

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, CHAIRMAN

DATED 4th DAY OF NOVEMBER 2023

COMPLAINT No: CMP/UR/190510/0002970

COMPLAINANTS....

**B.G. NATESH
M.C. PRATIBHA
GURU PRASANNA NILAYA
2ND MAIN, OPPOSITE
M.G. STADIUM
SHARADADEVI NAGAR
TUMKUR-572103**

**(BY SRI. MAHALINGAIAH
ADVOCATE)**

V/S

RESPONDENT.....

**M/S LAKE POINT BUILDERS
PRIVATE LIMITED
DALAMAL TOWERS
NARIMAN POINT
MUMBAI-400 021.**

**(BY SRI. GIRISH KUMAR B.M.
ADVOCATE)**

JUDGEMENT

1. This complaint is filed under section 31 of the RERA against, project "THE VILLAS" developed by " M/s LAKEPOINT BUILDERS PRIVATE LIMITED " for the relief of direction to the respondent to complete the construction work and to pay interest on delay period.

CSB

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

2. This project is not registered in RERA. This Authority has passed an interim order dated 7th March 2023 directing the respondent to register the project as required under section 3 of the Act within two weeks from the date of receipt of the said order.
3. The builder has developed this project in the limits of Sy.Nos. 176, 177 and 178, Sanna Ammanikere Village, Kasaba Hobli, Devenahalli Taluk, Bengaluru Rural District.
4. The gist of the complaint is that the complainants have booked a residential cottage bearing no. 616, in the project known as "THE VILLAS " by entering into an agreement of sale and construction agreement both dated 30/12/2020 for a total sale consideration of Rs.1,26,90,000/- (Rs. One crore twenty six lakhs ninety thousand only) with the respondent. The complainants have paid the entire sale consideration of Rs.1,26,90,000/- (Rs. One crore twenty six lakhs ninety thousand only) to the respondent on various dates which has been duly acknowledged by him. The respondent was required to hand over the possession of the said residential cottage to the complainants within 30/12/2013 with a grace period of 6 months i.e. by 30/6/2016. Thereafter the respondent has executed a sale deed in favour of the complainants on 6/8/2016 and handed over the possession on the same day. Since the respondent has delayed in completion of entire construction and hand over possession within the stipulated timeline, the the complainant were constrained to file this present complaint seeking for the relief of direction to the respondent to complete the construction work and to pay interest on delay period. Hence, this complaint.

ASB

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

5. After registration of the complaint, in pursuance of notice, the respondent has appeared before this Authority through his counsel and filed statement of objections as under:
6. The respondent has denied all the allegations made against it by the complainant as false. It is contended that the present complaint is not maintainable for the following grounds:
- (a) The dispute between the complainants and respondents centers around the schedule "C" property being a cottage No.616 in the project known as "The Villas". The said project was already completed before the enactment of RERA Act and that the said schedule C property/or the transaction was dated 6/8/2016 which do not come under the purview of the said Act.
- (b) Further, the provisions of the RERA Act cannot be construed to have retrospective effect and be made retrospectively applicable on buildings/projects which were already completed before the implementation of RERA Act.
- (c) All the prospective buyers of the said project are currently in peaceful enjoyment of their respective cottages. It is further contended that the said transaction was completed before the implementation of RERA Act and Rules. That, the explanation to Rule-4 of the Rules, 2017 defines "Ongoing project" and further excludes from registration of such projects which fulfill the criteria on the date of notification of the rules.



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

- (d) That a Full Occupancy Certificate dated 27/4/2017 was issued much prior to the coming into force of the RERA Act on 01/05/2017 and Rules 2017 on 10/7/2017 in favour of the respondent by Anneshwara Grama Panchayat, Devenahalli Taluk, Bengaluru Rural District.
- (e) That the Hon'ble High Court of Karnataka in W.P. No. 18448/2021 by order dated 02/01/2023 has held that the projects falling within the exemptions mentioned under Rule 4 of the Rules, 2017 need not be registered under the RERA Act. In the said case involving similar set of facts, the Hon'ble High Court was pleased to set aside the order passed by the RERA Authority allowing a belated complaint and in respect of which occupancy certificate was already issued holding that the complaint itself was not maintainable.
7. It is submitted that the complainants being interested in the project, desired to purchase a cottage and has approached the respondent to allot a cottage in his name along with his wife. Accordingly, the respondent has allotted the residential cottage bearing No. 616 in the project "The Villas" to the complainants and executed agreement of sale and construction agreement both dated 30/12/2010. Further, both the parties executed an Addendum to the agreement dated 30/12/2010 on 8/11/2013. Further, the complainants were requested for lot of changes to be made in the interiors of the said cottage and the same was carried out by the respondent with additional costs. Thereafter, the respondent has executed a sale deed in favour of the complainants on 6/8/2016. The complainants on the same day have taken the possession of the said cottage for the fit out and interiors and have also signed an undertaking stating that they have inspected the construction of the cottage and have satisfied with the quality of construction and other amenities.

