

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 16TH DAY OF JANUARY 2024

COMPLAINT No: CMP/211025/0008472

COMPLAINANT....

**DR. VEENA KALKUR
4A,501, ARYA HAMSA APARTMENTS
J.P. NAGAR, 8th PHASE
BENGALURU-560083**

**(REP BY MANJULA MS
ADVOCATE)**

V/S

RESPONDENTS.....

**1. M/S ARYA GRUHA PRIVATE
LIMITED
HAVING ITS REGISTERED OFFICE AT
SHOP NO.4, 1ST FLOOR
ARYA HAMSA, SY.NO: 28/1
KOTHANOR
J.P. NAGAR 8TH PHASE
2ND BLOCK
BENGALURU URBAN-560035**

**(REP BY G. SRIDHAR,
AKSHAY SIMHA ADVOCATES)**

**2. RAMNARAIAN KRISHAN COPPARAM
DIRECTOR
M/s ARYA GRUHA PRIVATE
LIMITED
NO:24, RAMAKRISHNAPPA ROAD
COX TOWN
BENGALURU-560 005.**

**(REP BY G. SRIDHAR
AKSHAY SIMHA,ADVOCATES)**

Asst

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3. MUNISWAMAPPA MANJUNATH
DIRECTOR

4. MOHITH M.
LANDOWNER

5. ROOPA M.
LANDOWNER

6. RUKKAMMA
LANDOWNER

Since respondent no.6 expired on
31/12/2017, her legal representatives
are brought on record

- a) M. PREMAKUMARI
b) M. SARASWATHI

7. VINEETH M
LANDOWNER

Respondents nos. 3 to 7 residing at:
72, VANASIRI, VADDRAPALYA
VILLAGE, J.P. NAGAR 8TH PHASE
2ND BLOCK, GOTTIGERE
BENGALURU URBAN-560 083
(Respondents 3 to 7 ABSENT)

JUDGEMENT

1. This complaint is filed under section 31 of RERA Act against the project "ARYA HAMSA GRANDE" developed by "M/s ARYA GRUHA PRIVATE LIMITED" for the relief of revocation granted to the project of the respondent and to impose penalty as per Sections 60 and 61 of the Act for contravention of Section 4 and 14 of the Act.



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2. This project is registered in RERA bearing registration no. PRM/KA/RERA/1251/310/PR/171015/000479.
3. The promoter has developed this project situated at Sy.No.28/2, Kothanur Village, Uttarahalli Hobli, Bengaluru South Taluk, JP Nagar 8th Phase, Bengaluru South, Bengaluru Urban.
4. The gist of the complaint is that the complainant is the owner of the flat no.4A501 in Block no.4 in the project "ARYA HAMSA". The project of the respondent is developed as joint development between the respondent no.1 and the owners of land bearing Sy.No.28/1. The respondent no.1 has also entered into a joint development agreement with another set of land owners in respect of land bearing Sy.No. 28/2 which is situated adjacent to the "ARYA HAMSA" project. This project is named as "ARYA HAMSE GRANDE" and is registered with this Authority. The respondents are advertising the project "ARYA HAMSA GRANDE" as a project which has shared amenities with an unrelated project viz., respondents are also claiming a single body registered under KSRA 1960 as the Association for both the projects which is again a violation of the RERA Act. Therefore, the complainant has approached this forum and prayed to revoke the registration and to impose penalty. Hence, this complaint.
5. After registration of the case, in pursuance of notice, the respondent nos. 1 and 2 have appeared before this Authority through its counsel and filed statement of objections as under:
6. The respondents have denied the allegations made against them by the complainant as false. It is contended that the complainant is a homebuyer with respect to "ARYA HAMSA" APARTMENT (PHASE-1)

Not

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which has not been registered under RERA and it has obtained the occupancy certificate on 22/4/2015. Hence, the project is exempted from registration under RERA. The complainant is the allottee with respect to a completed project.

