

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

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

Dated 8th DAY OF AUGUST 2023

Complaint No. CMP/UR/211116/0008573

COMPLAINANT:

SANTOSH PATIL
3-7-52, KAJAGARWADI NEAR
AMRUTESHWAR TEMPLE
YADGIR DISTRICT
KARNATAKA-585201

(IN PERSON)

V/s

RESPONDENT....

DHASARATHA RAJU K
PRESIDENT
BSNL, CENTRAL & STATE
GOVERNMENT IT/BT
EMPLOYEES(WORKING &
RETIRED) HOUSE BUILDING
COOPERATIVE SOCIETY
LIMITED
NO; 115, 2ND FLOOR
CREZENT PLAZA OPP;
PUSHPANJALI THEATRE
DINNUR MAIN ROAD
R.T. NAGAR, BENGALURU-32

(IN PERSON)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project 'BSNL SRIGANDHA PHASE III' developed by "BSNL CENTRAL



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& STATE GOVERNMENT IT/BT EMPLOYEES(WORKING & RETIRED) HOUSE BUILDING COOPERATIVE SOCIETY LIMITED

for the relief of interest on delay period.

2. The complainant while filing this complaint before this Authority on 16/11/2021 has sought for the relief of refund with interest. Subsequently, during the proceedings held on 28/11/2022 he has filed a representation dated 9/1/2022 to change pleading from "refund" to possession and delay period interest. Accordingly, this Authority has permitted the change of relief sought by the complainant from "Refund with interest" to "possession and interest on delay period".

3. The respondent has developed this project in the limits of IVC Road which is just 4.5 Kms from NH-7.

4. This project is not registered in RERA. The Authority has passed an interim order dated 3rd December 2022 with a direction to the respondent-promoter to register the project under RERA as required under section 3 of the RERA Act within two weeks from the date of receipt of this order. But the respondent yet to register the project in spite of the above directions issued by this Authority on 3/12/2022.

5. The gist of the complaint is that the complainant is a member of BSNL Central and State Government IT/BT Employees(Working & retired) House Building Cooperative Society Limited bearing membership No: A-762. He has booked a plot measuring 30' X 40' in the project "BSNL SRIGANDHA PHASE II" of the respondent-promoter. As per memo of calculation submitted by the complainant on 12/9/2022, he has paid

1/1/22

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an amount of Rs.6,02,300/- to the respondent on various dates. It is contended that since last 3 years, there has been no progress in the development of the plots. Since there is no sign of development of plots even after 3 years, he has lost confidence with the respondent and decided to exit from the project. Hence, the complainant has approached this Authority for the relief of interest on delay period. Hence, this complaint.

6. After registration of the case, in pursuance of the notice, the respondent has remained absent during the hearings held before this Authority on 15/9/2022, 30/9/2022, 21/10/2022, 9/11/2022, 28/11/2022, 30/1/2023, 17/2/2023, 24/3/2023 and on 17/4/2023 except on one occasion in between during the hearings held on 19/12/2022 and filed reply to interim order dated 3/12/2022 passed by this Authority.

7. The complainant has applied for allotment of site as mentioned therein and has paid substantial sale consideration of Rs.6,00,000/- (Rs. Six lakhs only) to the respondent on various dates which has been duly acknowledged by him. At the time of his booking of site in the said project, it has been clearly mentioned that the land/site to be allotted is under process of acquisition. The complainant having agreed upon had come forward to book a site in the said layout to be formed in the location as mentioned in the brochure. Further, the Society before formation of the layout in the acquired land, necessary permissions has to be obtained from the competent authority as the land so acquired by the Society is a part of agricultural zone. Necessary approval is required from the competent authority for conversion of land from agricultural



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to non-agricultural residential purpose. Later, necessary approval has to be obtained for sanction of plan from the jurisdictional planning authority. The process of obtaining change of the land in use is under process and the files are pending before the concerned competent authorities. Nowhere in the brochure nor the society has promised to pay interest on the deposited amount as stated by the complainant. The amount so received from the complainant and other society members have been invested over the purchase of the said lands for which the Society has agreed to carve out residential layout. Further he had also informed the complainant about the delay in forming the layout and also offered to refund the amounts deposited by the complainant, but the complainant was refused for the refund. It is submitted that the said project known as 'BSNL SRIGANDHA PHASE II' is yet to be developed. Hence, registering the project under RERA Act does not come under the purview of this Act.

