

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 16th of DECEMBER 2020

Case No.	CMP/UR/190701/0003209
Applicant	Owners & Purchasers of Zuari Garden City Association, No.31, Srinivas Apartments, # 102, 6th Cross, Malleswaram, Bangalore-560003. Mob: 9108968276 fmagc@adventzinfra.com
Promoter / Respondent	Zuari Infracore India Limited, (Formerly known as Adventz Infracore India Ltd) Regd. Office: "ADVENTZ CENTRE" 1st Floor, NO.28 Union Street, Cubbon Road, Bengaluru-560001 Tel: 080-49066900

FACTS OF THE CASE:

An online complaint has been lodged by the homebuyers association against the respondent promoter on 01.07.2019 with respect to Zuari Garden City Phase-1 project. This is an Association of town houses, luxury villas and grand villas.

The complaint in brief is as under:-

- (i) As could be seen from the website of this Authority the Respondent has registered Phases 2 and 3 of their projects with RERA without registering Zuari Garden City Phase-1 project. since the project was not complete on the date of enforcement of the Section 3 and 4 of the Act, the project required registration. For non registration of the project a penalty has to be levied.
- (ii) The Respondent has failed to hand over possession of the houses to the purchasers in time in violation of Clause 3.2 of the Construction Agreements.
- (iii) Contrary to the promises contained in its brochures, emails, agreements to sell and construction agreements the Respondent not only failed to include the common facilities and amenities promised by it in the sanctioned plan for



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which it sought approval from Mysore Urban Development Authority. With the exception of a small swimming pool and recreation centre it has together failed to provide the same to the purchasers.

- (iv) On 19.01.2018 the Respondent started sending backdated emails to members of the complainant followed by the Memorandum dated 23.01.2019 which on the basis of false statements as to having completed all construction work began justifying the demands for unreasonable maintenance charges without providing the common amenities and maintenance services. However as is evident from its reply dated 04.02.2019 the Respondent has been evasive and callous to the issues raised by the Purchasers.
- (v) The Respondent though legally obligated to provide free maintenance services pending the completion of construction work has failed to provide the same and instead started threatening purchasers with coercive recovery action without having fulfilled its obligations going so far as to adjust the deposits collected from purchasers towards maintenance charges from the month of May 2017.
- (vi) Having collected Rs. 150000/- from the Purchasers towards one time club membership fee the Respondent has failed to even complete the 3000 square feet club house promised by it. Even now the Respondent is sending emails along with invoices to purchasers of houses every month demanding maintenance charges illegally. Respondent is therefore liable to refund deposit amounts illegally adjusted by it towards maintenance charges to members.

In view of the above grievances, the complainants have requested this Authority to grant the following reliefs.

Direct the respondent to pay to each owner/ purchaser of the Town House, Luxury Villa and Grand Villa in ZGC-1 interest @ 10.25



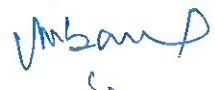
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per annum on the amount paid by him/her including the club membership fees and maintenance deposit for every month of delay till it provides all the promised common facilities and amenities in the ZGC-1/ Project.

- (i) Direct the Respondent to pay the homebuyers a sum of Rs.10,00,000/- (Rupees ten lakh only) each for having failed to discharge its obligations under the Agreements to sell and construction Agreements entered into by it with them.
- (ii) Direct the Respondent to refund to each of each owner / purchaser of the Town House, Luxury Villa and Grand Villa in ZGC-1 the deposit amounts illegally adjusted by it towards maintenance charges or in the alternative direct it to transfer same to the Association of Owners of houses to be formed by it for the maintenance of the project.
- (iii) Direct the Respondent to provide all the agreed common facilities and amenities listed in the above complaint listed in the above complaint without further delay.
- (iv) Direct the Respondent to continue to provide water, electricity and other amenities now being provided in the layout to all the Town Houses and Luxury and Grand Villas and maintain the Layout without demanding any charges from any person till it provides all the promised common facilities and amenities in the layout and hand over management of the same to the Association of House owners.
- (v) Levy penalty on the Respondent for not having registered Zuari Garden City Phase-1 project under the provisions of Real Estate (Regulation & Development) Act, 2016.
- (vi) Grant such other relief as deemed just and necessary in the facts and circumstances of the case including cost of the complaint, in the interest of equity and justice.



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The complainant has also sought the following interim relief.

Direct the Respondent to continue to provide water, electricity and other amenities now being provided in the Z layout to all the Town Houses and Luxury and Grant Villas and maintain the layout without demanding any charges from any person, pending deposit of the Complaint.