7. Further, they contend that they have completed the said project in the year 2015. They have entered into a joint development agreement on 30/3/2009 with the landowners of schedule "A" property (2 acre 38 guntas) to an extent of 2 acres for the development of "ARYA HAMSA" APARTMENT (PHASE-1) On the same day the respondents have entered into another registered JDA dated 30/3/2009 with the owners of the Schedule "B" property for development of 'ARYA HAMSA GRANDE" APARTMENT(PHASE-2)". After obtaining the requisite statutory sanction and permissions and sanctioned plan, they have developed schedule "A" property. Subsequently, the owners of Schedule "A" property desired of getting the entire extent of 2 acres 38 guntas to be developed and accordingly they have entered into another registered JDA dated 9/8/2010 for development of remaining 38 guntas by obtaining modified sanction plan which included the additional block to be constructed. Further, the respondents have also obtained sanction plan for "ARYA HAMSA GRANDE APARTMENTS PHASE-2" to be developed on Schedule "B" property.
8. In addition, the respondents were also to develop a club house and common amenities for both the phases. In fact these two phases adjacent to Sy.No.29 which would be available for use by the apartment owners of both the phases in the project. Hence, the respondents have acquired the property bearing Sy.No.29 Schedule "C" property. The respondents have intentionally developed the club



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house on a separate property for the benefit of both the phases. The apartment owners of both the phases were well aware of this fact and had consented to use the club house, roads and other common amenities by owners of both the phases. The respondents have co-operated to form an Association of Allottees registered under Karnataka Societies Registration Act on 17/7/2014. Accordingly, Memorandum of Association and bye-laws clearly state that the Association is being formed for owners of both the phases in the project.

9. These being the facts, the complainant started causing nuisance sometime in the year 2019 claiming "ARYA HAMSA' Apartments (i.e. PHASE-1) of the project to be a separate project and thereby demanding that respondent to demarcate the boundaries separating both the phases. The complainant has sent an email dated 9/6/2019 to the respondent to take measures to prevent the said illegal entry and trespass by the owners of Phase-2 into Phase-1. The respondent replied vide email dated 1/7/2019 clarifying that the apartments of both the phases of the same project and that easementary rights and usage rights have been created for both the phases by the developer as per the scheme and they cannot be modified without the consent of all the owners.
10. Further the complainant has himself and through associated persons filed multiple false complaints as below:
1. O.S. No.5080/2019 before City Civil Court (CCH-76)
 2. Complaint before Karnataka State Pollution Control Board bearing No. PCB 358 CNP 20/3562
 3. Complaint before the State Level Environment Impact Assessment Authority (SEIAA) bearing No. SEIAA 13 CON 2011



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4. Complaint before the Registrar of companies bearing ROCB/
COMPLAINT/ARYA/S454/2020/3003
5. MFA 6299/2021 AND 6693/2021 before the Hon'ble High Court of
Karnataka against the order dated 17/3/2021 passed in IA-1 and IA-
2 in OS 5080/2019.
6. Complaint before the Karnataka Real Estate Regulatory Authority
bearing CMP/210402/0007857
7. Appeal before the Karnataka Real Estate Appellate Tribunal
bearing REAT(APL) 61/2022
8. Review application 40/2022 before the Karnataka State Consumer
Redressal Commission against order dated 2/2/2022 in
CC13/2022
11. Further, the complainant has created nuisance by preventing owners
of other apartments from using usage of roads, pathways, club house,
entrance/exit gates and other common amenities. The respondent
has requested the complainant for several times not to do so. Few
apartment owners of Phase-2 aggrieved by this nuisance have a suit
in O.S. No. 537/2019 before City Civil Court(CCH-19) for the relief of
permanent injunction. Hence, the complaint is not maintainable and
prayed to dismiss the same with costs.
12. In support of her claim, the complainant, has produced documents
such as detailed complaint, details of respondent company, copies of
final sanction plan dated 6/1/2012, sale agreement, construction
agreement, brochure of the project of phase-1, sale deed dated
3/11/2015, cost break down sheet, receipts, occupancy certificate,
RERA registration certificate for development of Schedule B property,
project promoters information as per RERA Website, sanction plan
dated 24/10/2013 from BBMP uploaded on RERA website, fire NOC,
OC for development of Schedule B property, brochure of schedule-B



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property, show-cause notice issued by BBMP dated 18/1/2020 and copy of show-cause notice dated 21/01/2020 from SEIAA, reply dated 20/2/2020 furnished to SEIAA by respondent no.2, show cause notice from SEIAA to respondent no.1, response of RERA dated 14/2/2020 on a query on the phases of project on B-schedule, sanction plan for club house structure from BBMP, PCR 376/2020 dated 6/11/2020, order dated 5/2/2021 by the Hon'ble High Court of Karnataka in CRLP 7222/2020, NOC dated 27/9/2017 submitted by respondent no.2, complaint to RERA by complainant and other owners and response from RERA.