8. Further, the respondent has submitted written submissions on 22/5/2023 as under:

The respondent has denied all the allegations made against it by the complainant as false. It is contended that the complainant has approached the respondent society for allotment and purchase of site by filing the application on 9/8/2014 duly agreeing for the terms and conditions stipulated in the said application form indicated at Sl.No: 1 to 5. The complainant is binding on the conditions of the respondent and his application for allotment of site is subjected to approval and clearance of land by BDA/BMRDA/BIAPPA and also subject to availability of site. The allotment is neither cleared nor approved by the competent authorities. He has also given an option to the complainant



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to the effect that, in case he is unable to wait, he can withdraw his application to proceed with refund of amount paid without any interest. But the complainant is claiming interest. There is no prescribed time limit for the said project as it involves procurement of land. Due procedures and reasons for delay are explained in detail. There is no delay on the part of the respondent as the respondent is not investor for the profit to invest the money into the property to clear all the formalities through all the competent authorities. There is no agreement between the complainant and respondent for timeline to complete the project and the complainant is abide by the terms and conditions of the respondent from time to time. The application filed on 9/8/2014 for the allotment of site as early as before RERA Act comes into force. Hence, prayed to dismiss the complaint.

9. The complainants in support of his claim, have produced documents such as (1) Memo of calculation (2) Paper advertisement of BSNL Srigandha Phase-III (3) payment receipts

10. The respondent in support of his defence has produced copy of application for purchase of site.

11. On the above averments, the following points would arise for the consideration of the Authority.

1. Whether the complainant is entitled to the relief claimed?

2. What order?

12. **Findings on the above points are as under:**

13. 1. Partly Affirmative

2. As per final order for the following:



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FINDINGS

14. **Findings on point No.1:-** From the payment receipts furnished by the complainant, it is apparent that the complainant had booked a site measuring 30' x 40' sft in the project "**BSNL SRIGANDHA PHASE III**" of the **respondent-promoter**. As per the memo of calculation furnished by the complainant dated 8/8/2023, he has paid substantial sale consideration of Rs.6,00,000/- (Rs. Six lakhs only) to the respondent on various dates which has been duly acknowledged by him. It is contended that even after 3 years, there has been no progress in the development of plots.. Therefore, the complainant has approached this Authority for interest on delay period.
15. The same is resisted by the respondent on the grounds that the complainant has approached the respondent society for allotment of site by filling and signing the application on 9/8/2014 and agreed to abide by the terms and conditions stipulated in the booking form indicated at Sl.Nos. 1 to 5. The complainant is binding on the conditions of the respondent in his application for allotment of site is subject to approval and clearance of land by BDA/BMRDA/BIAPPA and also subject to availability of site. The respondent has also given an option to the complainant that if he is unable to wait, he can withdraw his application to proceed with refund of amount paid without any interest. But the complainant is reluctant for claiming interest.
16. Herein this case, the claim of the complainant is based on the application for purchase of site bearing Sl.No. 1816. Looking to the entire averments of form of application for purchase of site, it is significant to note that it is nowhere mentioned with regard to description of the property as well as location of the property. The complainant is setting up his claim only on the basis of application for purchase of site. But description of the property is not forthcoming so as to identify the property unmistakably and to grant the relief possession as prayed for by the complainant. While entering into any such

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documents, buyer has to make sure that such description shall be incorporated in the allotment letter so as to lay foundation for the claim in the event of any dispute. When the complainant is claiming for the relief based on such documents which binds the parties in a contractual relation so as to be properly enforced in accordance with law. It is quite necessary that it shall be free from ambiguity and vagueness. Otherwise, it is quite possible that the buyer may not be able to maintain his claim over the property which he is intending to purchase on account of want of proper description of the property.

18. The relief claimed by the complainant is akin to the one claimed in suit for specific performance before the Civil Court. There also for grant of main relief, it is quite essential to prove the description of the property in the first place. On the same analogy here also it is mandatory for the complainant to prove the description of the property in respect of which he is seeking for possession and interest on delay period with the respondents.
19. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law. Otherwise it is quite possible that the buyer may not be able to maintain his claim over the property which he is intending to purchase on account of want of proper description of the property.
20. The complainant has failed to establish his claim by producing any single iota of evidence for his amended relief of possession and interest on delay period. There is no any agreement between the complainant and respondent for stipulated timeline to complete the project. On perusal of the entire documents placed on record, it is apparent that the said project named and styled as "BSNL SRIGANDHA PHASE III" which is yet to be developed since the process of obtaining change of land in use is pending before the concerned competent authorities.



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21. Having regard to all these aspects, no option left to this Authority except to order for refund of amount paid along with interest. Accordingly, the point raised above is answered as partly Affirmative.

22. **Findings on point no.2:** In view of the above findings, I conclude that the complaint deserves to be partly allowed. Hence, I proceed to pass the following order:

ORDER

In exercise of the powers conferred under section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/UR/211116/8573** is hereby allowed and the following order is passed.

1. The respondent is hereby directed pay a sum of **Rs.10,90,555/-** (Rs. Ten lakhs ninety thousand five hundred fifty five only) towards refund along with interest to the complainant within 60 days from the date of this order calculated at the rate of 9% from 12/8/2014 to 30/4/2017. Further, at the rate of SBI MCLR + 2 % from 1/5/2017 till 8/8/2023. The interest due from 9/8/2023 shall be calculated likewise and paid to the complainant.
2. The complainant is at liberty to enforce the said order in accordance with law if the respondent fail to comply with the order.

No order as to costs.



(H.C. Kishore Chandra)

Chairman
K-RERA