

PROCEEDINGS OF THE AUTHORITY

Dated 05th of June 2020

<u>Complainant Name and Address</u>	<u>Complaint No.</u>
1. Shri. Balaji Sunku #40, 67/1, Shivani Sunshine, Chudasandra, Sarjapur, Bengaluru – 560099	CMP/ 180404 / 0000648
2. Shri. Sasmita Biswal #41, 67/1, Shivani Sunshine, Chudasandra, Sarjapur, Bengaluru – 560099	CMP/ 180502 / 0000797
3. Shri. P Prasad #9, 67/1, Shivani Sunshine, Chudasandra, Sarjapur, Bengaluru – 560099	CMP/ 180502 / 0000800
4. Shri. Banujit Narayan House 59, Shivani Sunshine Chudasandra, Sarjapur, Bengaluru – 560099	CMP/ 180526 / 0000859
5. Shri. Pankaj Jhunjunwala House 61, Shivani Sunshine Chudasandra, Sarjapur, Bengaluru – 560099	CMP/ 180627 / 0000970
6. Shri. Prajapati Suresh Kumar House 13, Shivani Sunshine Chudasandra, Sarjapur, Bengaluru – 560099	CMP/ 180623 / 0000947
7. Shri. Manish Raturi House 33, Shivani Sunshine Chudasandra, Sarjapur, Bengaluru – 560099	CMP/ 180623 / 0000948
8. Shri. Rakesh B House 57, Shivani Sunshine Chudasandra, Sarjapur, Bengaluru – 560099	CMP/ 180624 / 0000952

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9. **Shri. Jayadev Rajan**

CMP/ 180710 / 0001022

House 33, Shivani Sunshine

Chudasandra, Sarjapur, Bengaluru – 560099

10 **Shri. Sunil Sarat P**

CMP/ 181206 / 0001724

Flat No: 005, Comfort Opel,

No.27, 17th cross, Bengaluru - 560076

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Shri. Koteswar Rao Podapati

M/s. Shivani Developers

...Respondent

No. 401, Palace View Apartments,

9th Cross Road, HAL, 3rd Stage,

Kodihalli, Bengaluru – 560008.

These ten complaints have been filed under Section 31 of the Act, against the respondent's project namely "**Shivani Sunshine**", situated at Choodasandra Village, Sarjapura Hobli, Anekal Taluk, Bengaluru to which complaint numbers have been allotted.

Facts of the Complaints and Relief Sought:

Sl. No.	Complainant Name and Number	Complaint Brief & Relief Sought
1.	Shri. Balaji Sunku CMP/ 180404 / 0000648	<i>1. No Completion certificate or Occupation Certificate has been provided. Project has been delayed by 3 years. No certification by RERA. 2. Builder is supposed to do a lot of pending work and still demanding full money (Except 2 lacs which is not at all matching to the amount of work pending) for the registration. 3. Builder is not responding to phone calls or SMS from quite few days 4. Quality of</i>

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		<p>construction is very bad and a strict inspection is needed on the same.</p> <p>Relief : House Registration and Delay Penalty</p>
2	<p>Shri. Sasmita Biswal</p> <p>CMP/ 180502 / 0000797</p>	<p>Project doesn't have Completion Certificate or Occupation Certificate and still not registered under RERA. 2. Project has been delayed for more than 3 years and builder has to pay delay charge. and the following problems are there in the project 1. No permanent water connection 2. No proper road 3. Plenty of units are under construction 4. Workers are staying inside the compound along with their families 5. No water tank has been built yet and no bores 6. No Power backup 7. No proper rain water harvesting 8. No plastering and painting outside the house 9. No E-Khatha has been provided and builder is not responding when we r asking for the same. 10. Water leakage problems in many places of the house 11. Too many cracks to be filled and painted again</p> <p>Relief : Project has to be complted & delay cost to be paid</p>
3.	<p>Shri. P Prasad</p> <p>CMP/ 180502 / 0000800</p>	<p>1. No permanent water connection 2. No proper road 3. Plenty of units are under construction 4. Workers are staying inside the compound along with their families 5. No water tank has been built yet and no bores 6. No Power backup 7. No proper rain water harvesting 8. No plastering and painting outside 9. EKhatha has been promised but NOT provided 10. Water leakage problems in many places of the house 11. Too many cracks to be filled and</p>

