

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

Present

Shri . H.C. Kishore Chandra, Hon'ble Chairman

Dated 22nd November 2022

Complaint No.CMP/220830/0009963

COMPLAINANTS.....

1. Mr. Henry VijayMasih,
Aged: 56Years
S/o:SardarMasih
Resident Of:
Unit 154, Cloud 9,
N.I.B.M Road, Kondhwa,
Pune – 411048.

2. Mrs. Queenie Masih
Aged : 56 Years
W/o: Henry VijayMasih
Resident Of:
Unit 154, Cloud 9,
N.I.B.M Road, Kondhwa,
Pune – 411048.

By Pradeep Kumar P.K,
Advocate)

AND

Asst

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RESPONDENTS.....

1. Ms. VIJCON PROPERTIES,

A partnership firm having its
registered office at:

No-88, First Floor,

17th Cross, 14th Main, IV Sector,
HSR Layout,

Bangalore-560102

Represented through its
partners

Mr. Vijay Agarwal,

2. Mr. Vijay Agarwal,

Partner Vijcon properties,
registered office:

No-88, First Floor,

17th Cross, 14th Main, IV Sector,
HSR Layout,

Bangalore-560102

3. Mr.Swwapnil,

Partner Vijcon properties,
registered office:

No-88, First Floor,

17th Cross, 14th Main, IV Sector,
HSR Layout

**4. M/s. PNB Housing Finance
Limited (Registered Office)**

"9thAntrikshBhawan, 22

Kasturba Gandhi Marg,

New Delhi - 110001,

5. Smt .U. Anitha Reddy,

Wife of Shri U. Yeshwardhan
Reddy,

Aged about 44 years,



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R/o H.No -T-401, Red wood
Apartments,
Haralur Road, Off Sarjapura
Road,
Bangalore-560102

6. 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.

7. Sri. U Yeshwardhan Reddy

Son of late U.L reddy,
Aged about 44 years,
R/o No -T-401, Red wood
Apartments,
Haralur Road, Off Sarjapura
Road,
Bangalore-560102

INTERIM ORDER

1. This complaint is filed under section 31 of the RERA Act against the project "VivansaaAurigaa" developed by "Vijcon Properties" in the limits of Survey No.36/6 & 36/7,Chambenahalli Village, SarjapuraHobli , Anekal Taluk, Anekal , Bengaluru Urban for the relief of refund of entire amount paid with interest.
2. This project has been registered under RERA bearing PRM/KA/RERA/1251/308/PR/171230/002053.

ASB

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3. The present interim application is filed against the respondent No. 4 restraining it from taking any coercive measures against the complainants for recovery of balance loan amount on the following grounds.
4. The complainants are residents of Pune in Maharashtra state who have purchased a flat bearing No. B-204 in the project of respondent in the month of August 2015 by entering into an agreement of sale dated: 04/11/2015 with respondent No. 1 and tripartite agreement dated: 03/11/2015 with respondent No.4. Respondent No.1 was supposed to handover the said flat to the complainants on or before June 2017 with a grace period of 6 months which comes to December 2017. The complainants have paid Rs. 12,84,558/- towards part sale consideration at the time of execution of agreement of sale. Later, complainants have paid few instalments of pre Emi to respondent No.4. In the meanwhile the said project was stalled and there is no hope of completing the same in near future by the respondent No.1. Now the complainant No.1 is getting retirement shortly and hence he doesn't want to take burden of any loan which creates unnecessary pressure and liability during his retirement life. Therefore, finally the complainants have decided to withdrawal from the project. These being the facts, the respondent No.4 is pressurising the complainants to repay the entire loan amount. Infact the respondent No.4 has sanctioned the loan to the complainants and disbursed the amount to the respondent No.1 without following due procedure and terms and conditions of said agreement of sale.

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5. Further it is contended by the complainants that the Lender pushed the sales of the flat units in the project particularly under subvention scheme. Because under the said scheme, the lender made huge financial gains. The purchasers were not aware nor did the lender or the promoter disclose 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. In the instant case, the lender has disbursed Rs. 39,78,505 /- against the total sanctioned amount of Rs. 43,72,000/- as per the loan statement account shared by the lender. As per the statement, the lender has recovered Rs. 16,26,422/- towards principal and Interest. The disbursement made by the lender is clear violation of the RERA Act.
6. The said loan is against the property being an apartment bearing No. B 204, in B wing. However, the promoter intimated the purchasers that the agreement execution had an error and the apartment sold is A 705 and not B 204. Upon enquiry through reliable sources the complainants found out that the apartment A 705 is not yet constructed by the promoter. From this it is clear that the respondent No.1 cheated the complainants by allocating the said flat No. B-204 to some others.
7. Even otherwise the promoters abandoned the construction activities of the said project during June 2019 and till date no construction activity is being carried out by the promoters. The promoters claim that the project failed due to lack of funds. According to the promoters the project was ruined because all the money the promoters raised for construction was grabbed by the lenders towards Pre-Emi under the subvention scheme facility. The



