

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 BEFORE THE AUTHORITY

Dated 28th December 2023

CMP/220215/0009011

Present

Hon'ble Chairman Shri. H.C. Kishore Chandra

Hon'ble Member Smt. Neelamani N Raju

COMPLAINANT.....

Saritha Munaga

79, 10TH STREET, PRAKRUTI LYOUT,
HORAMAVU AGARA, KALYAN NAGAR,
Bengaluru- 560043.

(In person)

V/S

RESPONDENT.....

Vikram Structures Pvt Ltd

No.22, 5th main road,
near Baptist Hospital,
Bengaluru – 560024.

(Represented by Authorized signatory)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "VSPL Pinnacle" developed by "Vikram Structures Pvt Ltd" for the relief of refund of amount with interest.
2. This project has been registered under RERA vide registration No. PRM/KA/RERA/1251/309/PR/171102/001908.

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Neelamani N Raju

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3. The said project is situated at near Kodigehalli junction, Bellary Main road, Bengaluru north, Bengaluru Urban.

Brief facts of the complaint are as under:-

4. The complainant has agreed to purchase commercial portion measuring 1000sqft on 2nd floor in the project VSPL Pinnacle of respondent on 22/12/2018. At the time of agreement there were no registration done in 2nd floor. Subsequently, the respondent was asking to pay the balance sale consideration and to get registered the sale deed. The complainant was insisting for occupancy certificate and to complete the construction. This process continued till October 2020. Later they have considered to go for registration in November 2020 and got occupancy certificate. When they have enquired about the same with the respondent, he said he will refund the amount with interest. But till now he didn't give any amount and kept on postponing the same. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through authorized signatory. But he has not contested the matter by filing statement of objections, producing documents on his behalf etc.
6. In support of her claim, the complainant has produced/uploaded the documents such as the copy of agreement of sale dated 22/12/2018, bank loan NOC and Payment receipts.
7. On the other hand, in support of his defence, the respondent has furnished order copy of NCLT dated 17/02/2022.
8. This matter was heard on 10/11/2021, 09/12/2021, 01/02/2022, 03/03/2022, 31/03/2022, 24/05/2022 and 31/10/2022.
9. Heard Arguments.

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10. **Based on the above averments, the following points would arise for our consideration:-**

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

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

- 1) In the Affirmative
- 2) As per the final order for the following

REASONS

12. **Our findings on point No. 1:-** The complainant has approached this Authority seeking for the relief of refund of amount with interest on the ground that he had purchased the commercial space in the project of respondent by entering into agreement of sale dated 22/12/2018. He was waiting for occupancy certificate to get the property registered. Later, he came to know that the respondent builder had agreed to sell more area/share which is more than what really is available including the shares of landowners. On enquiry the respondent had admitted of over sell and agreed to refund their money back along with interest.

13. Though the respondent has appeared before this Authority he has not participated in the proceedings by filing statement of objections, producing documents etc. However, during the proceedings he has produced a copy of order of NCLT dated 17/02/2022.

14. On perusal of the order passed by NCLT of Bengaluru bench in C.P.(IB). 246/BB/2019, it is found that the respondent has been made as a party in the said proceedings as corporate debtor and in view of its inability to pay the dues as a guarantor to the borrower/investee company

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Corporate Insolvency Resolution Process(CIRP) is initiated against the respondent. Consequently, following prohibitions have been imposed as enumerated in para No.20 of the said order. They are as under

- (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution or any judgement, decree or order in*
- (b) *Any court of law, Tribunal, Arbitration panel or other Authority*
- (c) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (d) *Any action to foreclose, recovery or enforce any security interest created by the corporate debtor in respect of its property including any action under the securitization and reconstruction of financial assets and enforcement of security interest Act, 2002;*
- (e) *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor;*
- (f) *It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;*
- (g) *The provisions of section 14(3) shall however, not apply to such transaction as may be notified by the central government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor;*
- (h) *The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this bench approves the resolution plan under sub-section (1) of*

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section 31 or passed an order for liquidation of corporate debtor under section 33 as the case may be;

15. Ongoing through the above prohibition, at serial No. (a) and (b) clearly place bar on the continuation of any pending suits or proceedings against the respondent including execution of any judgement, decree or order in any court of law, Tribunal, Arbitration panel or other Authority.
16. As a matter of fact, to be able to lay his hand on his own commercial space in a metro city like Bengaluru is a matter of pride, prestige and life time achievement fused together for everyone who is in the field of commerce. To achieve such prestigious goal he would take risk of investing money in terms of lakhs or crores which would serve as source of livelihood and it may even be a profitable investment in a city like Bengaluru where the value of property is measured in sqft. That being so, the builder/developer who takes the responsibility of handing him over commercial space with tall promises shall conduct himself in equally responsible manner. If he resorts to use the hard earned money of investors in a reckless manner, it would not only cause great hardship to the investors, but also makes him to run from pillar to post by incurring heavy legal expenses.
17. In spite of issuing notices to the respondent to furnish details of NCLT order and to clarify on the status of the complaint, he didn't respond though sufficient opportunity was provided. As per the Section 12 of Insolvency and Bankruptcy Code 2016, moratorium cannot be continued for an indefinite period. Section 12 of Insolvency and Bankruptcy Code 2016 reads as under.

