

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-4

Dated 27th September 2022

Present

Shri. H.C. Kishore Chandra, Chairman

COMPLAINT NO: CMP/220801/0009832

Complainant...

Mrs. Vanishree Krishnamoorthy
Flat No-1401, Sai Avenue,
Navghar Road, Mulund (East),
Mumbai - 400081

V/S

Respondents...

- 1. Vivansaa Baalsam,**
through its partners
Mr. Vijay Omprakash Agarwal,
registered office: No-88, First Floor,
17th Cross, 14th Main, IV Sector, HSR
Layout, Bangalore-560034
- 2. Vijay Omprakash Agarwal,**
Partner VivansaaBaalsam,
registered office:
No-88, First Floor,
17th Cross, 14th Main, IV Sector,
HSR Layout,
Bangalore-560034
- 3. Mr. Swwapnil,**
Partner VivansaaBaalsam,
registered office:
No-88, First Floor,
17th Cross, 14th Main, IV Sector,
HSR Layout,
Bangalore-560034

6/3/8

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4. M/s. Indiabulls Finance Limited

"4th Floor, Tower I,
Elphinstone Road,
Mumbai-400013,

**5. CFM Asset Reconstruction
Private Ltd.**

Having its registered Office at:
A/3, 5th Floor, Safal Profitaire,
Near Prahlad Nagar Garden,
Ahmadabad,
Gujrat - 380015

Having its Corporate office at:
1st Floor, Wakefield House,
Sprott Road, Ballard Estate,
Fort, Mumbai - 400038

6. Smt .U. Anitha Reddy,

Wife of Shri U. Yeshwardhan Reddy,
Aged about 44 years,
R/o H.No -T-401,
Red wood Apartments,
Haralur Road, Off Sarjapura Road,
Bangalore-560102

7. Smt M. Pallavi Reddy

w/o Shri M. Rajenda Reddy,
Aged about 42 years,
R/o- H.No - T-406, Red wood
Apartments,
Haralur Road, Off Sarjapura Road,
Bangalore-560102

8. Smt Suma B N

w/o Shri R Venkatesh,
aged about 44 years,
R/o H.No -356, 3rd Cross, BEML
Layout, Tubarahalli, White Field
Post, Bangalore-560066

1/29

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INTERIM ORDER

1. This complaint is filed under section 31 of the RERA Act, against the project **'Vivansaa Baalsam'** developed by **'Vivansaa Baalsam'** in the limits of Sy.No: 82, Medahalli Village, Sarjapura, Hobali Division Anekal, Bengaluru.
2. This project has been registered under RERA bearing registration no. PRM/KA/RERA/1251/308/PR/ 180329/001820.
3. The gist of the complaint filed by the complainant is as under:
4. It is submitted that the complainant is an NRI residing in Sharjah. Her husband Late Anantharaman Krishnamoorthy was working for 35 years in Sharjah, U.A.E Dubai. The Complainant's husband was approached by the Respondent no 2 and 3, being the representatives of Respondent no. 1 along with the representatives of Respondent no. 4 and entered into an agreement of sale during January 2016 towards the purchase of Row House in the project of the respondent under the 'Builder Subvention Facilities' promising payment of Pre- EMI by the respondent /promoter till the possession of the flat. The purchaser has paid initial payment of Rs.12,84,558/- out of the total sale consideration Rs.1,02,45,300/-.
5. It is submitted that the representatives of the lender the Respondent No. 4 herein, regularly accompanied the employees and the partners of Respondent No. 1. The promoters accompanied by the lender marketed the project claiming that the lender has approved the project after verification of the title documents relating to the schedule property, the credit worthiness of the project and credibility of the promoters.



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6. It is very pertinent to note that the lender pushed the sales of the flat units in the project particularly under subvention scheme because under the scheme the lender made huge financial gains. The purchasers was not aware nor did the lender or the promoter disclosed that the loan disbursement was made to the promoter after deducting the Pre-EMI in lump sum and also without following the specific terms of the agreement with respect to payment against achieving promised completion milestones.
7. It is submitted that in the instant case the lender has disbursed Rs. 77,07,346/- against the total sanctioned amount of Rs.94,50,000/-. The disbursement made by the lender is in direct violation of the RERA regulations.
8. The purchaser, late Anantharaman Krishnamoorthy was diagnosed with stomach cancer during August 2020 and he died on 25.11.2021 due to multiple organ failure. The unfortunate widow of the purchaser the complaint herein was unaware of any of these activities happening in respect to the property or the recovery initiated by the lender. The lenders abandoned sarfaesi act proceedings which was initiated by the respondent No. 4 vide Notice under Section 13(2) as they are fully aware that the row house bearing E 1 for which the loan has been disbursed does not exist. The respondent No. 4 vide assignment deed dated 06.03.2020 assigned the loan bearing no. HHLDUB00259465 to Respondent No. 5. The recovery agents of the lenders taking advantage of the distress situation in the purchaser family approached the innocent widow under the guise of helping her and collected details of her children and the residence situated at Mulund in Mumbai. The Respondent No. 5 suppressing the material facts has approached the Debt Recovery



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Tribunal Delhi (DRT-2) by filing original application- OA 480 of 2021 seeking coercive reliefs and interim reliefs. Hence this complaint.