AS

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

8. It is further contended that upon delivery of said property, the agreement holder will have no claim against the developers in respect of any items or work in the said schedule C Property which may be alleged not to have been carried out or completed by the Developers. Further, the complainants were chronic defaulters and they always delayed the payments at every milestone and they have been charged with the interest amounting to Rs.75,781/- till external plastering of the slab. The respondent has already waived off Rs.25,15,894/- out of the total interest charges after mutual understandings. Further, the complainants after taking the possession had given the said property for interior design works to some third party. There was no complaint or request by the complainants about the allegations of structural defects during the defect liability period. Hence, prayed to dismiss the complaint.
9. In support of their claim, the complainants have produced documents such as (1) copy of agreement of sale and construction agreement both dated 30/12/2010(2) copy of sale deed dated 6/8/2016 (3) copy of architect inspection report (4) copy of emails dated 24/12/2018 and 22/02/2019.(5) copy of Addendum to the agreement dated 8/11/2013 (6) copy of civil estimate (7) copies of e-mail dated 08/08/2016, 20/07/2016, 01/08/2011 and 24/8/2011(8) memo of calculation
10. The respondent in support of his defence has produced documents such as (1) copy of full occupancy certificate dated 27/04/2017 (2) copy of the order dated 02/01/2023 passed in W.P. No. 18448/2021 (3) copy of letter dated 6/8/2016 (4) copy of engineering check list.

Handwritten signature

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

11. Heard arguments. This matter was heard on 25/11/2022, 16/12/2022, 23/01/2023, 10/2/2023, 6/3/2023, 17/4/2023, 26/5/2023, 23/6/2023, 10/7/2023, 21/7/2023, 4/8/2023, 25/8/2023 and on 22/9/2023.

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

1. Whether the complaint is maintainable?
1. Whether the complainants are entitled for the relief claimed?
2. What order?

13. **Findings to the above points are as under:-**

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

FINDINGS

14. Findings to point No.1:- The complainant has approached this forum seeking for the relief of direction to respondent to complete the construction of the project and to pay interest on delay period. The grounds urged are that the as per the construction agreement dated 30/12/2010, the possession of the cottage was agreed to be delivered by the respondent to the complainants within 30 months with a grace period of 6 months i.e. by 30/6/2014. However, the respondent transferred possession and ownership of the cottage to the complainants only on 6/8/2016 and thus causing a delay of more than 2 years. Therefore, the respondent has visibly failed to discharge obligations imposed on it in accordance with the terms and conditions of the Agreement of sale.

15. The same is resisted by the respondent on the ground that he has completed the project and executed the sale deed in favour of the complainants on 6/8/2016 and handed over the possession of the cottage no. 616 in the project "The Villas" on the same day. The complainants have also signed an undertaking stating that they have

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

inspected the constructions of the cottage and have also satisfied with the quality of construction and other civic amenities. Further, all the existing buyers of the said project are currently in peaceful enjoyment of their respective cottages. The said transaction was completed before the implementation of the RERA Act and Rules.

16. On perusal of entire documents placed on record, it is apparent that a Full Occupancy Certificate dated 27/4/2017 was issued in favour of the respondent by Anneshwara Grama Panchayat, Devenahalli Taluk, Bengaluru Rural District was much prior to the coming into force of the RERA Act on 1/5/2017 and Rules, 2017 on 10/7/2017. No material has been placed on record to show that the project is ongoing as on 01/05/2017 when the RERA came into effect.

17. Hence, this complaint is not maintainable. Accordingly, the point raised above is answered in the Negative.

18. **Findings on point no.2:** As the project is not ongoing as on 01/05/2017 when the RERA came into force, the complainants would not be entitled for the relief claimed in the complaint. Accordingly, this point is answered in the Negative.

19. **Findings to point no.2.** In view of the above discussion, I proceed to pass the following:

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/190510/0002970** is hereby dismissed as "Not Maintainable".

No order as to costs.


(H.C. Kishore Chandra)

Chairman
K-RERA

NOT AN OFFICIAL COPY