Along with the written complaint, various documents have been annexed from Annexure-A to Annexure-Q viz., Registration Certificate, BR, List of members, Agreement, Construction Agreement, Brochure, Partial Completion Certificate, Email dated 17.3.2012, MUDA plan of 2012, MUDA plan, Memorandum, Email dated 31.1.2019, Reply dated 4.2.2019, MOM, Email 7.5.2019, invoice and detailed complaint.

Authority heard the matter on 4/12/2019, 19/12/2019, 10/1/2020, 29/1/2020, 13/2/2020, 27/2/2020, 18/3/2020 and 2/7/2020 Advocate for complainant produced additional documents on 04/12/2019 vide Annexure-F and I i.e. brochure of respondent and plan sanction by MUDA-2012, along with a memo for having sent the email dated 29.11.2019, RPAD receipt towards service on 26.11.2019.

Respondent sent a letter praying for dismissal of the above complaint, as they are not aware of the above complaint and not received a copy of the same. Further, the project in question i.e. Zuari Garden City Phase-1 project was completed in all respect prior to the enforcement of RERA Act and Rules.

Vakalath has been filed by the Respondent's counsel on 4/12/2019.

Statement of Objections has been filed by the Respondent through its counsel on 10.01.2020 denying the averments made in the complaint and sought for dismissal of the complaint with exemplary costs.

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Respondent's counsel has produced documents on 13.2.2020 viz., Warranty Certificate, Photographs of Swimming Pool, Prize Certificate issued by Horticulture Department, Sanction letter dated 8.4.2014 issued by CHESCOM, letter issued by Kaveri Neeravari Nigama Limited and states that the complaints have made false claims by misusing the provisions of the Act in order to make unlawful gains. Respondent's counsel filed the memo on 26.2.2020 annexing the photographs of the project of Zuari Garden City Phase-1 evidencing its completion.

An affidavit has been sworn by the authorized representative of Respondent on 27.2.2020 and has stated that members of the Complainant Association have individually entered into separate Sale and Construction Agreements with the Respondent at different periods to purchase and undivided share in the Zuari Garden City Phase-1 and to construct their respective units in the project and including all infrastructure such as Roads, Electricity, Water, Sewage, operational STP, organic converter, landscaping, garden and play area etc amenities provided as agreed in the agreement for sale and construction.

This project was completed prior to KRERA Act and Rules coming into force. Further application has been filed by the Respondent's counsel U/S.35 of RERA Act 2016 and 151 of CPC, for appointment of a commissioner to visit the Zuari Garden City Phase-1 project and to take inventory of amenities provided by it.

Statement of Objections filed on 10.3.2020 by the Complainant to the above IA filed by the Respondent U/S.35 of the RERA Act and Sec.151 of CPC and made various contentions and sought for dismissal of the above application. Also filed the memo and produced Annexure-R to Annexure-W (5 documents).

Respondent's counsel also filed 5 documents on 10.03.2020 in support of their case i.e. Master Development Plan, Sanction plan for

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Phase-2 and Phase-1, RERA Registration Certificate w.r.t. Phase-3 and Phase-2.

Email notice of hearing has been sent 26.6.2020 and calling upon the parties to attend the hearing through Skype Video Call on 2.7.2020 at 2.00 p.m. along with supporting documents, if any.

Case called on 02.07.2020 for final hearing, complainant appeared through Skype and Respondent was absent. Since Sufficient opportunities were given to both parties to present their case, the case was posted for orders after final hearing.

Issues arising out of the case:

- a) Whether registration of the project is required?
- b) Whether the respondent promoter was within his rights to collect maintenance charges as per the sale agreement?
- c) Whether the homebuyers are entitled to compensation in view of the delayed handing over of the possession.

Reply for the issues are as under:

- a) Yes. Registration of Zuari Garden City Phase-1 project is required under the provisions of the Real Estate (Regulation and Development) Act, 2016.
- b) Till the common areas are handed over to the association of homebuyers it is the responsibility of the promoter to maintain the same till the transfer of the common areas and the undivided share to the association.
- c) With respect to compensation and interest, the Adjudicating officer will have to conduct separate proceedings and pass orders.

Though the promoter had applied for occupation certificate, the completion report from Mysore Urban Development Authority was issued only on 20.09.2017 and it has been mentioned in the completion report that the completion report in full will be given after the promoter

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approach MUDA in executing the entire project as per approved plan. It means that partial occupancy certificate was issued.