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		<p><i>painted again 12. No proper handling of rain water from the terrace of the house till the drainage. Fixed pipes are leaking.</i></p> <p>Relief : <i>Project completion and Delay penalty</i></p>
4.	Shri. Banujit Narayan CMP/ 180526 / 0000859	<p><i>The sale agreement was done with agreed handover in December 2014. So far the overall project is still in construction mode with no visibility of completion. The promoter has given us many false promises of completion in last 3 years which none he has kept. I am raising this complaint out of total frustration and pray RERA officials can help. 1. No Permanent water connection with no water tank 2. No proper road within at entry of project 3. Plenty of units under construction 4. Workers are staying in property 5. No power backup 6. No proper rain water harvesting 7. No e-khata provided 8. Clubhouse/Amenities is not built although it was promised to be built last year 9. Promoter reluctant to Register property and is insisting almost full payment and is not agreeing to pay delay charges as per sale agreement 10. Plenty of maintenance problems which has to be fixed by us only.</i></p> <p>Relief : <i>Project completion and delay penalty</i></p>
5.	Shri. Pankaj Jhunjhunwala CMP/ 1806 27 / 0000970	<p><i>Mr Koteswar Roa professionally is not a builder. Just running it as a business and not completing the project. No engineer, No Architect at project and just spoiling the whole work. List of pending works as follows: 1) No E- Khata 2) No Borewell 3) No Road 4) No Permanent water Connection. A guy climbs 4 floor and fills the water. 5) Many units under</i></p>

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		<p>construction. 6) Labours still staying in property with family. 7) No Amenities 8) No water tank. 9) Water leakage from even side walls. 10) All walls have cracks. 11) No proper Painting. 12) No intercom facility. 13) No garden. Builder has shown space as garden now telling it will be visitors parking. 14) No Land tax payment of last 4 years. All above thing has been stated by builder in broucher but non of this has been completed on several request. Request you to take strict action against builder.</p> <p>Relief : Project completion.</p>
6.	<p>Shri. Prajapati Suresh Kumar CMP/ 180623 / 0000947</p>	<p>1. Project is not completed and has pending things which includes permanent water connection, over head tank etc. None of the amenities work has been started 2. Road work is still incomplete 3. One of the house doesn't have the foundation yet. 4. Sale deeds are not being executed by the builder by keeping reasonable amount pending from the buyer's side based on the pending work. 5. Builder is not visiting the site from more than 6 to 8 months and there is no much progress in the work. 6. More than 60% of the houses in the project has pending work which makes the project looks like a construction zone 7. Workers are staying inside the project (Some of them are with their families too) and builder has ignored our request to make them stay outside.</p> <p>Relief : Sale deed, Project completion & Delay penalty</p>
7.	<p>Shri. Manish Raturi</p>	<p>Project is not completed and has pending things which includes permanent water connection, over</p>

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	<p>CMP/ 180623 / 0000948</p>	<p>head tank etc. None of the amenities work has been started 2. Road work is still incomplete 3. One of the house doesn't have the foundation yet. 4. Sale deeds are not being executed by the builder by keeping reasonable amount pending from the buyer's side based on the pending work. 5. Builder is not visiting the site from more than 6 to 8 months and there is no much progress in the work. 6. More than 60% of the houses in the project has pending work which makes the project looks like a construction zone 7. Workers are staying inside the project (Some of them are with their families too) and builder has ignored our request to make them stay outside.</p> <p>Relief : Sale deed, Amenities & Project completion</p>
<p>8.</p>	<p>Shri. Rakesh B</p> <p>CMP/ 180624 / 0000952</p>	<p>1. Pending electrical/plumbing work inside house. 2. Pending railing/glass fittings. 3. No permanent water connections and roads. 4. Plenty of units under construction and workers are living inside premises with family. 5. No proper water tanks and bore is not working. 6. No power back up. 7. Too many cracks started to show up and crack between houses. 8. No proper planning for rain water harvesting. 9. Amenities are not in place.</p> <p>Relief : Project completion and resolution of complaints</p>
<p>9.</p>	<p>Shri. Jayadev Rajan</p> <p>CMP/ 180710 / 0001022</p>	<p>The project was supposed to be completed by 2013 as per agreement with grace period of 6 months. The house was delivered to us with great difficulty in 2017. Even now there is lot of pending work. 1. There is no clob house yet. 2. There is debris everywhere</p>

