

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 13th DAY OF SEPTEMBER 2023

COMPLAINT NO. CMP/UR/220101/0008760

COMPLAINANT:

ARVIND ARYA
1-A-203, SHILPITHA ROYAL
K.R. PURAM
KODIGEHALLI ROAD
BENGALURU URBAN-560067

(IN PERSON)

V/s

RESPONDENT....

M/s MAITHRI DEVELOPERS
NO: 55/3, 55/4
DEVARABISANAHALLI
OUTER RING ROAD
BELLANDUR
NEAR SAKRA HOSPITAL
BENGALURU URBAN-560103.

(BY DUA ASSOCIATES)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act, against the project 'SHILPITHA ROYAL' developed by "M/s MAITHRI DEVELOPERS" for the relief of refund with interest.



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2. The respondent has developed this project situated at BBMP Khatha No.241, Sadarmangala Village, K.R. Puram Hobli earlier Bengaluru South Taluk, presently Bengaluru East Taluk, Bengaluru.

3. This project is not registered in RERA.

4. The complainant had earlier filed a complaint in CMP No: 180905/0001239 before the Adjudication Officer, RERA under the same project for the relief of DG relocation to designated place. This complaint came to be allowed and the Adjudication Officer, KRERA vide order dated 16/8/2019 has passed the following order:

*"The developer is directed to relocate the DG set immediately
Since the same is not supported from the plan and to pay
Rs.10,000/- per month as compensation from the date of
This complaint till the DG set is re-located at a proper place"*

5. The complainant had filed the present complaint in CMP/UR/220101/0008760 against the same project. The gist of the complaint is that the complainant is the absolute owner and in possession and enjoyment of the flat bearing No: 203, Block-1, A-Wing in second floor in the project "SHILPITHA ROYAL" of M/s Maithri Developers(builder). Ever since from the date of purchase he was in exclusive possession and enjoyment of the said apartment. He shifted to Shilpitha Royal in 2016 and later observed a heavy diesel generator placement beside his apartment in dangerously close proximity. He had approached RERA in May 2018 and Hon'ble RERA has passed the order in August 2019 in complaint No. CMP/180905/0001239 to relocate DG with additional monetary penalties. Till date no actions are being taken by the builder to shift the DG. Therefore, he has approached this



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Authority for the relief of refund of amount with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority and filed preliminary objections as under:

6. It is submitted that the present complaint pertains to the residential project known as "SHILPITHA ROYAL" which was completed as far back as 2015. The RERA Act came into force w.e.f. 01/5/2017. Since the said project was a completed project as on the date of the coming into force of the RERA Act, it does not fall under the purview of the RERA Act. Further, at the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under sections 12,14,18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. The complainant has sought for compensation under section 14 read with section 18 of the RERA Act. It is contended that this Hon'ble Authority does not have the jurisdiction to deal with the present complaint. Hence, prayed to dismiss the complaint.

7. Heard the arguments of both the parties. This matter was heard on 27/9/2022, 20/10/2022, 8/11/2022, 24/11/2022, 11/01/2023, 6/2/2023, 6/3/2023, 10/4/2023, 11/4/2023, 26/5/2023 and on 7/7/2023.

8. The complainant in support of his claim, has produced documents such as (1) Memo of calculation (2) copy of sale deed dated 26/7/2016.



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

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

2. What order?

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

11. 1. In the Negative

2. As per final order for the following:

FINDINGS

12. **Findings on point no.1:** The grievance of the complainant is that the builder has not complied with RERA orders in CMP/180905/0001239 dated 16th August 2019 to relocate the DG. The builder is saying that he did not receive RERA order and also ignoring other communications made by him and not responding either. Therefore, he has approached this Authority to mandate switching off DG operations with immediate effect and relieve him by paying refund as per memo of calculations.

13. The same is resisted by the respondent on the ground that the said project was completed as far back as 2015. The RERA came into force with effect from 1/5/2017. The complainant has sought for compensation under section 14 read with section 18 of the RERA Act. Therefore, this Hon'ble Authority does not have the subject matter jurisdiction to deal with the present complaint.

14. From the materials placed on record, it is apparent that the respondent has executed absolute sale deed dated 26/7/2016 in favour of the complainant and the complainant himself has admitted that he is in



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occupation and enjoyment of the said flat in the project "Shilpitha Royal" since 27th July 2016.

15. During the proceedings held on 7/7/2023 the complainant has orally prayed before this Authority that the order passed by the Adjudicating Officer in CMP/180905/0001239 dated 16/8/20219 should be enforced and penalty proceedings for non-prosecution to be initiated. The Adjudicating Officer has passed the said order directing the respondent to relocate the DG set immediately since the same is not supported from the plan and to pay Rs.10,000/- per month as compensation from the date of this complaint till DG set is re-located at a proper place. Therefore, the complainant cannot seek to impose penalty on the respondent for such violation before this Authority.

16. Undisputedly, the sale deed was executed on 26/7/2016 in respect of flat no: A-203 in the project "SHILPITHA ROYAL" in favour of the complainant and also possession was handed over on the same date. This being the fact, now the complainant has approached this Authority seeking for the relief of entire amount paid to the respondent along with interest on the ground that despite the RERA order dated 16/8/2019 the builder has not complied with the said order to relocate the DG. Such reliefs cannot be granted in favour of the complainant as the sale deed is already executed in favour of the complainant and the title and possession of the apartment flat is delivered to the complainant. Besides, the provisions of RERA ACT was in force only from 10/07/2017 and since the transaction is before coming in force of RERA provisions, the complaint of the complainant cannot be entertained by this Authority. Taking into considerations all the facts and circumstances of this case, the point raised above is answered in the Negative.

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




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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/220101/0008760 is hereby dismissed.

No order as to costs.


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

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