

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 4<sup>th</sup> DAY OF NOVEMBER 2023**

**COMPLAINT No: CMP/190905/0004128**

**RECTIFICATION ORDER UNDER SECTION 39 OF RERA ACT**

**COMPLAINANT....**

**SARVANAN R  
212, SAI POORNA LUXURIA  
32/10, HARALAKUNTE VILLAGE  
BEGUR HOBLI  
KUDLU ROAD  
BENGALURU URBAN-560068**

**(IN PERSON)**

**V/S**

**RESPONDENT.....**

**SRINIVASULU POLA  
MANAGING DIRECTOR  
M/s SRINIVAS DEVELOPERS  
110/2, HARALUR OFF  
SARJAPUR ROAD  
BENGALURU URBAN-560102**

**(BY SRI. S.V. GIRIDHAR  
GIRIDHAR & CO)**

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**JUDGEMENT**

1. This complaint is filed under section 31 of RERA Act against the project "**SAI POORNA LUXURIA**" developed by "**M/s SRINIVASA DEVELOPERS**" for the relief of direction to the respondent for completion of pending works and to provide occupation certificate.
2. This project is not registered in RERA. This Authority has passed an interim order dated 27<sup>th</sup> January 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 said order.
- 2A. The complainant Sarvanan R has filed an application inviting the attention of the Authority to rectify factual mistake that has crept in the Authority's judgement dated 4<sup>th</sup> November 2023 on point no.17 in page 9 as "under appropriate Act" instead Karnataka Society's Registration Act,1960"
  - (a) The application has been verified and it is found necessary to rectify the order dated 4<sup>th</sup> November 2023.
  - (b) This rectification is done within two years from the date of the original judgement i.e. of 4<sup>th</sup> November 2023.
  - (c) There is no information about any appeal pending on this order.
  - (d) No substantive part of the order is amended
  - (e) The Authority's judgement dated 4<sup>th</sup> November 2023 is declared Non Est and replaced by this order dated 26/12/2023.
3. The promoter has developed this project in Sy.No. 32/10, Haralakunte Village, Begur Hobli, Bengaluru South Taluk and now the property within the jurisdiction of BBMP Ward No. 190.



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4. The gist of the complaint is that the complainant has booked a flat bearing No. 212 on the second floor, Block-B in the project "SAI POORNA LUXURIA" and entered into an agreement of sale dated 02/06/2014 with the respondent for a sale consideration of Rs. 49,98,805/- (Rs. Forty nine lakhs ninety eight thousand eight hundred and five only). Thereafter the respondent has executed a sale deed in favour of the complainant on 22/2/2018. It is contended that he has to face constant issues due to STP, fire work and other pending tasks from the builder. It is contended that he has insisted the builder to register the property under RERA, however, he did not inform anything about this. The builder has deviated the building plan. The building has approval for G+7 floors but the builder has constructed two additional floors. All amenities including STP, Overhead water tank, power back up were not considered for the additional floors. The STP tank overflow has been causing health hazards to the residents. The construction quality of the apartment is substandard. The tiles that were laid at the time of construction was not as per the standard. The walls were not coated with cement. Some portion of the common area in the flat is still left unfinished. There is no storm water drain or sewage connection for this apartment. The club house structure is not as per the commitment from the builder and he had paid additional charges at the time of registration. It is further contended that the builder should make appropriate plan for rainwater harvesting. The podium has developed cracks. The builder had committed to provide occupancy certificate but failed to provide due to deviation in the plan and not adhering to the guidelines mentioned by regulatory authorities. The project was





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delayed for more than 3 years from the stipulated timeline. Hence, he has approached this Authority for a direction to the builder to complete all the pending works and to provide occupation certificate. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through its 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 complainant has entered into an agreement of sale dated 02/06/2014 towards purchase of a flat bearing No. 212 in the project "SAI POORNA LUXURIA" for a total sale consideration of Rs.49,98,805/- (Rs. Forty nine lakhs ninety eight thousand eight hundred five only). It is submitted that the complainant has paid a sum of Rs.8,99,761/- as part sale consideration on 20/06/2014 and the banker of the complainant has dispersed a sum of Rs.34,99,164/- on 11/07/2014 in favour of the respondent. The complainant has further paid an amount of Rs.2,49,490/- on 13/03/2016 being the full and final sale consideration for the said apartment. It is further said that the project was completed in March 2016 and that there was no advertisement, marketing, bookings, sell or offer to sell or invite persons to purchase the apartment in the said project subsequent to date of enforcement of the Act. It is submitted that the present apartment No.212 in the project "SAI POORNA LUXURIA" was completed and was ready to be handed over to the purchaser even before the date of enforcement of Section 3 of the Act. The



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complainant has delayed in getting the sale deed registered in his favour and the same was registered on 22/2/2018. It is further submitted that as on the date on which the sale deed was registered cannot be considered as the date of completion of the project. There has been no fault by the respondent and there is no liability of the respondent that the project is required to be registered as required under section 3 of the Act. Hence, prayed to dismiss the complaint.

7. The complainant, in support of claim has produced documents such as (1) a copy of letter from builder for OC (2) email to builder for fixing damaged tiles © letter from all owner to builder to fix pending work (4) copy of peaceful protest by owners
8. The respondent in support of his defence, has furnished documents such as (1) copy of sale deed executed in favour of Srinivas Developers dated 16/4/2005 (2) Conversion order dated 26/10/2004 from agricultural to non-agricultural residential purposes (3) BBMP Khata certificate (4) License No.58 dated 10/2/2012 (5) Development Right Certificate(TDR) to an extent of 3299.55 square meters + 618.75 square meters (6) NOCs from BSNL, BESCO, HAL, Fire Force, Pollution Control Board.
9. Heard both the parties. Hearing were conducted on 16/12/2022, 25/01/2023, 17/2/2023, 20/3/2023, 17/04/2023, 9/6/2023, 10/7/2023, 21/7/2023.
10. **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?