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- (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.
- (2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of (sixty-six) per cent. Of the voting shares.
- (3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:
Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

18. Therefore, as per section 12, a time limit of 180 days extendable by a further 90 days for the completion of corporate insolvency resolution process. The application for the extension can only be made by the resolution professional and has to be supported by a resolution passed at a meeting of the committee of creditors by a majority of 75 per cent of the voting shares (defined as shares of voting rights of financial creditors in relation to the overall financial debt). No other person is entitled to seek

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such an extension of time. The Adjudicating Authority/Tribunal shall no discretion to extend these time-lines.

19. The well-defined time limits would help the system to avoid many of the problems faced under the sick Industrial Companies (Special Provisions) Act, 1985. It would ensure that commercially unavailable corporate debtors are not kept in the resolution process for long periods (as was very common for proceedings under the sick Industrial Companies (Special Provisions) Act, 1985) and are liquidated based on decision taken by the financial creditors at the earliest opportunity. The time limits would reduce the cost to creditors and other stakeholders (including employees and workmen) of a long-drawn out procedure. Long-drawn-out proceedings cause depletion in value of the corporate debtor's business, diminish returns to creditors and other stakeholders and lock capital, which could have otherwise been redeployed elsewhere for the benefit of the larger economy.
20. Herein this case, the order of NCLT dated 17/02/2022 more than 1 and half year has been lapsed from the date of said order and no details or statements or any clarifications is provided by the respondent despite sufficient opportunity to indicate any continuation of moratorium or any embargo on this Authority to pass necessary orders in the interest of the allottees.
21. From the materials available on record, it is apparent that the builder has received substantial amount from the allottees based on the false promises made by the builder giving false assurances that the allottees will have their own commercial space within stipulated time. It is noticed by this Authority with regret that even during the proceedings the

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respondent/promoter has not cooperated with this Authority and was trying to escape from its liabilities which shows the mala-fide conduct and intention of the respondent. The respondent was intending to defraud the allottees and misappropriate the huge money which is hard earned money of the allottees. Having regard to this irresponsible conduct of respondent, this Authority has no option but to order for refund of amount with interest.

22. The agreement of sale is a key instrument 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 any 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.
23. Looking to the entire materials placed before this Authority it is very significant to note that the respondent/builder had executed unauthorized deeds of conveyances and agreements for sale as being vitiated by fraud and misrepresentation. In this regard the landowners have filed original suits against the respondent herein before civil court and commercial court. Even they have initiated criminal proceedings against the respondent builder. These being the facts, the whole scenario points to the sinister design of the respondent to get profit by unfair trade practice out of such transactions. The consequence of this unfair trade practice, the complainants inspite of paying substantial sale considerations, they would not be able to purchase the property. Having regard to these peculiar circumstances and considering the unfair trade

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practice on the part of the respondent, it is just and appropriate to impose penalty on the respondent in order to curtail such practices.

24. Considering all these facts and circumstances of the case, the point raised above is answered in the Affirmative.

25. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for refund with interest.

26. **Our findings to point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Accordingly, we proceed to pass the following

Sum and substance of the case is as under.

Date of agreement of sale	22/12/2018
Date of construction agreement	-
Sale consideration	Rs.51,00,000/- (Fifty one lakhs only).
Amount paid	39,00,000/- (Thirty nine lakhs only)
Promised date of possession as per AOS	July 2019
Date of sale deed	Not yet executed
Date of occupancy certificate	-
Whether the possession has been handed over	No
Prayer	Refund with interest

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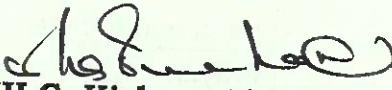
ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/220215/0009011** is hereby allowed as under

1. The respondent is hereby directed to refund the amount of 39,00,000/- (Thirty nine lakhs only) along with interest at the rate of SBI MCLR+2% from 21/12/2018 till realization of amount to the complainant within 60 days from the date of this order.
2. With regard to imposing penalty for unfair trade practice as per section 62 of RERA Act, office is hereby directed to initiate separate proceedings against the respondent immediately.
3. The complainant is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to costs.


(Neelmani N Raju)
Member
K-RERA


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