

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 FULL BENCH

PRESENT:

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

SMT. NEELMANI N RAJU, HON'BLE MEMBER

SHRI. GURIJALA RAVINDRANADHA REDDY, HON'BLE MEMBER

COMPLAINT NO.: CMP/UR/190706/0003492

DATED THIS 4th DAY OF SEPTEMBER, 2023

COMPLAINANT.....

KANIKA MASAND,
S 204, Ajmera Infinity,
Electronic City Phase-1,
Neeladri - 560100.

(In person)

V/S

RESPONDENT.....

AJMERA HOUSING CORPORATION,
Ajmera Housing Corporation Kormangala,
Bangalore - 560100.

(Rep. By. Sri. Pradeep, Advocate)

1. This complaint is filed under section 31 of the RERA Act against the project "Ajmera Avenue" developed by "Ajmera Housing Corporation" situated in Doddathogur Village, Begur Hobli, Bengaluru for the relief of refund with interest.
2. This project is not registered in RERA.
3. The earlier order dated 04/02/2021 passed by this Authority is set aside by the Hon'ble K-REAT in Appeal No. (K-REAT) 58/2021 vide judgement dated 10/06/2022 for fresh consideration.

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Brief facts of the complaint are as under:-

4. The complainant has booked a flat bearing No. 204 in the project Ajmera Avenue of respondent wherein they have executed a sale deed on 15/05/2015. After execution of sale deed it is noticed by the complainant that, from past 4 years there is a litigation between Ajmera Infinity Apartment Owners Welfare Association (AIAOA) and Ajmera Housing Corporation and S Block Owners. The respondent is not yet given ownership rights of amenities. The homebuyers of the project are using the amenities through an interim order from Hon'ble High Court of Karnataka. Now, Ajmera Housing Corporation is pressurizing the complainant to accept the violation in the sale deed. The allottees are supposed to form a separate Association under an Apex body and not with the allottees of other blocks. Complainant has been cheated and tortured for 4 years through this pending litigation and now after 4 years respondents are forced to accept this violation. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through his counsel and filed statement of objections as under:-
6. He has denied entire allegations made against them by the complainant as false. He contends that, in pursuance to the agreement of sale dated 14/11/2013, he had executed the absolute sale deed dated 15/05/2015 thereby confirming the delivery of the possession of the 3BHK residential flat bearing No. S-204 to the complainant. The respondent did not register this project under the RERA Act as the occupancy certificate of the project was obtained by the respondent on 06/08/2014.
7. Further he contends that, earlier this Authority has dismissed this complaint vide order dated 04/02/2021. Against the dismissal of the complaint, the complainant preferred an appeal before the Hon'ble Appellate Tribunal in

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Karnataka Real Estate Regulatory Authority,

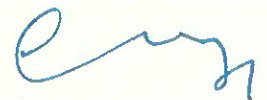
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Appl. No. 58/2021, and the same was remanded to this Authority for fresh consideration.

8. The respondent has launched their project in the year 2005-06 and completed in the year in between 2012-14. They have also obtained occupancy certificate by BDA on 17/02/2012, 20/03/2012 and on 06/08/2014. On 15/05/2015, as submitted by the complainant they have executed the sale deed in their favour and handed over the possession of the property. The respondent has also formed an apartment owners Association and transferred all the rights and responsibilities to the Association on 18/06/2012. The respondent has completed the project prior to commencement of the RERA Act. Therefore proceedings under this Act does not apply to the project Ajmera Avenue. Hence, prayed to dismiss the complaint with costs.
9. In support of her claim, the complainant has produced in all 4 documents such as copy of mail conversation between the parties, Stay order from Hon'ble High Court of Karnataka in W.P. No.54376 of 2016 (GM-CPC), Tax invoice for maintenance charges dated 01/09/2022 and sale deed dated 15/05/2015.
10. In support of his defence, the respondent has produced in all 5 documents such as copy of occupancy certificate dated 17/02/2012, 20/03/2012, 06/08/2014, agreement of sale dated 14/11/2013 and absolute sale deed dated 15/05/2015.
11. Hearings were conducted on 19/07/2022, 14/09/2022, 12/10/2022, 21/02/2023 and 28/03/2023.
12. Heard arguments of both sides.







