

ಕರ್ನಾಟಕ ರಿಯಲ್‌ಎಸ್ಟೇಟ್ 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

COMPLAINT NO. CMP/UR/200128/0005311

DATED 31ST DAY OF AUGUST 2023

COMPLAINANT....

**P.L. NAMRATHA RAO
1842, 7TH CROSS, 20TH MAIN
JP NAGAR 2ND PHASE
BENGALURU URBAN-560078**

(IN PERSON)

V/S

RESPONDENT.....

**PUSHPALATHA H SHETTY
M/s HPK PROMOTERS
502, KODIAL MANSION
KODIALGUTTU WEST
KODIALBAIL
MANGALURU
DAKSHINA KANNADA-575003**

**(BY SRI. V. VINAY GIRI, NITIN
PRASAD, ADVOCATES)**

JUDGEMENT

1.This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project “ **KRIPAKRITHI**” developed by

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M/s HPK PROMOTERS, MANGALURU ” for the relief of direction to the builder to issue OC and refund of double tax paid to Municipal Authority.

2. This project is not registered in RERA.

3. **The gist of the complaint is as under:**

The complainant has purchased the apartment in the project of the respondent in the year 2015. The building was completed in the year 2015. The respondent had promised to handover occupation certificate on the date of possession or with a maximum period of six months i.e. by March 2016 as per agreement. But, the respondent has failed to handover the occupation certificate due to which the complainant was compelled to pay the double property tax and unable to obtain Khata and other related documents. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through his counsel and filed statement of objections was under:

6. The respondent has denied all the allegations made by the complainant against it as false. The respondent is the proprietrix of the proprietary concern M/s HPK Promoters which is engaged in the business of real estate development. The respondent is represented by her Power of Attorney holder Harishchandra Shetty. It is contended that one H.T. Roopa Rao(landowner) is the absolute owners of the property bearing Re-Survey Nos.80/7A and 80/5A measuring an extent of 10 guntas and 26 ³/₄ guntas respectively. The landowner and the respondent herein entered into a joint development agreement for the construction of a multi-storied apartment building in the name and style of “Kripakriti Apartments”. Further, the said project was



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admittedly completed in the year 2015 itself. The landowner along with respondent have executed a sale deed dated 21/9/2015 in favour of the complainant. The respondent has also complied with the provisions of the Karnataka Apartment Ownership Act, 1972 and handed over the maintenance of the apartment to Krupakriti Apartment Owners' Association by executing registered Deed of Declaration on 31/10/2013. Further, the said association is fully operational and is conducting meetings regularly. The respondent and the landowner had taken several steps for obtaining the occupancy certificate and wrote letters dated 25/9/2019, 11/8/2021 and 26/4/2022 to the Commissioner, Mangaluru City Corporation. Prior to the said letters, in 2015 itself, the respondent had applied for completion/occupancy certificate. However, the same was not processed on account of there being no fire NOC. The fire NOC and completing all formalities in that regard took considerable amount of time and upon receipt of fire NoC, the respondent handed over possession of the apartment to the Apartment Owners including the complainant.

7. The concerned Authorities have insisted the respondent to install sewage treatment plant within their property in spite of there being a drainage line in front of the property. The building has been completed in the year 2012, which came to light only after completion of the project i.e. in the year 2015. More than 60% of the sale deeds have been executed and occupied prior to enactment of RERA. The Municipal Corporation took seven years for shifting the Underground Drainage line from the project land's compound which was done only in April 2022. In addition to the above, the respondent had to relinquish/release a portion of the project land to the corporation on account of road widening. Subsequently, between December 2019 and January 2022, due to the COVID-19 Pandemic and the nation-wide lockdown and thereafter lockdowns imposed by the State Government as such no work was being done.

12/3

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8. It is submitted that, the complaint is not maintainable either in law or on facts, more specifically since the project is a Pre-RERA project and the same does not come within the ambit of RERA Act, 2016. Hence, prayed to dismiss the complaint.

9. Further, the complainant has filed memo dated 19/01/2023 as under:
Clause(iii) of Rule 4 exempts applicability of the Real Estate(Regulation and Development) Act, 2016 and the Rules in cases where all development works have been completed as per the Act and certified by the competent agency and sale deeds/lease deeds of sixty percent of the apartments have been executed.

10. In support of her claim, the complainant has produced documents such as
(copies of payment receipts, agreement of sale and email conversations.

11. The respondent in support of his defence has produced documents such as Power of Attorney in favour of Harishchandra Shetty, copy of sale deed dated 21/9/2015, copies of letters wrote of obtaining occupancy certificate dated 25/9/2019, 11/8/2021 and 26/4/2022.

12. Heard arguments of both the parties.

13. On the above averments, the following points would arise for my consideration:-

1. Whether the complainant is entitled for the relief claimed?
2. What order?

14. Findings on the above points are as under:-

1. In the Negative

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2. As per final order for the following:

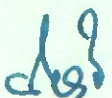
FINDINGS

15. **Findings on point No.1:-** The complainant has approached this forum with the grievance that the builder has failed to handover the occupancy certificate, she had to pay double tax to Municipal Authority for her apartment.

16. The same is resisted by the respondent on the ground that the building was completed in the year 2015 and they have submitted application for occupancy certificate in the year 2019. The concerned Authorities have insisted them to install sewage treatment plant though there is a drainage line in front of their property. Furthermore, they have executed sale deeds for more than 60% of the units and hence their project is not coming under RERA.

17. On going through the materials placed on record, it is apparent that the entire construction work relating to the project has been completed much before the enactment of RERA i.e. in the year 2015 itself. As far as liability of builder to get the occupancy certificate it is service allied to the works undertaken by the builder. In a strict sense, it is not coming in the way of completion of the project being one of the post construction formalities.

18. The Explanation to Rule-4 of the Karnataka Real Estate(Regulation and Development) Rules, 2017, defines an "ongoing project" as where a development of a project is going on, for which completion certificate has been issued, but excludes those projects which fulfil any of the criteria enumerated therein. The respondent herein had completed the development activity and executed sale deeds for all the apartments before the Act and Rules came into effect. In addition, Clause(iv) of Rule 4 exempts applicability of the Act and



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the Rules where the application for issuance of occupancy certificate has been made before the Act and the Rules came into effect.

19. The Hon'ble High Court of Karnataka in Writ Petition No.18448 of 2021(GM-RES) in M/s Provident Housing Limited Vs. Karnataka Real Estate Regulatory Authority and another reiterated the above position of law.

20. Therefore, in the considered view of this Authority, the complainant cannot approach this forum for any relief for deficiency service. It may be true that complainant was compelled to pay excessive tax on account of non issuance of occupancy certificate as on that date. Complainant can get redressed such grievance by filing a fresh complaint before the Adjudicating Officer, KRERA. With these observations this complaint is disposed of.

21. In that view of the matter, the complainant would not be entitled for the relief claimed. Accordingly, this point is answered in the Negative.

22. **Findings on point No.2:** In view of the above discussion, complaint deserves to be dismissed. Hence, I proceed to pass the following order.

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate(Regulation and Development) Act, 2016, the complaint bearing No. CMP/UR/200128/0005311 is hereby dismissed as not maintainable.

No order as to cost.


(H.C. Kishore Chandra)
Chairman
K-RERA