

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 : 5th NOVEMBER 2022

COMPLAINT NO.	CMP/201224/0007314
Complainant Name and Address	The Excel Oxigen Plot Owners Welfare Association Sy.No.69/2 & 91, Gudighattanahalli Village, Sarjapura Hobli, Anekal Taluk, Bengaluru:561125
Promoter Name and Address	M/s.Excel Dwellings Ozigen Pvt Ltd. No.44, 1st Floor, 12th Main, 17th Cross, 6th Sector Behind BDA Complex, HSR Layout, Bengaluru:560102
Project Name/ and Address	OXIGEN PHASE-I Sy.No.69/2 & 91, Gudighattanahalli Village, Sarjapura Hobli, Anekal Taluk, Bengaluru:561125
Project Registration No.	PRM/KA/RERA/1251/308/PR/171031/001644

FACTS OF THE CASE

1. This is a Registered Project and the validity of the registration including Covid-19 extension of 9 months would expire on 28.11.2022. Based on the complaints filed before the Authority that the development of the project has come to

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standstill and there is progress for the last two years, hearings in this case have been conducted on 31.8.2021, 28.9.2021, 2.10.2021, 9.11.2021, 19.11.2021, 15.12.2021, 22.1.2022, 15.2.2022, 15.3.2022, 27.4.2022, 4.5.2022, 20.07.2022, 18.8.2022, 6.9.2022, 21.9.2022 and 29.9.2022.

2. During the hearings the status of the progress of the project was reviewed and certain directions were issued to the respondents as is evident from the daily orders issued by the Authority. Some of the directions to the Respondents include submission of quarterly progress reports, copies of the bank accounts and the utilization of the funds for the project, the details of the allottees, sale consideration collected from the allottees, the amounts borrowed from mortgage lender, which was initially DHFL and subsequently M/s.Primal Capital and Housing Finance Limited. Several opportunities were given to the respondent-promoter to submit a resolution plan indicating the manner in which the project is proposed to be completed, the requisite financial outlay, the sources of finance, and the timelines within which the project would be completed.

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3. This is a plotted development project with sites developed in a land area comprising of about 47 acres. Based on some of the submissions it is seen that there are 114 plots which have been sold and also registered in favour of the allottees. The sale consideration received in respect of 114 plots amounting to Rs.13,23,10,536/- is stated to have been deposited in the escrow account of DHFL which has been subsequently taken over by M/s.Primal Capital and Housing Finance Limited. It is also submitted by the respondent-promoter that the mortgage lender has not issued NOC in respect of about 54 plots.

4. During the hearing proceedings the present mortgage lender for the project namely M/s.Primal Capital and Housing Finance Limited was impleaded as Respondent No.3 and further proceedings were conducted. The submissions of respondent No.1 are, broadly summarized as hereunder:

5. It is feasible to complete the project with the co-operation from the lender to the project namely M/s.Primal



Capital and Housing Finance Limited, being the 3rd respondent. It is submitted by Respondent NO.1 that a large amount of money paid by the allottees from time to time has been utilized for meeting debt service obligations to DHFL / M/s.Primal Capital and Housing Finance Limited which is respondent NO.3. It is further submitted by Respondent-1 that although there is litigation between Respondent No.1 and 2 and the said litigation can be resolved amicably in case Respondent No.3, extends co-operation in providing additional funds in view of the mortgage of the entire project assets, which are sufficient to provide adequate security to the lender. It is the case of the Respondent No.1 that Respondent No.3 has rejected its resolution proposal but has not submitted any alternative resolution plan in the interest of project completion and in order to ensure that the allottees whose money is invested in the project are provided with the developed plots.

On the other hand complainants have submitted that they have lost confidence and hope in the Respondent No.1 on account of the inordinate delay in completion of the project, since the development of the project has come to a standstill

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long back and no further progress is seen with regard to the development and completion of the project. Considering the submissions of the parties, complainants were given opportunities from time to time to form Association of Allottees (AoA) and register the same as a co-operative society so as to take over the project u/s 8 of the Act. It is submitted by the Advocate, representing the complainants that steps have been initiated to register the AoA as co-operative society and further submissions with regard to the taking over the project would be made before the Authority at the earliest.