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11. **Answer to the above points are as under:-**

1. Partly Affirmative.
2. As per final order for the following

**FINDINGS**

12. **Findings on point No.1.** The grievance of the complainant is that there are many works left uncompleted as per the compliance norms while building the flats. The association has not been formulated. It is urged that in the absence of such an association, there is no guarantee of continuity of daily services like water, STP house keeping. The following works need to be completed within the fixed timeline such as (a) betterment charge of the plot (b) STP(proper drainage for STP) (c) Lift and Generator license (d) approval for construction two additional floors (e) BESCO penalties, occupancy certificate, rain water harvesting, gardening, front signage, all essential drainage system, fire and painting work.

13. The same is resisted by the respondent on the ground that:

- (a) **Betterment charges:** The land is a converted property and license was granted/sanctioned by BBMP and therefore betterment charges to the plot is not applicable to the case on hand.
- (b) **STP:** The best quality STP in the market and approved by the authorities was installed and the Flat Owners' Association is maintaining the STP.
- (c) **Lift Licence:** Obtained with the approval of the authorities and handed over to the Flat Owners' Association.
- (d) **Generator Licence:** Obtained with the approval of the competent authorities and handed over to the Flat Owners' Association.





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- (e) **8<sup>th</sup> and 9<sup>th</sup> floor approval:** Obtained necessary TDR and has constructed within permissible limits and the modified plan is pending due to Government/BDA/BBMP and criminal cases/inquiry/investigation against the employees of the State. Therefore, beyond the circumstances of the respondent – there is no illegality in putting up the 8<sup>th</sup> and 9<sup>th</sup> floor and is within the ambit of law.
- (f) **BESCOM Penalty:** There is no such penalty imposed. In fact the BESCOM has permitted sanction of electricity load to 8<sup>th</sup> and 9<sup>th</sup> floor.
- (g) **Occupancy certificate** – The modified plan is pending consideration by BBMP due to TDR issue. Occupancy certificate would be provided once the issue is resolved by the Government/BDA/BBMP/Courts.
- (h) **Rain water harvesting:** Provided as stipulated by Pollution Board.
- (i) **Gardening** – Necessary area was earmarked for gardening and the Flat Owners' Association is developing the garden.
- (j) **Front Signage** – All issues resolved with Flat Owners' Association.
- (k) **All essential Drainage system:** Resolved as required under the Pollution Board.
- (l) **Fire** –Duty is cast on Flat Owners Association. However, the promoter has completed his task as required and NOC issued thereof.
- (m) **Painting work:** - Flat Owners Association is duty bound – However, the promoter has painted the building as is required.

ASB

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(n) **Club House:** Brochure is not a legal document and cannot be relied upon by the complainant for making illegal claims and demands. No such promise was made either in the agreement of sale or sale deed.

14. Undisputedly, the complainant had entered into an agreement of sale dated 02/06/2014 towards purchase of apartment no. 212 in the project "SAI POORNA LUXURIA" of the respondent for a total sale consideration of Rs.49,98,805/- (Rs. Forty nine lakhs ninety eight thousand eight hundred five only) and has paid the entire sale consideration. The respondent has executed a sale deed in favour of the complainant on 22/2/2018.

15. The respondent has taken a contention that he has purchased lands in Sy.No: 32/10 of Haralakunte Village through sale deed dated 16/4/2015. The khatha of the lands were mutated in the name of the promoter firm M/s Srinivas Developers in 2011. The license to construct residential apartment was obtained from the competent authority i.e. BBMP on 10/2/2012. With the consent of the BBMP two floors were extended under the scheme Transfer of Development Rights(TDR) and modified plan was to be sanctioned by BBMP. However, due to some litigations/disputes arising between the Government, BDA and BBMP as regard to misuse of TDR by some erring Government officials, the modified plan was kept in abeyance and construction of additional floors was permissible both in law and rules framed by BBMP. During the construction and after completion of the construction, he has obtained all necessary sanctions, permissions, NOC from all concerned authorities. The developer has undertaken to complete all the obligations and has taken care to resolve local issues if any.

*ASB*



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16. On going through the entire documents and materials placed on record, it is apparent that the respondent has not formed an Association of Allottees as required under law. Further, the complainant is a party to all the meetings held between the promoter firm with the Flat Owners' Association and various authorities and agencies and all pending works were completed to the satisfaction of the Association. The promoter had given written assurances to the Flat Owners' Association that any such minor works would be attended to. From this, it is crystal clear that the respondent has fulfilled all the obligations and has completed the entire construction of the said project and executed sale deeds in favour of the purchasers from March 2016 as the project stood completed as on that date.

17. Hence, at this stage it would be just and appropriate to issue directions to the respondent to form an Association of Allottees as required under relevant laws (**amended vide order dated 26/12/2023**) and to obtain the necessary occupancy certificate from the competent authority and provide the same to the complainant as agreed. Having regard to all these aspects, the point raised above is answered in the Partly Affirmative.

**18. Answer to point no.2.** In view of the above discussions, I conclude that, this complaint deserves to be allowed in part. Accordingly, I proceed to pass the following order:

**ORDER**

19. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/190905/0004128** is hereby partly allowed



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1. The respondent is hereby directed to form an Association of Allottees as required under law and to obtain necessary Occupancy certificate from the competent authority and provide the same to the complainant within 60 days from the date of this order.
2. The complainant is at liberty to file afresh complaint before the Adjudicating Officer, K-RERA for compensation for deficiency of service if any under section 14 of RERA Act.

No order as to costs.

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

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