

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 18th of November 2020

Complaint No. CMP/180531/0000876

MANISH SINGH

.....Complainant

No. 303, Block A, 3rd Floor,
Bairavi Cruz Luxor,
Challekere Main Road,
Behind Kalyan Nagar Bus Depot,
Bengaluru Urban – 560043.

AND

**BAIRAVI PROPERTIES AND
CONSTRUCTIONS PVT. LTD.,**

.....Respondent

No. 546, 10th Main, 6th A Cross,
HAL 3rd Stage,
Bengaluru Urban – 560008.

The complaint is filed against the project Bairavi Cruz Luxor situated on Challekere Main Road, Bengaluru.

The complaint in brief is as follows.

- (i) That the applicant booked a 3 bedroom apartment bearing No. 303 in Block A of the said project. An agreement to sell, agreement to build and an upgrading agreement were executed. The total consideration was Rs. 1,02,12,693/-.
- (ii) A sale deed was executed on 29/06/2015. The apartment was incomplete on the date of execution of the sale deed.

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- (iii) The complainant occupied the premises only in February 2016.
- (iv) The respondent has completely failed to provide what was promised in the brochure and the agreement.
- (v) It was promised to use granite in the common areas and entrance lobbies, as per the agreement but what has been provided is cheap tiles. The external painting is not by emulsion painting and is not weather proof. 100% power backup is not there. The respondent has provided STP of 25KLD/ Per day as against the requirement of 55KLD per day. The external elevation of elliptical brick structure not done. The squash court is not provided as promised. Agreement to sell promises uninterrupted gas flow which has not been done. Etc.,
- (vi) The apartment owners association has not been formed.

The complainant has hence requested for direction to complete the project as promised in the agreement.

The complaint was taken on record and notices issued to both the sides.

MD and T Partners, Advocates have appeared on behalf of the complainant and filed additional statements.

On behalf of the respondent promoter Sri. Rohan Kotari, Advocate has filed vakalat and they have filed written objections.

The respondent advocate has filed statement of objections on 03/05/2019. It is stated that the complaint is not maintainable and this Authority doesn't have jurisdiction to adjudicate the dispute. The provisions the Real Estate (Regulation and Development) Act, 2016 was

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not applicable and there is a dispute pending against the respondent in National Consumer Disputes Redressal Commission, New Delhi. The respondent claims that the project was not ongoing within the meaning of Rule 4 of the Karnataka Real Estate (Regulation and Development) Rules, 2017. All the development works were completed before the enforcement of the rules and seventy apartments (out of Ninety) sale deeds were registered before the Act came into force. Hence he claims that the project is exempted from the application of the Act. The Real Estate project hence is not liable for registration. The respondent further states that the complainant has to seek relief in the nature of specific performance before a proper forum.

Heard both the sides and perused the records. The following issues are required to be resolved:-

Issue No. 1) whether the complaint is maintainable.

Issue No. 2) whether the project namely Bairavi Cruz Luxor is required to be registered under Section 4 of the Real Estate (Regulation and Development) Act, 2016.

Issue No. 3) If so, What Order?

Our answers to the above are as follows:-

Issue No. 1) YES, the complaint is maintainable.

Issue No. 2) YES.

Issue No. 3) As per the order below.

The submissions of the respondent that the complainant has filed a similar complaint before the National Consumer Disputes Redressal Commission, New Delhi, cannot be accepted for the simple

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reason that one Mr. Nayasheel Kumar Ahuja and another and Mrs. Amitha Sheel Ahuja have filed consumer case number 1240/2018 before the forum. The respondent has not produced any document to show that the complainant before us has also filed a complaint before the Consumer Forum. Hence the complaint herein is maintainable.

The respondent has produced copies of the encumbrance certificates relating to sixty six apartments out of ninety apartments, which have been executed before September 2016. He has also produced the following.

