

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 6th of November 2020

| | |
|---------------------|---|
| Complainants | <p>CMP/UR/190622/0003362 1. Pankaj Kumar Jaiswal G/08/03,</p> <p>CMP/UR/190719/0003639 2. Asinkumar Jhunjhunwala E-10/12,</p> <p>CMP/UR/190719/0003646 3. Manoj Kumar Modi C/8/11,</p> <p>CMP/UR/190730/0003770 4. Subhranshu Rath Flat No.E805,</p> <p>CMP/UR/190804/0003812 5. Ajay Kumar Bhotika C-1303,</p> <p>CMP/UR/190826/0003872 6. Ganesh Shastri, B-1306,</p> <p>CMP/UR/190724/0003681 7. Ragavan Srinivasa, No.B-312,</p> <p>CMP/UR/190801/0003788 8. V.Hari Hara Subramanyam, E-10/09,</p> <p>Above all complainant residing at Platinum City, HMT Road, Tumkur Road, Yeshwanthpur, Bangalore-560022.</p> |
| Respondent | <p>PLATINUM CITY Ziaulla sheriff, M/s. Sheriff Constructions, No.73/1, Sheriff Centre, 5th Floor, St. Mark's Road, Bangalore – 560001.</p> |

W. Shivaram

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FACTS OF THE CASE:

These online complaints have been filed against the project "Platinum City". These complaints are filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016. The promoter of this project is Ziaulla Sheriff, M/s. Sheriff Constructions, No.73/1, Sheriff Centre, 5th Floor, St. Mark's Road, Bangalore - 560001. Following are the contentions in brief of the complainants.

The Contents of all these complaints is with regard failure to provide the following items:

- a) After the completion of the building the promoter was duty bound to obtain a permanent BESCOM connection, however the homebuyers till now are dependent upon the temporary connections provided by the promoter. The cost of usage of electricity is higher as compared to that of a permanent connection. There is no transformer and electrical installations as approved by the Chief Electrical Inspectorate.
- b) No official connection has been taken from BWSSB. Water is being supplied to the premises from bore wells through tankers. Illegal sewerage connection has been taken and may be disconnected any time by the BWSSB Authorities.
- c) The Respondent was required to provide EPABX connection and intercom facility as promised, which has not been done.
- d) The Apartment Owners Association has neither been formed nor registered. A few individuals with an ulterior motive and with the support of the promoter have formed a society. It is the duty of the respondent to form a registered association and handover the maintenance corpus to it. But the promoter is demanding maintenance charges and has not handed over the project nor has completed the same.

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- e) No handing over of the common areas has been made in favour of the Association.
- f) No Occupancy Certificate has been obtained which is the statutory duty of the respondent.
- g) Filing of complaints under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is independent of the arbitration clause available in the sale agreement.
- h) The project is not registered under the provisions of the Real Estate (Regulation and Development) Act, 2016.

Reliefs sought:

- a) Direction to the respondents to complete the project 'Platinum City' in all respects, as per the agreement, and obtain Completion Certificate as per law;
- b) Direction to the respondents to obtain Occupancy Certificate from BBMP or such other authorities as prescribed.
- c) Direction to the respondents to get regular BESCO Electricity Connection to the Apartment;
- d) Direction to the respondents to reimburse the electricity charges paid by the complainants till the Occupancy Certificate is obtained;
- e) Direction to the respondents to provide regular Water Supply and Sewerage connections from the BWSSB;
- f) Direction to the respondents to form the Association under the Karnataka Apartment Ownership Act of the occupants, and permit them to maintain the building as per the bye laws of the Association;

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- g) Direction to the respondents to transfer Rs.29 crores collected from the complainants towards maintenance along with interest;
- h) Direction to the respondents to refund the money collected by third parties in the name of respondents for maintenance and initiate action against the respondents for permitting third parties;
- i) Direction to the respondents to provide free membership to the complainants to various amenities viz., Club House, Swimming Pool, gym and other facilities;
- j) Directions to the respondent for the removal of encroachments on the terrace areas of the building, since such encroachments are legally not permissible.
- k) Direction to the respondents for providing EPABX and intercom as per the terms of the agreements of sale.
- l) Directions to earmark car parking space to facilitate the allottees to identify the car parking space for the exclusive use of each apartment.
- m) Direction to the respondents to pay appropriate compensation as damages;
- n) Direction to the respondents for any other relief/s as this Hon'ble Authority deems fit to grant;

The complainants have also sought for an interim order restraining the respondents from collecting money towards maintenance and to direct them to maintain the building till completion of the building and obtaining Occupancy and Completion Certificates pending disposal of the above complaint.

The Authority issued notices of hearing to both the parties. Accordingly the Authority heard the case on 9.6.2020, 23.6.2020,

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2.7.2020 and on 9.7.2020. Both the parties were present on the said hearing dates. Mr. L M Chidanandaiya, Advocate has filed vakalat on behalf of Mr. Pankaj Kumar Jaiswal, the complainant. Vaishnavi and Suhas, Advocates have filed Vakalat on behalf of the respondent.

