

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/211130/0008651

DATED THIS 1ST DAY OF DECEMBER, 2023

COMPLAINANT.....

MANJUNATH NAIK,
KSR Cordellia, CB-00-08,
B" Block, Ground Floor,
Dasarhalli Main Road,
Bengaluru - 560024.

(In person)

V/S

RESPONDENT.....

KUNDURAMANA REDDY,
No.1302, A Block,
Meenakshi Trriedentopp,
Ramky Tower, Gachibowi,
Rangareddy,
Hyderabad - 500032.

(Rep. By Shishira Amarnath, Advocate)

1. This complaint is filed under section 31 of the RERA Act against the project "KSR Cordelia" developed by "K Ramana Reddy" situated in KSR Cordelia, Near Rachenhalli Lake Park, Dasarhalli Main Road, Bengaluru - 560024 for the relief of direction to the respondent to complete the pending issues and to register the sale deed.







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2. This is an unregistered project.

Brief facts of the complaint are as under:-

3. The complainant had booked a flat bearing No.CB-00-08 in the project KSR Cordelia of the respondent by entering into an agreement of sale and construction agreement both dated 28/09/2017. The total sale consideration of the said flat is Rs.72,50,014/- (Rupees Seventy Two Lakh Fifty Thousand Fourteen Only) and he has paid entire sale consideration to the respondent on various dates. As per the agreement of sale and construction agreement, the respondent was supposed to complete the project, execute the sale deed and handover the possession of said flat to the complainant on or before April 2020. But, the respondent has failed to complete the project as agreed. Further, it is a poor quality of construction and there is seepage in multiple walls. Poor pipeline resulted in unhealthy living conditions. There is water leakage. The respondent didn't complete the project even to the 50% of what is provided in the brochure. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through his counsel by filing vakalat but he has not contested the matter by filing statement of objections, producing documents etc.,
5. In support of his claim, the complainant has produced in all 4 documents such as copy of Agreement to sell and construction dated 28/09/2017, allotment letter and no due certificate.
6. Hearings were conducted on 27/09/2022, 13/10/2022 and finally on 12/04/2023.
7. Heard arguments.
8. **On the above averments, the following points would arise for our consideration:-**

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1. Whether the complainant is entitled for the relief claimed?
2. What order?

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

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

REASONS

10. **Our finding on point No. 1:-** The grievance of the complainant is that, he had purchased a flat bearing No.CB-00-08 in the project KSR Cordelia of the respondent by entering into an agreement dated 28/09/2017 and paid entire sale consideration amount to the respondent. The respondent was supposed to complete the project and to execute the registered sale deed of their flat in their favour on or before February 2018 as per agreement of sale. However, the respondent has not completed the project and registered the sale deed of their flat bearing No. CB-00-08 as agreed.
11. The agreement is a key instrument which binds 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 any ambiguity and vagueness. From the materials produced by the complainants it is apparent from the occupancy certificate dated 24/11/2018 that he has applied for occupancy certificate on 28/03/2017. Further, he has executed agreement of sale in respect of said flat in favour of complainants on 30/09/2019 agreeing as per clause No.20.1 as under:-

The possession of the schedule 'C' Apartment in Schedule 'A' Property will be delivered by the First Party to the Second Party within 3 months from this date of agreement with two months grace period. Though every effort will be made to obtain electrical, water and sewerage connections with the stipulated time, no responsibility will be accepted by the First Party for delays in obtaining such connections, clearances, occupancy and other certificates from the statutory authorities

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and second party shall not be entitled to claim any damage / losses / interest against the first party on the ground of such delay. The second party shall however pay the consumption charges as per bills raised. The construction shall be deemed completed solely based on the Architects certificate.