- (i) BESCOM sanction vide letter dated 10/12/2013.
- (ii) Electrical safety approval for electrical installation dated 02/12/2015 of the Chief Electrical Inspector to Government.
- (iii) BWSSB approval letter dated 26/03/2014.
- (iv) Clearance certificate from fire safety department dated 11/12/2015.
- (v) Purchase order dated 01/06/2015 for the supply of hot water system for the project.
- (vi) Work order dated 12/12/2013 for rain water harvesting structure.
- (vii) Work order dated 31/07/2015 for the supply and installation of OWC Aaga water purifier system.
- (viii) Purchase order dated 11/12/2013 for supply, installation, testing and commissioning of sewage treatment plan.

Rule 4 of the Real Estate (Regulation and Development) Rules, 2017 reads as under:-

1. Upon the notification for commencement of Sub Section (i) of Section 3, promoters of all on-going project which have not

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received completion certificate shall, within the time specify in the said subsection, make an application to the regulatory authority in the form and manner as specified in Rule 3.

Explanation: - For the purpose of this Rule "on-going projects" means a project where development is going on for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of notification of these Rules, namely:-

- (i) In respect of layouts where the streets and civic amenities sites, and other services have been handed over to the local authority and planning authority for maintenance.
- (ii) In respect of apartments where common areas and facilities have been handed over to the registered association consisting of majority of allottees.
- (iii) Where all development works have been completed as per the Act and certified by the competent agencies sale / lease deeds of 60% of the apartments / houses / plots have been registered and executed.
- (iv) 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
- (v) Where partial occupancy certificate is obtained to be extent of the portion for which the partial occupancy certificate is obtained.

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The respondent in this case is claiming exemption from registration of his project taking shelter under Rule 4 (iii) of the above said Rules.

In order to avail exemption as per Rule 4 (iii) following requirements are to be fulfilled.

- (a) Where all development works have been completed as per the Act and
- (b) Such completion should be certified by the competent agency and
- (c) Sale / lease deeds of 60% of the apartments / houses / plots have been registered and executed.

It is true that the respondent has produced encumbrance certificates for having registered the sale deeds in favour of the home buyers before the designated date of coming into force of the Real Estate (Regulation and Development) Act, 2016 and the Rules, 2017.

As per the requirement (b) above the development of all the works should have been certified by a competent Agency.

Section 2 (p) of the Real Estate (Regulation and Development) Act, 2016 defines competent authority as "means the local authority or any authority created or established under any law for the time being in force by the appropriate government which exercises Authority over land under its jurisdiction, and has powers to give permission for development of such immovable property".

The respondent has obviously not produced any certificate for having completed all the development works from a competent authority. The fact that he has not completed all the development

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works as promised under the sale agreement / broacher as alleged by the complainant reinforces the fact that many development works are yet to be completed.

Considering all the above factors, following order is passed.

ORDER

The complaint bearing No. CMP/180531/0000876 is hereby allowed under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

The respondent is hereby directed to

- (i) Get his project Bairavi Cruz Luxor, registered under Section 4 of the Real Estate (Regulation and Development) Act, 2016 within a period of 60 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. On the basis of the materials on record there is a prima facie that the project were required to be registered with the Authority, since all the internal and external development works were not completed and occupancy certificate were not obtained prior to the commencement of the Act.
- (ii) In view of the above, penalty proceedings under Section 59(1) of the Act are hereby initiated at the promoter of the project is hereby directed to offer in 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

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proceedings under Section 59(1) of the Act would be continued and finalized as per the provisions of the Act.

- (iii) The respondent is hereby directed to complete the project as per the agreements entered with the complainant, within a period of 3 months from the date of receipt of this order.
- (iv) To obtain completion certificate / occupancy certificate and provide copies of the same to the homebuyers.
- (v) To facilitate formation of the homebuyers association.


(D. Vishnuvardhana Reddy)
Member - 1
KRERA


(Adoni Syed Saleem)
Member - 2
KRERA


(M.R. Kamble)
Chairman
KRERA