The Respondent has submitted statement of objections on 23.7.2020 denying the averments made, the statement of objection in brief are:-

- i. The complaint is not maintainable, as the said project cannot be brought within the purview of RERA Act as it was completed before the Act came into force. Further the Hon'ble High Court in W.P.No.31982/2013 had issued a direction to respondent to submit the project plan afresh for sanction. The work was completed long back and the apartments were sold 10 years prior to the RERA Act coming into force. The complainants purchased individual apartments and are seeking some reliefs contrary to covenants in the sale deed. Respondent has been maintaining the building at his cost and also the amount contributed by the complainants got exhausted long ago. As such, the complaint is frivolous and without jurisdiction.
- ii. RERA Act was enacted by Act No.16/2016. Section 3 speaks about registration. The proviso to Section 3 mandates that the ongoing projects on the date of commencement of the Act and for which completion certificate was issued, the promoter is obliged to make application to the Authority for registration of the said project within 3 months from the commencement of the Act. The project in question does not require registration as per Section 3 of the Act, as the project was completed and cannot be treated as ongoing project.
- iii. Contractual obligation of the purchaser was to pay maintenance charges, which amount was used for maintenance and as such the said funds are exhausted. Complainants had consented to pay additional sum for the maintenance.

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- iv. The respondent states that till the formation of Association, the Respondent was required to maintain the common areas of the Scheduled property and upon formation of a registered Association of Platinum City Residents, wherein 90% residents are members of the said Forum. Complainants are supposed to become members and accordingly pay the maintenance charges to the said association.
- v. The respondents states that there is an Arbitration Clause in agreement to sell. Before approaching this Authority, as such this Authority does not have jurisdiction entertain the complaint.
- vi. Section 31 enables the aggrieved persons to file complaint for any violation of the Act. Section 37 confers powers on the authority to issue such directions to promoters or allottees, as it may deem fit. In this complaint, the complainants sought for a direction for completion of building, obtain amenities, occupancy rights, formation of association, transfer of funds collected for maintenance etc. As per terms of agreement, the complainants should have approached for arbitration. The provisions of the Real Estate (Regulation and Development) Act, 2016 has no application to the project. Hence the complaints are liable to be dismissed as not maintainable.

After verification of the records placed before the authority and oral submissions made by both the parties, the following issues come up for consideration:

Issue No. 1:- Whether the complaints filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 are maintainable.

Issue No. 2:- Whether the project was "ongoing" as on the date on which Section 3 of the Real Estate (Regulation and Development) Act,







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2016 came into force. If so, whether the project requires registration under the respective provisions of the Act.

Issue No. 3:- Whether association of allottees as required under Real Estate (Regulation and Development) Act, 2016 has been formed.

Issue No. 4:- Whether the basic amenities as promised have been provided by the promoter.

Issue No. 5:- If not, what order.

Our considered view on the above issues is as follows:-

Issue No. 1:- Yes, the complaints are maintainable.

Issue No. 2:- Yes, the project was "ongoing" on the date of enforcement of the Act and hence requires registration.

Issue No. 3:- No. The Association of allottees as required under the Act is not formed.

Issue No. 4:- No.

Issue No. 5:- As per the detailed order.

These complaints have been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016. A contention has been raised by the respondent that the complaints are not maintainable for the reason that the project was completed well before the said Act has come into force. The second ground which the respondent has taken against maintainability is the availability of an Arbitration clause in the agreement to sell. Both these grounds are not tenable.

The very fact that till date regular water supply connection from the BWSSB and the regular BESCOM connection has not been obtained and the occupancy certificate as required under the building byelaws of the Municipal Corporation are sufficient to prove that the building was not completed as on 01.05.2017 on the Act came into force.







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Clause 9 of the agreement to sell entered into between the complainants and the respondents reads as under:-

"That in the event of any dispute, question or doubt were to arise between the parties regarding the construction, interpretation of this agreement or regarding the matters specified herein above, then every such dispute, question or interpretation or doubt shall be referred to a sole Arbitrator appointed under mutual consent of the parties and the proceedings shall be conducted as per the provisions of Indian Arbitration and conciliation Act, 1996 amended and Rules framed there under and as amended up to date"

Section 31(1) of the Real Estate (Regulation and Development) Act, 2016 reads as under:-

"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 thereunder against any promoter, allottee or the Real Estate Agent as the case may be.

Explanation:- for the purpose of this Sub-Section "Person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

The facility of filing a complaint under the said Act is available to the complainant notwithstanding the provision of invoking Arbitration clause in the sale agreement. The stipulation in a bi-lateral agreement cannot snatch away the rights conferred on a person under a statutory enactment. Hence all the complaints are maintainable.

Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 reads as under:-

"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







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any planning area, without registering the real estate project with the real estate regulatory authority established under this 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 the Act;”

Section 3 of the said Act has come into force with effect from 01.05.2017 and the last date for registration of the project expires on 31.07.2017.

The project was not completed in all respect as on the date of the commencement of the Act. On the basis of the materials on record there is a prima facie case that the project was required to be registered with the Authority, since all the internal and external development works, including regular electricity supply by BESCO, water supply and sewerage connections, club house, swimming pool, gymnasium and such other amenities as per the sale agreement were not completed and occupancy certificate the project was not obtained as on the date of the commencement of the Act.

The promoter/ respondent has not produced any evidence to show that he had completed the project and obtained completion certificate within the due date.

Exemptions to the above requirement of registration of the projects are provided under Rule 4 of the Real Estate (Regulation and Development) Rules, 2017. Rule 4 (i) to (v) provides for different situations where exemptions from registration can be granted. The promoter respondent has not produced evidence to claim exemption under the above said Rule.

Hence the project has to be declared as “ongoing” as on 01.05.2017 and had to be compulsorily registered under the provisions







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of Section 3 read with Section 4 of the Real Estate (Regulation and Development) Act, 2016.

Though the respondent has claimed that there is an association of the homebuyers existing in the project, he has failed to produce any certificate of registration of the association issued by a competent Authority. Section 11(4)(e) of the Real Estate (Regulation and Development) Act, 2016 reads as under:-

“The promoter shall 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.”

Further Section 4(f) of the Real Estate (Regulation and Development) Act, 2016 reads as under:-

“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 the Act.

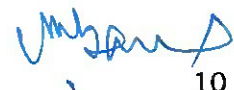
It is also the responsibility of the promoter to pay all the outgoing till common areas etc., or registered in favour of the homebuyers association.

The respondent has failed to perform his part of obligation as stipulated under the provisions of the Act.

The claim of the complainants that a few homebuyers are operating as an association of the project at the behest of the promoter appears to be prima facie true.







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Though the complainants have repeatedly made a claim that regular water supply, sewerage connections are not provided, the respondent has not disproved this contention by submitting documents evidencing the existence of these facilities in the project.

Further a contention has been taken by the complainants that occupancy certificate has not so far been obtained and that khata of the property still is categorized as "B-Khata", the promoter respondent has not produced a copy of either the occupancy certificate or the "A-Khata" certificate issued by the Competent Authority.

Since the association of homebuyers has not been formed and registered under an enactment, the promoter respondent is bound to accept the responsibility of providing accounts of the maintenance charges collected from the homebuyers.

In view of the above, following order is passed.

ORDER

All the complaints filed against the project "Platinum City" are hereby held to be maintainable and allowed under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

In exercise of the powers conferred under Section 37 of the Real Estate (Regulation and Development) Act, 2016,

- (a) The respondent promoter is hereby directed to register the project with the Authority within sixty days, in accordance with the provisions of Section 3 and 4 of the Act, since the project was not completed in all respects as on the date of the commencement of the Act.
- (b) Since the application for registration was not filed in time by the respondent, penalty proceedings under Section 59(1) of the Act are

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hereby initiated and promoter of the project is hereby directed to offer an explanation within sixty days from the date of receipt of this order.

In case of failure on the part of the respondent promoter to register the project and offer explanation for non registration, further proceedings under Section 59(1) of the Act would be continued and finalized as per the provisions of the Act.

- (c) A direction is issued to the promoter to provide the basic facilities like regular BWSSB and BESCOM connections, which are required for the project to be self reliant.
- (d) To obtain "A-Khata" for the property and also to obtain occupancy certificate and provide copies of the same to all the homebuyers.
- (e) To immediately take necessary action to form an Association of homebuyers and get it registered under the provisions of the relevant Act, and to execute a deed of conveyance in favour of the Association for the common areas and further to transfer the maintenance funds available. The promoter is further directed to handover the project documents on sanctioned plan etc., as required under the Real Estate (Regulation and Development) Act, 2016, to the association of homebuyers.
- (f) The promoter respondent is hereby directed to remove the encroachments on the terrace areas of the building, which are a part of the common areas / common terraces. This direction is given in accordance with the definition of common areas as per Section 2(n) of the Act.

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- (g) The promoter respondent is hereby directed to provide EPABX and intercom as per the terms of the sale agreement.
- (h) The promoter respondent is directed to earmark car parking space to facilitate the allottees to identify the car parking space for the exclusive use of each apartment.
- (i) The respondent promoter is hereby directed to comply with the directions contained in (c) to (i) above within a period of three months from the date of receipt of this order. In case of failure to comply with the directions, the Authority would initiate penalty proceedings under Section 63 of the Act.


(D. Vishnuvardhana Reddy)
Member - 1
KRERA


(Adoni Syed Saleem)
Member-2
KRERA


(M.R Kamble)
Chairman
KRERA

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