculation as on 15/8/2022.
12. Heard arguments of both sides.
13. On the above averments, the following points would arise for my consideration:
 - a. Whether the complainants are entitled for the relief claimed?
 - b. What order?
14. My answer to the above points are as under:-
 - a. In the Affirmative.
 - b. As per final order for the following
15. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of assuring to allot and handover the possession of plots to the complainants within ten months, even after the lapse of 12 years, the respondent has not completed the project as agreed and has not



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handed over the plots in favour of the complainants till date. Hence the respondent has failed to abide by the terms and conditions of the advertisement pamphlet. There seems to be no possibility of completing the project or handing over the possession of the plots in the near future.

16. As per Section 18(1) of RERA Act, in case the allottee wishes to withdraw from the project, the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.
17. Therefore, as per Section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
18. From the averments of the complaints and the copies of letter correspondences between both the parties, it is obvious that the complainants have paid substantial sale consideration amount towards the purchase of plots in the project of the respondent. Having accepted the said amount and failure to keep up promise to handover possession of the plots even after lapse of 12 years certainly entitles the complainants herein for refund with interest. It is evident that the respondent has deprived the complainants from owning a plot of their own and taken them for a ride.
19. ***During the process of the hearing, the Authority has noticed that though the project is still going on, it has not been registered under RERA. The respondent was directed to get the project registered under RERA immediately.***

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20. The complainants have filed their memo of calculation as on 15/08/2022 and the respondent has submitted its memo of calculation as on 16/9/2022. The details of refund with interest claimed by the complainants and the respondent's refund calculation is as under:

Complaint Number	Complainant's Name	Refund with interest claimed by the complainants as on 15/8/2022	Respondent's claim of refund with interest to be paid to the complainants as on 16/9/2022
1	2	3	4
CMP/6494	Ajay Kumar	1,03,41,924	1,03,74,323
CMP/6499	Ajay Kumar	60,61,718	60,01,945
CMP/6497	Praveena Ajay	1,03,41,924	1,03,74,323
CMP/6508	Uday Kumar	1,03,36,383	1,03,74,323
CMP/6507	Vidya Uday	1,03,41,924	1,03,74,323
CMP/6500	Ananditha Ajay	59,89,718	60,01,945

There is no dispute in the amount paid and received by both the parties. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest.

21. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Complaint Number	Complainant's Name	Respondent's memo of calculation submitted for refund with interest to be paid to the complainants as on 16/9/2022
1	2	3
CMP/6494	Ajay Kumar	1,03,74,323
CMP/6499	Ajay Kumar	60,01,945
CMP/6497	Praveena Ajay	1,03,74,323
CMP/6508	Uday Kumar	1,03,74,323
CMP/6507	Vidya Uday	1,03,74,323
CMP/6500	Ananditha Ajay	60,01,945

22. Accordingly, the point raised above is answered in the Affirmative.

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23. **My answer to Point No.2:-** In view of the above discussion, I proceed to pass the following –

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing Nos. (1) **CMP/UR/200902/0006494**, (2) **CMP/UR/200902/0006499**, (3) **CMP/UR/200903/0006497**, (4) **CMP/UR/200904/0006508**, (5) **CMP/UR/200903/0006507** & (6) **CMP/UR/200904/0006500** are hereby allowed.

1. Respondent is directed to pay the amount **as mentioned in Para 21, Column No.3 above towards refund with interest** calculated at 9% from 21/10/2009 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 16/09/2022 to the complainants within 60 days from the date of this order. The interest due from 17/09/2022 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.
2. Respondent is directed to get his project registered under RERA as it is an ongoing project.
3. The original judgement is placed in the file bearing No.CMP/UR/200902/0006494 and copies in the other 5 files as in page 1 and 2 of the judgement.


(Neelmani N Raju)
Member-2, K-RERA