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

		<p>which gets added up and doesn't get cleared often. 3. Lot of work is still going on in site in other flats which is causing further mess. 4. Workers are staying the property without compromising safety. 5. Generator back up is not there. 6. No proper provision for water. 7. Roads are not laid everywhere. 8. Childrens play area and park is not completed. 9. Lights are not functioning everywhere. 10. Water harvesting is not going on property.</p> <p>Relief : Get the project completed once and for all.</p>
10	Shri. Sunil Sarat P CMP/181206/0001724	<p>I (Sunil Sarat P) have entered into a sale / construction agreement with Shivani Developers on 24th May 2013 (both agreements attached) for purchase of a Row House. As per the agreement, promised date of possession is December 2013. Total consideration amount is Rs. 66.1 L I have made payments both through cheques and bank disbursements, the latest being on 28th October 2016. Total payments made is Rs. 69.5 L (Payment details and bank disbursement details attached) I have paid an additional amount of Rs. 3.4 L towards Stamp Duty and Registration as the builder had promised to register my property. Since then he has neither been responding promptly nor registering my property. There has been no progress in the Row House work either In the agreement, there is a promised amount of Rs. 4 per sq feet of SBA per month. My request is to help me get the promised compensation (Compensation details attached) I kindly request you to look into this issue, and provide me with the relief with respect to the following 1. Get the property</p>

With my regards

Shri. Sunil Sarat P

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Karnataka Real Estate Regulatory Authority,

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	<p><i>registered in my name immediately 2. Complete all pending works immediately 3. Provide me with compensation.</i></p> <p>Relief : <i>Immediate registration of property</i></p>
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Under Section 31 (1) any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of the provisions of this act or the Rules and Regulations made there under against any promoter, allottee or real estate agent, as the case may be.

Facts of the Case:

1. Based on the first complaint number 648 of Shri. Balaji Sunku and since it is an un-registered project, the engineering section of the Authority issued three notices dated 13-04-2018, 03-05-2018 and 17-05-2018 to the promoter directing to comply with Section 3 of the Act.
2. The promoter did not respond to these three notices. Hence, the Secretary of the Authority took up the case and issued notice for preliminary hearing on 22-06-2018.
3. Accordingly, the Secretary of the Authority conducted the proceedings on 22-06-2018, 13-07-2018, 29-10-2018, 26-12-2018, 03-05-2019 and 17-05-2019.
4. The complainants in complaint No. 648, 797, 800, 859, 952, 947, 948, 970 and 1022 have filed their respective complaints seeking for the relief of compensation and for completion of the project. Further, it is also alleged that the builder has failed to provide the requisite civic amenities.
5. During the preliminary enquiry before the Secretary of this Authority, the developer as well as the landowner had agreed to provide civic amenities. It was submitted on behalf of the developer that he had applied for issuance of Occupancy Certificate (OC) on 07-07-2017. Secretary of the Authority had asked the developer to produce the copy of the Occupancy Certificate.
6. On 26-12-2018, the complainants in complaint No. 648, 859, 947, 948, 952 and 970 had filed their respective memo of withdrawal of their respective complaint. On enquiry on 26-12-2018, none of the complainants were present. After the developer left the office, the complainants have appeared before the Secretary of the Authority and submitted that their signatures have been

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obtained forcibly on the memo of withdrawal. And further submitted that action be taken against the developer.

7. The landlords viz: Shri Muthurayappa, Mrs. Pushpa, Mr. Kodanda and others have submitted a written counter claim against the developers vide letter dated 25-07-2018 stating that M/s Shivani Sunshine has constructed his portion of share which is 60% whereas, the landowners' share which is 40% is not constructed in accordance with the Joint Development Agreement.
8. The plan for the project is sanctioned by the Commissioner, BDA vide LP No. 3-1/e/52/2011-12 dated 21-03-2012 which is valid upto 22-03-2014. The plan has been sanctioned in favour of Shri P Koteshwar Rao, M/s Shivani Developers.
9. As per Section 4(1) of RERA Act, 2016, every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.
10. While claiming exemption of the project from RERA registration, the developer should have completed his project in all respects on or before 10-07-2017. In view of the fact that there was a prima facie case of violation of Section 3 of the Act, on account of non-registration of an ongoing project within 3 months from the date of commencement of RERA Act, the Authority initiated further proceedings on 30.08.2019.
11. The Authority issued notices to the promoter / developer and the complainants to appear before the Authority on 17-09-2019, 11-10-2019, 22-10-2019, 14-11-2019 and on 27-12-2019. Complainants & respondents were present during the hearing dates.

