

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 30TH DAY OF DECEMBER 2023

COMPLAINT No: CMP/221003/0010047

COMPLAINANT....

**ANITHA LS
LAXMI SAGAR
MAHADESHWARAPURA
PANDAVAPURA TALUK
MANDYA
KARNATAKA-571434**

**(REP BY RAMA R. IYER
VINAY KUMAR H.R. ADVOCATES)**

V/S

RESPONDENTS.....

**1.M/S ESS AND ESS INFRASTRUCTURE
PRIVATE LIMITED
HAVINGS REGISTERED OFFICE AT:
1112, 2ND FLOOR, G & H BLOCK
GAGANACHUMBI DOUBLE ROAD
KUVEMPUNAGAR
KARNATAKA-570023**

**(REP BY SUBRAMANYA S. UDUPI
ADVOCATE)**

**2. JSS MAHAVIDYAPEETHA
EMPLOYEES HOUSING
CO-OPERATIVE SOCIETY
HAVINGS REGISTERED OFFICE AT
#32, 12TH BLOCK, JSS LAYOUT
MYSURU, KARNATAKA-570029**

**(REP BY SUSHMA S. SHETTY
ADVOCATE)**

Asb

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA against the project "**JSS 4TH STAGE BLOCK-A'**" developed by **M/s ESS AND ESS INFRASTRUCTURE PRIVATE LIMITED**" for the relief of allotment of site and interest on delay period.
2. This project is registered in RERA bearing registration no: PRM/KA/RERA/1268/378/PR/211117/004525.
3. The builder has developed this project situated at Sy.Nos. 60/2, 60/3, 60/4, 61, 63/2, 63/3 and 64/2 of Madapura Village, Varuna Hobli, Mysore.
4. Respondent-1 is a leading property developer in Mysore and the respondent no.2 is a leading educational institution.
5. The gist of the complaint is that the respondent no.2 has launched an attractive scheme and made an offer to the complainant in the year 2013 in their layout "JSS Mahavidyapeetha Employees Housing Co-operative Society Stage-4" wherein each site formed in the said layout to be sold at a sale consideration of Rs.5,40,000/- and the said amount to be paid in 5 equal instalments at Rs.1,08,000/- (Rs. One lakh eight thousand only) each per instalments. Further, there is no written agreement of sale or any agreement between the complainant and the respondents, there was only an oral agreement informing the members of the Society to pay 5 instalments of Rs.1,08,000/- per instalment for the aforesaid total sale consideration of Rs.5,40,000/- (Rs. Five lakhs forty thousand only) based on the development of formation of the layout. The complainant has paid an amount of Rs.1,08,000/- (Rs. One lakh eight thousand only) on 13/12/2013



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as 1st instalment to the respondent no.2 which has been duly acknowledged by him. It is contended that it has been almost 9 years from the date of booking, but still they have not handed over the site. Therefore, the complainant has approached this Authority for the relief of allotment of site and interest on delay period. Hence, this complaint.

6. After registration of the complaint, in pursuance of notice, the respondent-no.1 and 2 have appeared before this Authority through their respective counsels and filed statement of objections as under:

7. **OBJECTIONS FILED BY RESPONDENT NO.1**

He has denied all the allegations made against him by the complainant as false. It is contended that the complainant has filed this complaint against the wrong person. As per the documents produced by the complainant, nowhere there is transaction between the complainant and respondent no.1 and hence respondent no.1 is bound to refund any amount or pay compensation to the complainant. Further, there is no cause of action for this complaint and moreover there is no deficiency of service on the part of respondent no.1 in this case. Hence, prayed to dismiss the complaint.

8. **OBJECTIONS FILED BY RESPONDENT NO.2**

He has denied all the allegations made against him by the complainant as false. It is contended that the complainant has approached respondent no.2 for allotment of site in the project "JSS LAYOUT 4TH STAGE". As per mutual agreement and consent it was directed by the respondent no.2 to the complainant that he ought to pay a total sum of Rs.5,40,000/- (Rs. Five lakhs forty thousand only) in 5 equal instalments of Rs.1,08,000/- each per instalment on various dates as follows: i.e. on 13/12/2013, 13/3/2014, 13/6/2014, 13/9/2014 and 13/12/2014 i.e. within one year and the complainant has agreed to do the same. The complainant on 13/12/2013 has paid an amount of Rs.1,08,000/- as 1st instalment to the



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respondent no.2 which has been duly acknowledged by him. Further the complainant has not paid the remaining instalments till date as agreed to pay within a year from the date of 1st instalment. It is submitted that since the complainant failed to pay instalments within the stipulated timeline and hence payment of compensation for delay does not arise at all. Further, there was no written agreement or contract between the respondent no.2 and the complainant. Hence, prayed to dismiss the complaint.