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

1. Whether the complaint is maintainable?
2. What order?

14. **Our findings on the above points is as under:-**

1. In the Negative.
2. As per final order for the following

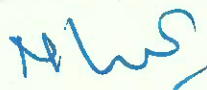
REASONS

15. **My finding on point No. 1:-** The complainant has approached this forum for the relief of refund with interest of amount paid to the respondent towards purchase of flat on the grounds that there is litigation since 4 years between Ajmera Infinity Apartment Owners Welfare Association (AIAOA) and Ajmera Housing Corporation and S block owners. The respondent has not yet given ownership rights to use amenities. As per sale deed the respondent has not formed a separate Association under an Apex Body.

16. The contention of the respondent is that, they have launched the project in the year 2005-06 and completed the same in the year in between 2012 – 2014 and obtained occupancy certificate by BDA on 17/02/2012, 20/03/2012 and 06/08/2014. The respondent has executed the sale deed in favour of the complainant and handed over the possession of the property on 15/05/2015. The respondent has also formed an apartment owners Association and transferred all the rights and responsibilities to the Association on 18/06/2012.

17. At this juncture, primarily, the Authority has to address the issue of maintainability of the complaint. Unless the Authority assumes jurisdiction in respect of the project the issues raised in the complaint filed under section 31 of the Act cannot be addressed. Section 3 of the Act deals with the registration of the projects that are ongoing projects as on the date of







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commencement of the Act. Only the projects which are registered with the Authority or required to be registered with the Authority shall come under the purview of the jurisdiction of the Authority to deal with the complaints filed under section 31 of the Act. This proviso makes it mandatory registration of projects for which the occupancy certificate have not been issued as on the date of commencement of the Act. In view of this, it is necessary to establish that the project was an ongoing project as on the date of commencement of the Act i.e., 10/07/2017.

18. At this juncture, our attention is drawn towards the decision of the judgement of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction civil appeal No's.6745 – 6749 of 2021 arising out of SLP (civil) No's. 3711-3715 of 2021 between M/s. Newtech Promoters and Developers Private Limited V/s. State of UP & others (2021 SCC Online SC 1044), it is held as under:

Para No.80:- "As submitted by learned counsel for the appellant, it may be true that, the registration alone cannot be a test to decide whether the provisions of the RERA are applicable or not; because, in that case, if the project is not registered, then, it will not be possible to accept that the provisions of the RERA are not applicable to such projects. However, in any considered opinion, this reasoning or logic cannot be applicable to the instant case, as section 3 of the RERA mandates registration. It clearly provides that, no promoter shall even advertise, market, book, sell or offer for sale or invite persons to purchase, in any manner, any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under the RERA. Even in respect of ongoing projects also, this mandate applies, unless it is shown that, 'completion certificate' has been already issued. The word used in section 3(1) and the







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proviso to section 3 in respect of 'ongoing project' is "shall", thereby making the intention of the legislature clear that, in respect of those ongoing projects also, the registration has to be sought within a period of three months from the date of commencement of the Act. Sub-clause (2) of section 3 provides for some exceptions, where registration of real estate project shall not be required and those exceptions are pertaining to the projects, where the area of land proposed to be developed does not exceed 8, inclusive of all phases, or, where the promoter has received completion certificate prior to commencement of the Act. One more exception laid down in clause (c) or sub-section (2) of section 3 is that, when the project undertaken is for the purpose of renovation or repair or redevelopment, which does not involve marketing, advertising, selling or new allotment of any apartment, plot or building, as the case may be; otherwise, for all other development projects, the registration under the RERA is mandatory."

19. The facts on the case indicate that this project had obtained occupancy certificate on 17/02/2012, 20/03/2012 and on 06/08/2014. It is also noted from the submission made during the course of hearings before the Authority that the complainant has taken possession of the flat on 15/05/2015. It is pertinent to note that the project was a completed project as on the date of commencement of the Act. Unless this project is required to be registered as an ongoing project, this Authority cannot exercise jurisdiction to adjudicate the complaints filed under section 31 of the Act. As is evident from the facts of the case, this project has to be treated as a completed project within the meaning of section 3(2)(b) of the Act. Accordingly, the point raised above is answered in the Negative.

20. **Our finding on point No.2:-** In view of the above discussion, the complaint deserves to be dismissed. Hence, we proceed to pass the following

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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/190706/0003492 is hereby dismissed as not maintainable.

No order as to costs.

(G.R. REDDY)

Member
K-RERA

(NEELMANI N RAJU)

Member
K-RERA

(H.C. KISHORE CHANDRA)

Chairman
K-RERA

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