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/220912/0010001

Complainants.....

1. **Mr. Henry VijayMasih**
   Aged: 56 Years
   S/o:SardarMasih
   Resident Of:
   Unit 154, Cloud 9,
   N.I.B.M Road, Kondhwa,
   Pune - 411048
   Phone: +919823510030 /
   +91 9823510035

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

Respondents.....

1. **Ms. VIVANSAA BAALSAM,**
   A partnership firm having its registered office at:
   No-88, First Floor,
   RenukaNilaya, 17th Cross,
   14th Main, IV Sector, HSR Layout,
   Bangalore-560034
   Represented through its partners
   Mr. Vijay Omprakash Agarwal,
   baalsam.blr@gmail.com

2. **Mr.** Vijay Omprakash Agarwal,
   Partner VivansaaBaalsam,
   registered office:
   No-88, First Floor,
   RenukaNilaya, 17th Cross,
   14th Main, IV Sector, HSR Layout,
   Bangalore-560102

3. **Mr. Shubham Omprakash Agarwal,**
   Partner VivansaaBaalsam,
   registered office:
   No-88, First Floor,
   17th Cross, 14th Main, IV Sector,
   HSR Layout,
   Bangalore-560034

4. **Mr. SwapnilDevendra Agarwal,**
   Partner VivansaaBaalsam,
   registered office:

No-88, First Floor,
17th Cross, 14th Main, IV Sector,
HSR Layout,
Bangalore-560034

5. **M/s. INDIABULLS HOUSING FINANACE LMITED**
Registered office:M- 62 &63,
First Floor, Connaught place,
New Delhi-110001.
homeloans@indiabulls.com

6. **CFM Asset Reconstruction Private Ltd.**
Having its registered Office at:
A/3, 5th Floor, SafalProfitaire,
Near Prahlad Nagar Garden,
Ahmadabad,
Gujrat – 380015
Having its Corporate office at:
1st Floor, Wakefield House,
Sprott Road, Ballard Estate,
Fort, Mumbai - 400038

7. **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

8. **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.

9. **Smt. Suma B.N**
W/o R. Venkatesh,
Aged about 46 years,
R/o No - 356, 3rd Cross,
BEML Layout,
Bangalore-560034

INTERIM ORDER

1. This complaint is filed under section 31 and the interim application is filed under section 36 read with 37 of the RERA Act against the project Vivansaa Baalsam" developed by "Ms. Vivansaa Baalsam" in the limits of Survey No. 82 2 s medahalli village, Sarjapura hobli , Anekal Bengaluru.

2. This project has been registered under RERA bearing PRM/KA/RERA/1251/308/PR/180329/001820.

3. The present interim application is filed against the respondent No. 5 & 6 restraining them 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 row house villa bearing No. B-1 in the project Vivansaa Baalsam under the '*Builder Subvention Facilities*' promising payment of PRE- EMI by the Respondent /Promoter till the Possession of the villa. The specific

undertaking to pay the Pre-Emi was precondition for the purchase, the agreement of sale dated 24.08.2015 does not mention the payment of advance towards sale consideration at the time of signing the agreement to sell. However, the complainants have paid a lump sum amount of Rs. 47,00,000/- which was to be used as full consideration for one flat in another project of the promoter known as Vivansaa Aurigaa. The complainants were planning for retirement and never wanted to take the burden of any loan which would create unnecessary pressure and liability. However, due to the promoters distress and pressure for payment of pre-EMI's, loan was raised on three properties and the complainants were assured that they need not pay any amounts towards discharge of the loans until completion of the projects. Once the projects are completed, the flats will be sold to close the loans and the complainants shall not have any liability.

5. 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 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 respondent No. 5 sanctioned a loan of Rs. 80,00,000 /- and in utter violation of the RERA Act disbursed the entire sanctioned amount of Rs. 80,00,000 /- to the promoters as per the loan statement account shared by the lender. As per the statement, the lender has recovered total amount of Rs. 31,17,697/- towards principal, Interestand pre-EMI. The disbursement made by the Lender is in direct violation of the RERA Act.

6. The said loan is against the property being row house villa bearing No. B-1. Upon enquiry through reliable sources the complainants found out that the row house villa bearing No. B-1is not yet constructed by the promoter. From this it is clear that the complainants got cheated with the burden of a huge loan paid against property which the purchasers can never get title and possession of said villa.

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 promoters stopped payment of the Pre-EMI and the recovery proceeding was initiated under SARFAESI Act by the Respondent No. 5. The notice under Section 13(2) SARFAESI Act was issued followed by public Notice under Section 13(4) SARFAESI Act. However, the Respondent No. 5 is not keen to pursue recover in the legal manner by taking possession of the villa for which the loan was disbursed without the knowledge of the complainants and in violation or the RERA Act. The Respondent No. 5 has filed multiple Criminal cases in New Delhi while the suit schedule property is situated in Bengaluru, So also transactions were carried out in Pune and Bengaluru and the complainant are the residents of Pune in Maharashtra. The approach of the Respondent No. 5 is mischievous, unprofessional and unethical. 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 12.09.2022 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 complainant has furnished the copy of the agreement of sale, tripartite agreement and the loan statement.

10. From the materials placed on record, it is apparent that the agreement to sell is executed on 24thAugust 2015 and the tripartite agreement is executed on 1st September 2015. The amount sanctioned is Rs. 80,00,000/- and the entire sanctioned amount is disbursedon 31st August 2015 itself. This itself is clear that the respondent bank admittedly has ignored the payment slab of the sale agreement and has 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 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 ofinstrumentalities 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 UpendraBaxi 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 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-suiteddoes 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 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.

16. Accordingly, I proceed to pass the following

ORDER

The interim prayer of complainants restraining the respondent No. 5 & 6 from initiating any coercive measures against them for recovery of loan amount is hereby allowed. Hence, the respondent No.5 & 6 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