9. In support of his claim, the complainant has produced documents such as Copy of receipts of payments made to the respondent no.2.
10. On the other hand, in support of their defense, both the respondent no.1 and respondent no.2 have not produced any documents.
11. Heard arguments of both the parties. Written arguments filed by the complainant as well as respondent no.1 and 2 have been taken note of.
12. This matter was heard on 14/12/2022, 16/01/2023, 14/2/2023, 14/2/2023, 15/3/2023, 18/4/2023, 2/6/2023, 23/6/2023, 24/7/2023, 23/8/2023, 15/9/2023 and on 12/10/2023.
13. 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?
14. **Findings to the above points are as under:-**
 1. In the Negative.
 2. As per final order for the following:



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FINDINGS

15. Findings to point No.1:- The complainant has approached this forum for the relief of allotment of site and interest on delay period. The grounds urged are that the she had booked a site in the project "JSS 4TH STAGE" ON 13/12/2013 by paying an amount of Rs.1,08,000/- on 13/12/2013 as 1st instalment out of total sale consideration of Rs.5,40,000/- (Rs.Five lakhs forty thousand only) to the respondent no.2 which has been duly acknowledged by him. It is contended that it has been almost 9 years from the date of booking, but still they have not handed over the site. There was an oral agreement regarding the payment of instalments based on the development in the residential layout and trusting the same the complainant had paid 2 instalments and was waiting for the allotment of sites.

16. The respondent no.1 has taken a contention that nowhere he has entered into any agreement nor have received any amount from the complainant. Hence, the respondent no.1 is not bound to refund any amount or to pay compensation to the complainant.

17. The respondent no.2 has taken a contention that the complainant has not paid the remaining amount of the instalments which he has agreed to pay within a year from the date of 1st instalment. Further, since the complainant had failed to pay instalments within the stipulated timeline and hence interest on delay period does not arise at all since the complainant failed to perform his part of contract. There is no written agreement of sale of any agreement between the complainant and respondent no.2. As per the oral agreement, the allotment of the site number to the members of the Society will only after the completion of the layout.

ASB

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18. On perusal of materials placed on record, it is apparent that the complainant has paid an amount of Rs.1,08,000/- on 13/12/2013 as 1st instalment to the respondent no.2 which has been duly acknowledged by him.

19. Here, in this case the claim of the complainant is based on the oral agreement in respect of allotment of site in the project "JSS 4TH STAGE BLOCK-A" of the respondents. Looking to the entire averments of said oral agreement between the parties, it is significant to note that it is nowhere mentioned with regard to description of the property as well as location of the property. The complainant has not submitted documents like agreement to sell, sale receipts as required to be filed for the purpose of complaint before RERA and has not given the details of flat like flat number, location of the flat etc. on which oral agreement was done. Except payment receipts, the complainant has not produced any documents to establish that he was an allottee of the said project.

20. The complainant has filed this complaint on 3/10/2022, after 9 years of the oral agreement which is said to have been entered into by the complainant with the respondent no.2. The complainant is setting up his claim only on the basis of oral agreement. But description of the property is not forthcoming so as to identify the property unmistakably and to grant the relief of as prayed for by the complainant. While agreeing to purchase any property, the buyer has to make sure that necessary documents shall be executed between the parties so as to lay foundation for the claim in the event of any dispute. When the complainant is claiming for the relief based on oral agreement 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 established by other circumstantial evidence. 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 documents of the said property.

21. For grant of main relief, it is quite essential to prove the agreement between the parties in the first place. On the same analogy, the complainant has to



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prove the allotment of the property in respect of which he is seeking allotment of site and interest on delay period from the respondent.

22. In view of the above discussion, the complainant has failed to prove that particular site has been allotted to him by the respondent no.2. Now coming to the aspect of grant of interest on delay period, the complainant has not produced any single iota of evidence before this Authority to show that the respondent has failed to handover possession of any site in favor of the complainant. In the absence of any such materials, the claim of the complainant for interest on delay period cannot be considered.

23. Under such circumstances, this Authority has no option but to discard the claim of the complainant for allotment of site and interest on delay period.


Accordingly, the point raised above is answered in the Negative.

24. Findings on point no.2. In view of the above discussion, the complaint deserves to be dismissed. Hence, I 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/221003/0010047 is hereby dismissed.

No order as to costs.


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

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