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promoters stopped payment of the Pre-Emi and the Respondent No. 4 initiated recovery proceeding under SARFAESI Act. The notice under section 13(2) of SARFAESI Act was issued followed by public notice under section 13(4) SARFAESI Act. However, the Respondent No. 4 being aware of the fact that the loan was disbursed without the knowledge of the complainants and in violation of the RERA Act. Now respondent No.4 is harassing the complainants by filing multiple cases including criminal cases at various places. The complainants are now undergoing unbearable pain and harassment at the hands of the recovery agents of the lenders in all the loans.

8. After registration of the complaint, the notice has been issued on 24.09.2022 and in pursuance of the notice, the respondent No.1 and 4 have not appeared before the Authority for hearing and have not filed any objections till date.
9. In support of the claim, the complainants have furnished the copy of the agreement of sale, copy of the tripartite agreement and the loan statement.
10. From the materials placed on record, it is apparent that the agreement to sell is executed on 4th November 2015 and the tripartite agreement is executed on 3rd November 2015. The loan was sanctioned on 26th November 2015 by the respondent No. 4. The amount sanctioned is Rs. 43,72,000/- and disbursement made for Rs. 39,78,505/-. The statement shows that Rs. 37,00,990/- has been paid to the Respondent No. 1 promoter on 27th November 2015 itself. This itself is clear that the respondent bank admittedly has ignored the payment slab of the sale agreement and has

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disbursed amounts putting the complainants at risk. The respondent bank has acted irresponsible and cannot be absolved from its responsibility to be diligent and ensure that the borrower shall not be exposed to risk.

11. At this juncture my attention is drawn towards the decision of Hon'ble High Court of Karnataka while considering similar facts in WP No. 17696/2021(GM-RES) and connected matters has granted relief to the borrowers like the complainants. The extract of few observations of the Hon'ble High Court of Karnataka in WP No. 17696/2021(GM-RES) and connected matters are:

Para 1. All these petitions broadly having common questions of law & facts inter alia seek to lay a challenge the coercive recovery measures of Housing Loans by the Respondent - lending agency i.e., Punjab National Bank Housing Finance Limited (hereafter 'PNBHFL

Para 3(i) 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 & between the 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

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allegedly without ascertaining the stages of construction, though the extant RBI Circulars mandate such ascertainment

Para 3 (ii) 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 the RERA under Section 31 of the Real Estate (Regulation and Development) Act, 2016

12. 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. The observation is extracted below

Para 4(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 & fairplay. 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

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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 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.

13. The Hon'ble High Court of Karnataka, while allowing those petitions made the following order directing that:

(i) A Writ of Mandamus issues restraining the Respondent-PNB Housing Finance Limited from taking any coercive measures against the petitioners for recovering any amount

Ans

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*comprised in the Loan Agreements and Tripartite Agreements
in question;*

*(ii) a Writ of Mandamus issues directing the respondents i.e.,
Reserve Bank of India, National Housing Bank, Punjab
National Bank Housing Finance & TransUnion CIBIL Limited,
to process petitioners' claim for reframing the CIBIL scores
and for issuing No Due Certificates in accordance with law,
within sixty days; and*

*(iii) 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.*

14. The principles laid down in the above decision is exactly applicable to the present case on hand. In which the Hon'ble High Court of Karnataka in WP 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.
15. Considering all these facts and circumstances of the case it is a fit case wherein interim order can be passed in favour of complainants directing the Bank authorities not to take coercive measures for recovering of loan amount.



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16. Accordingly, I proceed to pass the following

ORDER

The interim prayer of complainants restraining the respondent No. 4 from initiating any coercive measures against them for recovery of loan amount is hereby allowed. Hence, the respondent No.4 is hereby directed not to take any coercive measures against the complainants for recovery of balance loan amount till further orders.



(H.C. Kishore Chandra)

Chairman
K-RERA

RESULTS

The first part of the study was a pilot study to determine the feasibility of the study. The pilot study was conducted in a small number of schools and found that the intervention was feasible and acceptable to both teachers and students. The pilot study also found that the intervention had a positive impact on students' reading skills.

The main study was conducted in a larger number of schools and found that the intervention had a significant positive impact on students' reading skills. The intervention was found to be effective in improving students' reading fluency, comprehension, and vocabulary. The intervention was also found to be acceptable to both teachers and students.