12. Herein this case, the respondent had applied for occupancy certificate on 28/03/2017 and obtained the same on 24/11/2018. However, the respondent had obtained NOC from fire clearance department on 07/09/2018 i.e., after commencement of RERA Act. The application dated 28/03/2017 is not valid, without obtaining NOC from fire Department. Therefore, this project is to be considered as ongoing. Hence, it is just and necessary to direct the respondent to register the project 'KSR Cordelia' under section 3 of the RERA Act.
13. The builder/developer has to obtain all necessary NOC's from the concerned competent Authorities before applying for occupancy certificate. Herein this case, the respondent has obtained NOC from Fire Clearance Authority only on 07/09/2018. Without obtaining the said NOC, he had applied for occupancy certificate on 28/03/2017. Therefore, as on the date of applying for occupancy certificate, the respondent had not obtained the necessary NOC from fire clearance Department which is mandatory. Hence, the said project is to be considered as ongoing.
14. According to the respondent they have completed the entire development works of the said project and had applied for occupancy certificate on 28/03/2017 i.e., before enactment of RERA Act. Had it been the fact, the respondent would not have been mentioned in the agreement of sale dated 30/09/2019 that he is going to complete the project and to register the sale deed of the said flat in favour of complainants on or before February 2018.
15. In response to the notice, the respondent has appeared before this Authority through its authorized signatory, but not contested the matter by filing statement of objections, producing documents on its behalf etc.,. The

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respondent has not participated in the proceedings and not disputed the claim of complainant. Hence, the claim of complainant has remained unchallenged which is corroborating with cogent evidence.

16. Having regard to all these aspects, no option is left with this Authority except to accept the claim of complainants.
17. The question of requirement of registration of real estate project where it is not completed has been dealt with in the Hon'ble High Court of Judicature at Madras in CMSA No:22 of 2019 before a Division Bench. It is held in this Judgment that the Project should be completed in all respects for the OC to be in order. At this juncture, our attention is drawn towards the Judgment of the Karnataka High Court in Writ Petition No:11522/2012. Para 9 and 10 of the Judgment is reproduced as below:

9. The construction of buildings is governed by the Bangalore Mahanagara Palike Building Bye-Laws 2003. Bye-law 5.6 is with reference to grant of an Occupancy Certificate, which reads as follows:

"5.6. Occupancy Certificate - 5.6.1 (a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of the erection of a building shall send intimation to the Commissioner in writing of such completion accompanied by a certificate in Schedule VIII certified by a Registered Architect / Engineer / Supervisor and shall apply for permission to occupy the building.

The Authority shall decide after due physical inspection of the building (including whether the owner had obtained commencement certificate as per Section 300 of the Karnataka Municipal Corporations Act, 1976 and compliance regarding production of all required documents including clearance from the Fire Service Department in the case of high-rise buildings at the time of submitting application) and intimate the applicant within thirty days of receipt of the intimation whether the application for occupancy certificate is accepted or rejected. In case, the application is accepted, the occupancy certificate shall be issued in

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the form given in Schedule IX provided the building is in accordance with the sanctioned plan.

(b) Physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and requirement of building bye-laws, and includes inspections by the Fire Service Department wherever necessary.

(c) If the construction or reconstruction of a building is not completed within five years from the date of issue of licence for such a construction, the owner shall intimate the Authority, the stage of work at the expiry of five years. The work shall not be continued after the expiry of five years without obtaining prior permission from the Authority. Such continuation shall be permitted, if the construction or reconstruction is carried out according to the licensed plan and if the Authority is satisfied that at least 75 per cent of the permitted floor area of the building is completed before the expiry of five years. If not, the work shall be continued according to a fresh licence to be obtained from the Authority.

5.6.2. For all high-rise buildings, the work shall also be subject to inspection by the officers of the Karnataka State Fire Service Department and the occupancy certificate shall be issued only after obtaining a clearance certificate from the Director of Fire Services."

10. If the building is partly constructed, then an Occupancy Certificate in terms of Bye-Law 5.6 cannot be granted. However, a POC can be granted to a part of the building, in terms of Bye-Law-5.7, which reads as follows.

"5.7 Occupancy or letting of the new buildings.- No person shall occupy or allow any other person to occupy any new building or part of a new building for any purpose whatsoever until occupancy certificate to such buildings or part thereof has been granted by an officer authorized to give such certificate, if in his opinion in every respect the building is completed according to the sanctioned plans and fit for the use for which it is erected. The Authority may in exceptional cases (after recording reasons) allow partial occupancy for different floors of a building."

18. In the Judgment cited above, the occupancy certificate was quashed as not having followed the procedure laid down in the above bye-laws. It is relevant at this point of time that clearance for Fire Service department in the case of

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high rise buildings is an essential requirement for occupancy certificate to be valid.