As per Section 3 of the Real Estate (Regulation and Development) Act, 2016, as on the date of commencement of the Act, all projects which are not completed require compulsory registrations. As could be seen from the records all the civic amenities necessary for making the project habitable were not available as on the date of the commencement of the Act. It is seen from the records that the water supply facilities was sanctioned on 20.2.2020, electricity connection was applied on 19.10.2017 and got electrification later on 20.2.2020 by CHESCOM and pollution control board clearance came after the provisions of the RERA Act.

There is a mention in construction agreement at clause-7.1 that a club house will be provided for which purchaser shall pay a non refundable charge of Rs.150,000/- towards club membership charges for the purpose of utilizing the facilities available at the club house which will be valid for the period of 15 years and thereafter the allottee at his action may renew the membership upon the payment of such additional charges as may be applicable at relevant time. There is no mention of specifications for the club house to be constructed.

As per construction agreement entered between Advenze Infra World India Limited and the purchaser at clause-5.1, the purchaser undertakes to become a member of the owner's maintenance entity. The Developer or his nominee will maintain the scheduled property till the formation of owner's maintenance entity. After handing over the scheduled property it is the responsibility of owner's maintenance entity.

In view of the aforesaid discussion, the following order is passed.

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ORDER

In exercise of power conferred under section 37 of the RERA Act, 2016 the promoter is hereby directed to.

- (i) Get the project Esari Garden City Phase-1 project registered within a period of sixty days under Section 3 read with Section 4 of the Real Estate (Regulation and Development) Act, 2016.
- (ii) A penalty proceedings for not registering the project under the provisions of the Act shall be initiated against the promoter.
- (iii) To immediately take steps to form a homebuyers association and handover the common areas and the undivided share of the land in favour of the said association.
- (iv) To convene a meeting of the homebuyers and provide an account of the money collected towards maintenance and to refund wherever necessary. And to handover the maintenance of the project to the association of homebuyers.
- (v) The homebuyers are directed to file separate complaints, if any before the Adjudicating officer of this Authority seeking individual compensation interest etc., for delayed possession.


(Adoni Syed Saleem)
Member - 2
KRERA

NOT SIGNED
(D. Vishnuvardhana Reddy)
Member-1
KRERA


(M.R. Kamble)
Chairman
KRERA

However Member-1, is of the under mentioned opinion.

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Zuari Garden City Phase-1

ORDER

- (i) No change
- (ii) Since the materials available on record indicate that the project was not complete in all respects and all the requisite amenities were also not completed as on the date of the commencement of the Act, the promoter of the project ought to have registered the project as an ongoing project in accordance with the first proviso to Sec.3(1) of the Act. In view of this, penalty proceedings u/s.59(1) of the Act are hereby initiated with this order.
- (iii), (iv) and (v) No change.

Note: I am of the view that the directions, by exercise of the powers vested with the Authority u/s.37 of the Act, shall not be issued in specific cases of complaints. Such directions can be issued only in respect of clause of promoters or allottees or real estate agents and hence the reference to Sec.37 is deleted.


Member-1

We do not agree to the above said opinion of Member-1, for the following reasons.

1. In order to bring finality to the complaint filed, it is deemed necessary that the issues with respect to the complaints have to be resolved in the final order. Therefore separate proceedings have to be initiated for the levy of penalty.





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2. Section 37 of the Real Estate (Regulation and Development) Act, 2016, reads as under:-

"The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned."

A bare reading of the provision is sufficed to infer that the powers under Section 37 can also be invoked while disposing of the complaints. Therefore by majority of the members of the Authority, following order is passed.

ORDER

In exercise of power conferred under section 37 of the RERA Act, 2016 the promoter is hereby directed to:


- (vi) Get the project Zuari Garden City Phase-1 project registered within a period of sixty days under Section 3 read with Section 4 of the Real Estate (Regulation and Development) Act, 2016.
- (vii) A penalty proceedings for not registering the project under the provisions of the Act shall be initiated against the promoter.
- (viii) To immediately take steps to form a homebuyers association and handover the common areas and the undivided share of the land in favour of the said association.
- (ix) To convene a meeting of the homebuyers and provide an account of the money collected towards maintenance and to refund wherever necessary. And to handover the maintenance of the project to the association of homebuyers.


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- (x) The homebuyers are directed to file separate complaints, if any before the Adjudicating officer of this Authority seeking individual compensation interest etc., for delayed possession.


(Adoni Syed Saleem)
Member 2
K-RERA


(M.R. Kamble)
Chairman
K-RERA

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