The Points that arise for the Authority's consideration are:

Whether the project Shivani Sunshine is eligible for exemption from registration under the Act?

➤ **Promoter's Claim:**

Vide promoter letter dated 03-05-2018 has submitted to the Authority stating that their project is not an ongoing project as it fits the description of the project which is exempted from registration under Rule 4(1) (iv) of the Karnataka Real Estate (Regulation and Development) Rules, 2017.

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➤ Complainants Claim:

The promoter / developer has not registered their project under Act, even though the basic amenities like permanent water supply, power backup, club house / amenities not built and operational as on the date of commencement of the Act

Authority's findings: Section 3 (1) of Karnataka Real Estate (Regulation and Development) Act, 2016 states that "*No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under the Act:*

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

For exemption of a project under Karnataka Real Estate (Regulation and Development) Rules, 2017 Rule 4(1) (iv) states – "*Where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of completion certificate / occupation certificate: and*".

In this case, the developer should have completed his project in all respects on or before 30-04-2017. The promoter was yet to complete the basic amenities as submitted by the complainants. During the hearings the promoter admitted that some of the amenities have been pending for want of funds. The promoter also stated that some of the allottees are yet to pay the balance of rupees two lakhs and once they pay the balance amount, the promoter will complete the amenities promised for. In this connection, the promoter and the complainants have filed a joint memo dated 21-01-2020. The plan was sanctioned to the developer on 21-03-2012 which is valid upto 22-03-2014. He has commenced the project work but has not completed the project in all respects as on 01-05-2017. Further, it is not the case

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of the developer that he has obtained Occupancy Certificate prior to 01-05-2017 and therefore the project is not eligible to claim exemption under Section 3 (2) (b) of the Act.

As regards the exemption claimed under Rule 4 (1) (iv) is concerned, in order to seek exemption the developer was required to complete the project in all respects and a certificate issued by a competent agency had to support such a contention. However no such evidences are submitted. Hence, it is amply clear that the project was an ongoing project and the promoter / developer was required to register the project. The claim of the promoter / developer that his project "Shivani Sunshine" is exempted under Rule 4 (1) (iv) of RERA Rules, 2017 is not maintainable.

In view of the non-fulfillment of the conditions regulating the exemption of projects from Registration, the developer respondent ought to have registered his project "Shivani Sunshine" to K-RERA.

Therefore, the promoter is hereby directed to register the project within 30 days from the date of receipt of this Order failing which, penalty proceedings under Section 59 (1) of the Real Estate (Regulation and Development) Act, 2016 would be initiated.

Out of the ten complainants in this case, eight complainants namely P Prasad (Complaint No. 800), Suresh Kumar Prajapati (Complaint No. 947), Manish Raturi (Complaint No. 948), Balaji Sunku (Complaint No. 648), Bichtra Mallick (on behalf of Complaint No. 797 – Sasmita Biswal), Rakesh Balakrishnan (Complaint No. 952), Banujit Narayan (Complaint NO. 859) and Yogesh Jhunjunwala (on behalf of complaint No. 970 – Pankaj Jhunjunwala) have entered into an agreement with the developer with regard to amenities and completion of the project and submitted a Joint Memo dated 21-01-2020 to this Authority.

The sum and substance of the Joint Memo is that the developer / respondent has agreed to complete all the pending works within the time frame. Each allottee has agreed to deposit Rs.1,00,000/- in an Escrow Account with a nationalised bank and the developer has agreed to contribute its share of 50% of the estimated cost of completion of the balance pending works. After the development work makes good progress, the flat owners have agreed to deposit the balance of Rs.1,00,000/- each with a mutual understanding to cooperate and

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complete the pending work. It was also mutually agreed to form the Allottees Association and Maintenance of the building with amenities will be handed over to the Association. The developer has undertaken to obtain occupancy certificate and e-Khatha. The developer has also undertaken to shift the labourers from the project premises on or before 28th February 2020. The homebuyers and the developer have agreed to the terms and signed the Joint Memo with a request to record the same before the Authority.

