

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/210622/0008024

DATED THIS 1ST DAY OF DECEMBER, 2023

COMPLAINANT.....

SURESH JAYARAM,
80, Hutchins Road,
3rd Cross, St. Thomas Town,
Bengaluru - 560084.

(Rep. By. Sunil.K, Advocate)

V/S

RESPONDENT.....

VALERIAN DAYANAND,
Zoe India Properties Private Limited,
No.50/8A, 2nd Floor, Gubbi Cross,
Hennur Bagalur Main Road, Kothnur,
Bengaluru - 560077.

(In person)

1. This complaint is filed under section 31 of the RERA Act against the project "Zoe Residency" developed by "Zoe India Properties Pvt. Ltd.," on Sy. No. 76, 77 & 98, Gowda's Street, Mallasandra - Byranahalli Road, Malur (Near Narasapura Industrial Area), Kolar - 563130 for the relief of registration of plots or compensation equivalent to the current market value.
2. This project is registered under RERA bearing Registration No. PRM/KA/RERA/1265/347/PR/291022/005379 valid till 06/09/2024.

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Brief facts of the complaint are as under:-

3. The complainant has entered into two Memorandum of Understatings dated 22/07/2013 and 10/01/2014 with the respondent for purchase of 40 plots measuring (30*40) for a total sale consideration of Rs.1,00,00,000/- (Rupees One Crore Only) and the complainant has paid Rs.50,00,000/- (Rupees Fifty Lakh Only) on various dates from 07/12/2012 to 15/03/2014. Further, the respondent has stopped the development work in the project and indefinitely delaying the completion of the project. The respondent has not responding calls and not willing to come forward for discussion. The respondent has not registered this project under RERA, but had already executed nearly 25+ registered sale deeds to various buyers. He denied receiving the money from the complainant even though it was paid through cheque. Therefore, in this regard the complainant has filed a criminal case and same is pending. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority and filed statement of objections as under:-
5. He has denied the entire allegations made against them by the complainant as false. He contends that, the complainant is an investor who has filed criminal case in CC No.53849/2019 before Mayo Hall. However, the complainant has been portraying different versions before different forums to tarnish the image of the respondent. This Authority has no jurisdiction to entertain the complaint. Hence, prayed to dismiss the complaint.
6. In support of his claim, the complainant has produced in all 5 documents such as copy of Encumbrance certificate, supplemental agreement to the joint development agreement dated 07/05/2022, postal receipt for serving copy of written submission to the respondent, statement of accounts and memorandum of understanding dated 22/07/2013 and 10/01/2014.

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7. The respondent has not produced any documents in support of his defence.
8. Hearings were conducted on 08/12/2021, 17/03/2022, 26/04/2022, 19/05/2022, 15/11/2022, 28/03/2023, 19/04/2023, 06/06/2023, 26/07/2023, 05/09/2023, 20/09/2023 and finally on 10/10/2023.
9. Heard arguments.
10. **On the above averments, the following points would arise for Our consideration:-**
 1. Whether the complaint is maintainable?
 2. What order?
11. **Our findings on the above points is as under:-**
 1. In the Negative.
 2. As per final order for the following

REASONS

12. **Our finding on point No. 1:-** The complainant has approached this Authority seeking for the relief of direction to the respondent to register the plots or to award compensation equivalent to the current market value of plots. The grounds urged are that he had entered into two Memorandums of understanding dated 22/07/2013 and 10/01/2014 with the respondent towards purchase of 40 plots for a total sale consideration of Rs.1,00,00,000/- (Rupees One Crore Only). Accordingly, he had paid Rs.50,00,000/- (Rupees Fifty Lakhs Only) to the respondent on various dates from 07/12/2012 to 15/03/2014. The respondent had stopped the development work and delayed the completion of the project. Now, the respondent is not responding the calls so also not willing to come forward for discussion. The respondent without registering the said project had already executed nearly 25 registered sale deeds to various purchasers.

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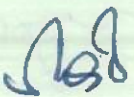
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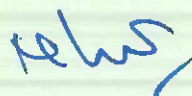
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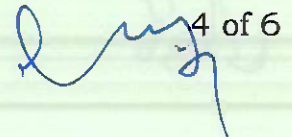
13. Same is resisted by the respondent on the grounds that, the complainant is not an allottee and he is an investor who has filed various cases against the respondent before different forums.
14. Undisputedly, both memorandum of understandings dated 22/07/2013 and 10/01/2014 were entered into between the parties during the year 2013 and 2014 i.e., before enactment of RERA Act.
15. On going through the entire materials placed on record, it is apparent from the statement of accounts and Memorandum of understanding that the complainant had paid Rs.50,00,000/- (Rupees Fifty Lakhs Only) to the respondent towards purchase of the plots for a total sale consideration of Rs.1,00,00,000/- (Rupees One Crore Only). The entire claim of the complainant is based on memorandum of understanding dated 22/07/2013 and 10/01/2014. At the time of entering into such memorandum of understanding, the lands pertaining into the said project have not yet converted from agricultural to non-agricultural land by the concerned authority and the respondent has not obtained approval for formation of layout and sanctioned plan etc.,
16. As per section 31 of RERA Act,

Filing of complaints with the Authority or the adjudicating officer.—(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force. (2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be 1 [prescribed].





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17. Taking into consideration of entire materials placed before the Authority it can be very well gathered that the complainant is not an allottee, but he is an investor.
18. Here, in this case the claim of the complainant is based on the memorandum of understanding dated 22/07/2013 and 10/01/2014 in respect of 40 plots. Looking to the entire averments of said memorandum of understanding entered between the parties, it is significant to note that it is nowhere mentioned with regard to description of the property. The complainant is setting up his claim only on the basis of memorandum of understanding. But description of the property is not forthcoming so as to identify the property unmistakably and to grant the relief of execution of sale deed as prayed for by the complainant. While entering into any such documents, buyer has to make sure that such description shall be incorporated in the memorandum of understanding so as to lay foundation for the claim in the event of any dispute. When the complainant is claiming for the relief based on such document which binds the parties in a contractual relation so as to be properly enforced in accordance with law, it is quite necessary that it shall be free from ambiguity and vagueness. Otherwise, it is quite possible that the buyer may not be able to maintain his claim over the property which he is intending to purchase on account of want of proper description of the property.
19. The relief claimed by the complainant is akin to the one claimed in the suit for specific performance before the Civil Court. There also for grant of main relief, it is quite essential to prove the description of the property in the first place. On the same analogy here also it is mandatory for the complainant to prove the description of the property in respect of which he is seeking execution of sale deed from the respondents.
20. In addition, the complainant had already initiated criminal proceedings against the respondent herein in CC No.53849/2019 alleging that the







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respondent had committed the offence of cheating u/s.420 read with 34 of IPC before filing the present complaint.

21. Here in this case, the grievance of the complainant is already pending for consideration in criminal case before approaching this forum. Having regard to all these aspects, we are of the opinion that the complainant is not entitled for the relief claimed. Accordingly, the point raised above is answered in the Negative.
22. **Our findings on point No. 2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we 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/210622/0008024 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