6. Respondent NO.3 has filed its written submissions dated 21.9.2022 which is a continuation of a memo filed in the office of the Authority on 4.7.2022. In the written submissions dated 21.9.2022, Respondent No.3 has submitted the following: That Respondent No.1 and 2 have mortgaged the plots / villas forming a part of the project in favour of respondent No.3 by depositing the tile deeds, that 388 plots / villas were mortgaged, that 19 plots / villas were issued NOCs by Respondent No.3 on receipt of amounts due in respect of the

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said plots / villas. It is the case of the respondent No.3 that in respect of 55 plots certain amount are due as on date and therefore NOCs have not been issued and that it has not issued NOCs in respect of 314 plots / villas since the amounts due in respect of said plots / villas have not been paid till date. The Respondent No.3 was directed to submit the statement of accounts of the Respondent No.1 in order to examine the amount borrowed, debt service already done and the residual liability on the project assets so as to assist the authority in conducting further proceedings so as to find a resolution of the issues that have come in the way of completion of the project. In this context it is relevant to extract the daily orders dated 6.9.2022 and 21.9.2022 which are as hereunder:

DAILY ORDER DATED 06-09-2022

1. *The Authority has reviewed the status of the project as on date.*
2. *The advocate for the complainant has submitted the following:*
 - a) *There is no physical progress in the project to achieve the full completion with amenities.*

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b) A large number of allottees have obtained NOC from the mortgage lender which was initially DHFL and subsequently taken over by Pyramid Capital Housing Finance, prior to the execution of the sale deeds and therefore the lender is not justified in raising any disputes as regard such sites.

c) A memo dated 18.8.2022 is brought to the notice of the Authority, wherein a direction is sought from the Authority to the mortgage lender for submission of current list of plots in respect of which mortgage issues continue as on date.

d) A further direction is sought that Respondent NO.1 & 2 to immediately transfer the sale proceeds to the mortgage lender. Complainant have also sought directions to the concerned authorities for registration of the Association of Allottees as a Co-op. Society.

3. Respondent No.1 submits that there is no physical progress in the project on account of non co-operation of the mortgage lender/Respondent No.3 and not agreeing to the resolution plan submitted by the respondent No.1 to respondent No.3.

a) It is the case of the promoter that the project can be completed if additional funds can be infused by Respondent No.3 by taking into consideration the unsold inventory of plots and by providing the required financial assistance for completion of the project. The resolution plan submitted by Respondent NO.1 to Respondent NO.3 is directed to be submitted before the Authority and offer further explanations and submit the information which has not been provided so far.

b) Further directions to Respondent No.1 are :

a) Compliance of the daily order dated 28.09.2021. It is noted that the names, address, email ids, mobile numbers and the amounts paid, balance payable have not been complied in a manner that is helpful to arrive as the amounts receivable from the sold plots vis-à-vis allottees and the aggregate amount thereof.

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b) *The Respondent NO.1 is also directed to submit the valuation of the inventory of the unsold plots as per the guidance value.*

c) *Audited statement of accounts for the financial year covering the entire project execution period to till date along with schedules and such information that would be helpful in assessing the utilization of the funds for wholly and exclusively for the development of the project is required to be submitted.*

d) *Certificate by Architect, Engineer and CA for the quarter ending 30.06.2022 to be submitted.*

e) *It is noted that Respondent has provided a broad break-up of finance cost and interest, However, the correct debt service payments made year-wise to respondent No.3 have not been disclosed. This has to be filed.*

f) *Copies of the bank accounts statements were also directed to be submitted as per daily order dated 28.9.2021. Compliance is directed.*

g) *In addition to the proposal made by Respondent No.1 to the Respondent NO.3, respondent NO.1 may submit any other resolution plan which is feasible for implementation under the directions of the Authority. The Respondent NO.1 is also directed to take necessary steps for providing all the details required for formation of the association with all the existing allottees and provide any other information required to register it as a co-operative society.*

a) *Advocate representing Respondent NO.3 has submitted that the resolution plan proposed by Respondent No.1 was not found to be acceptable for the Respondent No.3. However, no alternative proposal for resolution of financial issues that have come in the way of project completion has been submitted by the respondent No.3.*

b) It is the case of Respondent No.3 that it is not intending to take any precipitate action for further recovery of the amount under Sarfaesi Act, 2002 until the Respondent No.3 objections are heard.

FURTHER DIRECTIONS ARE AS UNDER:

5. The Registrar of Co-operative Society is required to register the Association of Allottees at the earliest to enable the allottees to make necessary application before the Authority for taking further necessary action towards the completion of the project, as may be required.

6. Respondent NO.1 and Respondent No.3 are directed to examine the feasibility of limiting the mortgage issues only to the unsold inventory and ensure that no encumbrance are there on the plots which have been sold to the allottees.

7. Respondent No.3 is directed to give the details of NOCs issued in respect of the sites which have been registered in favour of the allottees.