9. After registration of the complaint, in pursuance of notice served on 26.9.2022, the respondent abstained before this Authority
10. In support of the claim, the complainant has furnished the following documents such as (a) copy of agreement of sale (b) copy of the tripartite agreement (c) copies of letter of undertaking by the respondent (d) copy of the death certificate of the purchaser (e) copy of the loan sanctioned letter (f) details of bank transactions towards loan (g) copy of notice issued by respondent-4 under section 13(2) of the sarfaesi Act and (h) copies of the documents in OA No: 480/2021.
11. On perusal of the document produced by the complainant it shows that the agreement to sale, the tripartite agreement and the loan sanction is made during January 2016 and an amount of Rs. 77,07,346/- has been disbursed from the sanctioned amount of Rs. 94,50,000/- on 29.02.2016 itself. The Respondent financial institution admittedly has ignored the payments slab for sale agreement and has disbursed amount putting the Purchaser at a risk. The Respondent Financial institution has acted irresponsible and cannot be absolved from its responsibility to be diligent and ensure that the borrower shall not be exposed risk.
12. Hon'ble High Court of Karnataka while considering the similar facts in W.P. No. 17696/2021(GM-RES) and connected matters has made the following observations: Facts in brief contained in W.P. No. 17696/2021(GM-RES) and connected matters filed by the petitioners before the Hon'ble High Court of Karnataka are hereunder:
"All these petitions broadly having common questions of law and facts inter alia seek to lay a challenge the coercive recovery measures of housing loans by the respondent.

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All the petitioners had booked their apartment units with the respondent - developer i.e. M/s Mantri Developers Private Limited, in terms of "Pre-EMI Scheme" i.e. pre-sanctioned loans vide tripartite loan agreements entered into by and between petitioners, developer & the PNBHFL. Not being happy with the pace of construction, they withdrew their bookings with intimation to PNBHFL and the same came to be endorsed by the developer. However, in terms of arrangement, the PNBHFL had disbursed the loan amount directly to the developer allegedly without ascertaining the stages of construction, through the extant RBI circulars mandate such ascertainment. Petitioners too had made certain payments to the developer towards their contribution which included the remittance of "margin monies". Despite withdrawal from the project, they did not get their monies back from the developer and therefore had complained to RERA under section 31 of the Real Estate (Regulation and Development) Act, 2016.

13. The Hon'ble High Court of Karnataka in para-4(g) has made the following observations about the bank which has advanced the loan to the petitioners and the same is relevant in this case. The observations is extracted below:
- g) This court hastens to add that the constitutional mandate for fairness in the acts of instrumentalities of 'State' under Article 12, respondent PNBHFL answering this description, will fail, if they are not animated by the elements of justice & fair play. What Professor Upendra Baxi writes referring to John Rawl's 'Theory of Justice' in treating the singularity of justice & fairness, is worth quoting

"I do not, naturally mean that fairness and justice are magic wands or that conscientious justices will entertain any one single or univocal conception of it... But what I am urging is an approach under which courts will not ask: "How do we balance the need for administrative efficiency with fairness to the individuals affected?" Rather, they will ask: "Is the action fair? If it is, is it not by the same token efficient? If not, must we foster a conception of efficiency which generates incidence of unfairness?" Only when justice or fairness is seen to be an integral aspect of the value of efficiency (or vice versa) will we have a bureaucratic culture more responsive to citizen's rights

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and status. Only when this happens will small man gain when the big fight forensic battles"

(h) The contention of Mr. Holla that the petitioners have suppressed the fact that it is on their instruction the sanctioned loan has been released to the Developer and therefore they are liable to be non-suited does not impress the court. In any loan transaction of the kind, the bankers take consent of the borrowers as a precautionary measure to release the amount in favour of Developers. That does not dilute the protection otherwise availing to the them under the base arrangement i.e., the Tripartite Agreement. Even otherwise, consent of the kind can only strengthen the liability which the Developer has to shoulder in terms of clause (h) as already discussed above.

14. The Hon'ble High Court of Karnataka, having been allowed these petitions in part, it is held that::

(a) A writ of Mandamus issues restraining the respondent-PNB Housing Finance Limited from taking any coercive measures against the petitioners for recovering any amount comprised in the loan agreement and tripartite agreements in question'

(b) A writ of Mandamus issues directing the respondents i.e. Reserve Bank of India, National Housing Bank, Punjab National Bank Housing Finance Limited and Trans Union CIBIL Limited, to process petitioners claim for reframing the CIBIL scores and for issuing No Due Certificates in accordance with law

(c) A writ of mandamus issues to the respondent – M/s Mantri Developers Private Limited, to comply with the subject orders made by the Adjudicating Officer, RERA within sixty days.

15. It may be noted that the facts of the case in this complaint are similar to the facts of the case in which the Hon'ble High Court of Karnataka in W.P. no. 17696/2021(GM-RES) and connected matters has directed the bank to restrain from taking coercive measures against the petitioners therein for recovery of any amount comprised in the loan agreements and tripartite agreement in question.

138

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

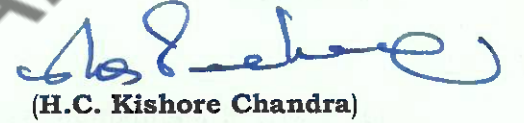
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13. **Keeping further issues, the following order is passed.**

INTERIM ORDER

1. In view of the order in W.P. 17696/2021(GM-RES) and connected matters by the Hon'ble High Court of Karnataka, the complainant herein also deserves the similar remedy. Accordingly, the respondents 4 & 5 are hereby directed to restrain from taking any coercive measures including the reliefs sought by the complainant in OA No: 480 of 2021 pending before the Debt Recovery Tribunal(DRT-2), Delhi.



(H.C. Kishore Chandra)

Chairman
K-RERA

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