Shri Sunil Sarat P bearing complaint number

CMI/181206/000172

This complainant had entered into agreement for sale with the promoters of the project vide Agreement dated 24.05.2013. The allottee complainant namely Shri Sunil Sarat P has paid an advance of Rs. 50,000/- and Rs.10,00,000/- on 25.02.2012 and 22.04.2012 respectively to the promoter. It is evident from the facts of the case that the allottee complainant has not been handed over the possession of the Row House till date. As per the complaint, the allottee has paid Rs.69.5 lakhs towards the purchase of the Row House, including the cost of Registration and Stamp Duty. It is also stated in the complaint that the promoter had promised to deliver the possession in December 2013. The complainant also has stated that the last payment made by him was on 28.10.2016 and the aggregate payment made by the allottee to the promoter on that date was Rs.66.1 lakh. It is further submitted that Rs.3.4 lakhs was also paid by the complainant to the promoter towards the Registration & Stamp Duty. The complainant has sought the following reliefs:

1. Property registration without further delay
2. Complete all pending works immediately
3. Payment of compensation

On a perusal of the materials on record and the complaint submitted by the allottee complainant, it is evident that there is an inordinate delay in completing the construction of the Row House, providing all the necessary amenities and registering the property in favour of the allottee complainant. The promoter developer has not submitted any documents or evidences against the basic issues raised by the complainant. However by the promoter by a letter dated 25.02.2020 has merely stated that some financial differences are there between the complainant and respondent which will be

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sorted out soon and thereafter the registration of the Row House would be done.

The stand taken by the promoter is not supported by any documents and evidences and therefore does not have any legal force. About 7 years has elapsed from the date of entering into agreement of sale and more than 8 years has elapsed from the date of initial payment of Rs.10,50,000/- by the complainant to the promoter of the project. According to the complainant the project promoter has received the full payment towards the cost of the Row House by October 2016 itself and the promoter has also accepted the payments towards the cost of Registration and Stamp Duty. The complainant is clearly entitled to all the reliefs he has sought for in his complaint. Accordingly the promoter of the project is hereby directed to comply with the following directions in the case of Shri Sunil Sarat P bearing complaint number CMP/181206/000172.

ORDER

**Shri Sunil Sarat P bearing complaint number
CMP/181206/000172**

1. Complete all the pending works, provide the requisite amenities so as to make the Row House fit for occupation and living, within a period of 90 days.
2. Register the property in the name of the complainant within 60 days.
3. As regards the issue of compensation, this case along with the other cases of the complainants filed against this project promoter are hereby ordered to be transferred to the Adjudicating Officer for a priority hearing, keeping in view the dates of original complaints.
4. As regards the balance complaints, after taking cognizance of the Joint Memo filed by the parties, the following order is issued:

i. Registration of the project

The developer / respondent of the project "Shivani Sunshine" is hereby directed to register the said project within 30 days

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

from the date of receipt of this Order. Penalty proceedings under Section 59(1) of the Act are hereby initiated.

ii. Completion of the Balance Pending Work and providing amenities:

The complainants and the promoter-developer are hereby directed to abide by the terms as mentioned in their Joint Memo dated 21-01-2020. In case there is a failure on the part of the promoter-developer to complete the pending balance work and providing the requisite amenities within a period of 90 days from the date of receipt of the order, the complainants are at liberty to approach this Authority for appropriate relief.

iii. Providing compensation:

As regards issue of compensation payable by the developer-promoter to the complainant allottee is concerned, the office is hereby directed to transfer all the original complaints to the Adjudicating Officer so as to accord appropriate priority to the complaints by taking into account the dates of filing of the said complaints before the Authority.

Vishnuvardhan 5/6/2020
(D. Vishnuvardhana Reddy)
Member -1
KRERA

Adoni Syed Saleem
(Adoni Syed Saleem)
Member-2
KRERA

M.R Kamble
(M.R Kamble)
Chairman
KRERA