13. On the other hand, the respondents have furnished documents such as copies of occupancy certificate dated 22/4/2015 in respect of phase-1, RERA registration certificate in respect of Phase-2, Occupancy certificate dated 31/01/2019 in respect of phase-2, email dated 9/6/2019, 01/07/2019, reply dated 4/9/2020 to the SEIAA and order copy dated 29/9/2021 by II ACJM.
14. Both the parties have submitted their written submissions.
15. Heard both the sides.
16. This matter was heard on 21/9/2022, 14/10/2022, 2/11/2022, 7/11/2022, 9/12/2022, 12/01/2023, 7/2/2023, 24/2/2023, 24/3/2023, 17/4/2023, 9/6/2023, 31/7/2023, 21/8/2023, 11/9/2023, 10/10/2023, 6/11/2023 and on 24/11/2023.
17. **On the above averments, the following points would arise for my consideration:-**
 1. Whether the complainant proves that the respondent had agreed to provide the club house and other common amenities exclusively to Phase-1?



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2. Whether the respondents further prove that they have obtained the consent of the allottees of both the phases for joint enjoyment of club house and other common amenities?
3. What order?

18. Answer to the above points are as under:-

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

FINDINGS

19. Findings on point No.1 and 2. Both these points are taken up together for discussion as they are inter related.

The claim of the complainant is that the club house and other common amenities are exclusively meant for the use and enjoyment of purchasers/allottees under Phase-1.

As against this, the claim of the respondent is that these amenities are meant for use and enjoyment of purchasers/allottees under Phase 1 and 2 and they have appraised the purchasers under phase 1 about this situation before hand and they have also taken their consent before hand.

Looking into the relevant document namely registered sale deed dated 12/3/2014 executed by the respondent in favour of the complainant at Page No.8 which contains the terms of sale deed entered into between the parties so as to ascertain whose claim is in consonance with these terms.



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Clause/reads as under:

“1.11. The developer are providing a club house and entertainment facility outside the schedule A property and common facilities, etc., inside the Schedule A property including roads, STP, transformer yards, electrical infrastructures, etc.,

1.12. The common facilities, club house and entertainment facility shall be managed and maintained by the Association of apartment owners and be made available to the apartment owners to manage it on such terms as they find fit, with no charges payable to the Developers.

1.13. The purchaser/s hereby consents to use of the space, as may be identified by the Developers for this purpose and consents to the same being provided for all owners of units in the project, which may consist of different phases which may be located within or outside the Schedule A property and expressly consents to the use of common amenities including the roads, club house and entertainment facility in any phase by any of the owners of units in the project”

On perusal of these clauses, it is apparent that the club house and other common amenities provided by the respondent is meant for the use and enjoyment of purchasers/allottees under both the phases and the purchasers/allottees under phase 1 are aware of these clauses since the date of their execution of sale deed with the respondent. Therefore, have agreed/consented to use these amenities along with purchasers/allottees of phase-2 as well, complainant cannot claim that they are meant for phase-1 alone. The demand of complainant for providing these amenities exclusively is apparently unreasonable and contrary to the agreed terms.

ASB

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Earlier one Shailesh B. Charati had filed a complaint in CMP/210402/0007857 before this Authority. It was heard by full bench and passed the judgement dated 6/5/2022. Now the present complainant Dr. Veena Kalkur has filed this complaint for the same reliefs. The facts contended in the present complaint as well as in CMP/210402/0007857 are one and the same against the same project and even the relief sought for in both these complaints are one and the same. This Authority has heard the matter in CMP/0007857 and has expressed its opinion vide judgement dated 6/5/2022. Hence, the same holds good herein this case also.

Therefore, this Authority is of the considered view that complainant has not been able to establish her claim. On the other hand, the clauses of the sale deed between the parties show that contention of the respondent is in consonance with the clauses of sale deed. Accordingly, point no.1 is answered in the Negative and point no.2 in the Affirmative.

20. Answer to point no.3. In view of the above discussion on points no.1 and 2, the complaint deserves to be dismissed. Accordingly, 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/211025/0008472** is hereby dismissed:

No order as to costs.


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