19. It is relevant to refer to the Judgement of Hon'ble High Court of Karnataka in ILR 2014 KAR 2863 of Justice Ravi Malimath. While deciding this case, the Hon'ble High Court of Karnataka has drawn attention to byelaw 5.6 of BBMP relating to grant of an occupancy certificate. In the byelaw, before application of occupancy certificate, clearance from the fire service department is a necessary pre-condition and without fire clearance any application for issuance of occupancy certificate is not in accordance with law.
20. The purport of the judgement is that occupancy certificate is given on an application along with all the required documents apart from other documents as required in the byelaw. For our purpose application for occupancy certificate without obtaining clearance from the fire service department is 'No application' at all.
21. In this particular case, the fire clearance was obtained on 07/09/2018. Hence, the builder had applied for occupancy certificate on 28/03/2017 and that application is premature in law.
22. Further, the respondent has clearly mentioned in the agreement of sale dated 28/09/2017 that after completion of the project possession of the said flat will be delivered within 3 months from the date of said agreement of sale with 2 months grace period i.e., in the month of February 2018. However, in response to the notice though the respondent has appeared before this Authority through his counsel by filing vakalat but he didn't participate in the further proceedings, by filing statement of objection, producing documents on his behalf etc.,. Thus, he has not disputed the claim of complainant. The claim of complainants remained unchallenged and it is corroborating with cogent evidence. The respondent has not resisted the claim of complainant in any manner.



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23. During the proceedings, the complainant has produced copy of sale deed dated 01/02/2023 executed by the respondent in respect of his flat bearing No. CB-00-08. Further, the complainant submits that the respondent has not transferred Khata of said flat in his name and not allotted car parking space as agreed.
24. In general to have his own cozy house is everyone's dream. To fulfil that dream, one would take risk of investing all his lifetime savings and raise loans in terms of lakhs or crores which would take away rest of his life in repaying the same. That being so, the developer who promises to fulfil dream of owning the house shall conduct himself in equally responsible manner.
25. As far as issues of completion of amenities and allotment of car parking are concerned, as per the agreement of sale the respondent has to complete the project and to provide all amenities including car parking as agreed. Further, the respondent has to resolve all the issues with regard to construction, seepage, water leakage etc.,. Having received entire sale consideration, failure on the part of the respondent to complete the work and to provide all the amenities, certainly entitles the complainant for the relief claimed.

Sum and substance of the case is as under:-

Date of agreement of sale and construction agreement	28/09/2017
Sale consideration	Rs. 72,50,014/- (Rupees Seventy Two Lakh Fifty Thousand Fourteen Only)
Amount paid	Rs. 72,50,014/- (Rupees Seventy Two Lakh Fifty Thousand Fourteen Only)
Promised date of possession as per AOS	February 2018
Date of Sale deed	01/02/2023
Date of occupancy certificate	24/11/2018

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Whether the possession has been handed over	Handed over on 01/02/2020
Prayer	Direction to the respondent to complete the pending issues, to register the sale deed and to allot car parking.

26. Under such circumstance, it is just and appropriate to direct the respondent to maintain good quality of construction and to resolve all the multiple pending issues inside the flats, water leakage, wiring, pipeline etc., Accordingly, the point raised above is answered in the Affirmative.
27. **Our finding on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we 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/211130/0008651 is hereby allowed.

1. The respondent is directed to resolve all the pending issues like water leakage, wiring, pipeline etc., in the project 'KSR Cordelia' and to allot car parking in favour of the complainant as agreed within 60 days from the date of this order.
2. Further, the respondent is directed to complete the project with all the amenities as agreed in the agreement of sale and sale deed.
3. The respondent is hereby directed register the project 'KSR Cordelia' under section 3 of the Real Estate (Regulation and Development) Act, 2016 within 30 days from the date of this order.





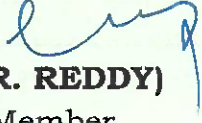


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No order as to costs.


(G.R. REDDY)
Member
K-RERA


(NEELMANI N RAJU)
Member
K-RERA


(H.C. KISHORE CHANDRA)
Chairman
K-RERA

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