8. Respondent No.3 is further directed to furnish the details of any plots for which NOCs are yet to be issued wherein the allottees are not the borrowers but the finance assistance was extended to the promoter.

5. Hearing is scheduled on 21.09.2022 at 11.30 hrs.

DAILY ORDER DATED 21.09.2022

The Authority has given one more opportunity to the respondents to comply with the directions vide daily order dated 7.9.2022. Further directions are as follows:

1. Respondent No.3 has submitted that the resolution proposal initiated by the Respondent No.1 is not found to be acceptable. However, no alternative proposal to find a resolution towards the implementation of the completion of the project is submitted by respondent no.3. Since the respondent no.3 has created a very large

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mortgage interest, covering most of the plots in the project, it is imperative that the respondent no.3 undertakes to find an appropriate resolution process which also takes into consideration the following:

i) The funds already invested by the Allottees in the project and the rights of the Allottees to get the developed plots suitable for construction of houses.

ii) To limit the mortgage issues only to the unsold inventory so as to enable the Allottees to obtain unencumbered marketable title for the plots for which they have paid consideration.

iii) To provide the accounting details of the loans disbursed to the promoter of the project (R1) from time to time together with the debt service done by the promoter to R3.

iv) Accounts statements of the promoter / R1 for the entire period of loan borrowed and debt service.

2. As undertaken, the complainants association is required to submit the proposal u/s 8 of the Act and furnish the application submitted for the registration of AoA as co-operative society. In case registration is obtained a copy of the same is required to be submitted.

3. Respondent No.1 is once again directed to comply with the directions issued during the previous hearing vide daily order dated 7.9.2022. Further, respondent No.1 is directed to show cause as to why penalty proceedings should be initiated for non-compliance with the directions, which includes non submission of the certificate by Architect / Engineer and CA for the quarter ending 30.6.2022.

4. Next date of hearing is 29.09.2022 at 1130 hrs.

Despite giving adequate opportunities, Respondent No.3 M/s.Primal Capital and Housing Finance Limited, has not submitted the statement of accounts of Respondent No.1 to explain the initial amounts lent, any subsequent amounts lent, rate of interest, compounded annual rate of interest, debt service done so far,

the balance amounts of principal and interest payable with year-wise break up vis-à-vis valuation of the sites held as mortgage and so on to assist the Authority in finding the resolution of the project as per the scheme of the Act and under the provisions of Section 8 of the Act.

On a careful examination of the facts of the case, the Authority is of the view that by mere passage of time the amounts lent by Respondent NO.3 together with the interest, with high rates of interest and compounding factor, would create such a huge financial liability on the project that the project assets would be inadequate to meet the financial liabilities. This is a project which is halted on account of lack of funds for completing the development. Such projects which remain as work in progress create severe hardship to the allottees and all the delays on account of lack of co-operation from the lenders of the project would further cause unmanageable financial burden on the project. The scheme of the Act intends a process of resolution of the issues that arise in the completion of the project in the best interest of the allottees. Accordingly the provisions of Sec-7 & 8 have to be applied to projects which have not achieved completion on account of the defaults attributable to the promoter of the project. In this case the promoter of the project is also constrained by the lack of co-operation on the part of the lender who has taken all the project assets as security. In case the lender to the project invokes Section 13 of the SARFAESI Act, as held by the Hon'ble Rajasthan High Court and upheld by the Hon'ble Supreme Court, the lender would be stepping into the shoes of the promoter and shall also be responsible for the completion of the project.

In view of this the following Interim Order is issued:

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INTERIM ORDER

- i) The Respondent No.1 shall submit a resolution plan before the Authority.
- ii) The Respondent No.1 shall enable the formation of Association of Allottees. The Respondent No.1 shall also provide all the necessary information and assistance in this regard by convening the meeting of the allottees for taking further necessary steps to complete the project.
- iii) The Respondent No.3 is hereby restrained under Sec-36 of the Act from disposing off the sites which are mortgaged to it, without prior written approval of the Authority.
- iv) The Respondent No.3 is also given an opportunity to propose a resolution plan and submit before the Authority so as to achieve completion of the project and the allottees are handed over developed sites with all the requisite clearances required for registration of the sites.
- v) Penalty proceedings are hereby initiated under Sec-63 of the Act against the Respondent No.1 as well as Respondent No.3 for non-compliance with the directions of the Authority which are communicated vide daily orders dated 6.9.2022 and 21.9.2022.


(Neelamani N Raju)
Member-2


(D.Vishnuvardhana Reddy)
Member-1


(H.C.KISHORE CHANDRA)
CHAIRMAN