

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

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BEFORE ADJUDICATING OFFICER

PRESIDED BY SRI I.F. BIDARI

DATED 24th MARCH 2021

Complaint No.	CMP/200103/0005115
Complainant:	Smt. Veena Krishnamurthy W/o. Krishnamurthy .B G1, Canopy Crown Apts., 18 th Main, 3 rd B Cross, BTM 2 nd Stage, Bengaluru – 560 076 (By: Sri. Suhail Ahmed & Associates Advocates, i.e., Trail Base Advocates.)
Respondent:	Prestige Estates Projects Limited Sri. Sujith Kumar Authorised Signatory of Respondent The Falcon House, No. 1, Main Guard Cross Road, Bengaluru – 560 001 (By: Sri. Mohumed Sadiqh. B.A. & Associates Advocates, i.e., K V Legal)

J U D G M E N T

Smt. Veena Krishnamurthy W/o. Krishnamurthy B (here-in-after referred as complainant) has filed this complaint bearing no. CMP/200103/0005115, under Section 31 of the Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the Prestige Estates Project Limited. (here-in-after referred as Respondent) seeking compensation of

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Rs.18 to 20 Lakhs for delay and question the builder as to why they cannot provide valid documents.

2. The brief facts of the case are as under:

The seller Mr. Suresh Bhatia is a owner of "Schedule-A" non-agricultural converted lands comprising of lands in various survey numbers of Avalahalli Village, Bengaluru North Taluk in all measuring 22 Acres 9 Guntas bearing Singenahalli Panchayath Khatha No. 507/475. The seller and the respondent/developer, have entered into joint development agreement dt.06.08.2012 and supplementary development agreement dt.29.08.2013 respectively, in-respect of "Schedule-A" property, to develop the same, into a residential apartments buildings. Pursuant to said agreements a project Prestige Royale Gardens (here-in-after referred Project) is being developed. The complainant and her husband, together entered into agreement to purchase "Schedule-B" property for consideration amount of Rs.17,05,000/- and get construct residential apartment i.e., "Schedule-C", solely through respondent/developer, described in the agreement to sell. That in the month of August 2014 Mr. Suresh Bhatia represented by power of attorney holder, M/s. Prestige Estate Project Limited, being "seller" as the first part and M/s. Prestige Estate Project Limited a company in-corporated under companies Act having its office at Bengaluru, Represented by its Authorised Signatory/Managing Director being called "developer" as a second part have entered into an

agreement to sell with the complainant and her husband Sri.Krishnamurthy.B, to sell the immovable property described as "Schedule-B" in the agreement to sell i.e., 1705/2260672th un-divided right title and interest and ownership in the "Schedule-A" property, described in the agreement to sell, where-under the complainant and her husband agreed to get construct residential apartment (described as "Schedule-C" in the agreement to sell) bearing No.0063, on floor-6, of tower-6 in Prestige Royale Garden, being developed on Prestige Estate property measuring 1,705 Sq.ft., super built up area with one car parking space etc. The complainant and her husband on the same day in the month of August 2014 entered into "Construction Agreement" with the respondent/developer to get construct the apartment i.e., "Schedule-C" apartment on "Schedule-B" property described in said agreement for sum of Rs. 62,67,500/-. The "Schedules-A, B and C" properties described in both aforesaid agreements are one and the same.

3. As per construction agreement delivery of possession of the residential apartment Schedule-C was to be handed over to complainant and her husband on or before 30.04.2017 with grace period of 6 months. The complainant has lodged the instant complaint, on the ground that there is a delay in handing over possession of apartment and incomplete documents. The complainant alleged in the complaint that they were informed in August

2019 for registration. As per Point No's 5(a) and 5(c), in page 4 of the construction agreement builder has agreed to pay 9% per annum interest on Rs.83 lakhs for 2 years delay. The respondent is asking to register but then tower-6 was not included in Occupancy Certificate (here-in-after referred as OC). The tower-6 was incomplete in July 2017 and OC was given in July 2018. The OC was given to all towers except tower-6. The respondent is asking complainant to register with numbering of towers which is different in BDA and marketing plan. The complainant is not accepting this as the agreement also says that registration will happen only after all documents are clear. Therefore the complainant has filed this complaint seeking relief as sought in the complaint.

4. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent has appeared through its Advocate. The respondent has filed Objections / written submission, contending that complainant has filed false complaint. The construction of apartment bearing No.6063 and construction of project has been completed. The respondent has obtained OC Dt. 04.07.2018. The respondent through E-mail Dt. 09.07.2018 informed the complainant to take possession of the apartment and to pay balance amount and same has been informed through many follow-up E-mails. The respondent till date has not inclined to take possession of the apartment. The

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complainant has violated provisions of Sec.19 (6) of RERA Act not settling the outstanding due amount also violated provisions of Sec. 19(10) and (11) of RERA Act in as much as not taking possession of apartment within 2 months from date of OC and taking registration of conveyance deed. The complainant failed to pay the installments amount in time as per terms of agreements. The complainant as per Sec.19(7) of RERA Act, liable to pay interest to the respondent on delayed payment of installments. As per clause 4(c) on construction agreement and clause 1.7 of agreement to sell the complainant has agreed to pay 15% per annum interest on delayed payment of installments. The complainant is liable to pay holding charges of the apartment. As on 31.01.2020 the complainant was liable to pay Rs.12,02,455/-, to the respondent. The respondent is contending that there is marginal delay of 8 months in completing project and obtaining OC due to force majeure. Such delay is due to de-monetization, shortage of river bed sand and heavy rain in-between 2015 to 2017 and not for any other reasons. The respondent had informed this fact to the complainant and extension of time as per clause-5(b) of construction agreement without liability of the respondent to pay compensation to the complainant. The complainant has committed breach of the agreements terms. As per BDA approved development plan there are 9 towers, consisting of 1,696 residential apartments in project. The tower numbers 1,2,4,5 and 9 are independent stand

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alone, towers whereas tower numbers 3,6,7 & 8 have two inter connected towers each. Thus, there are 13 towers in project. In present case it is to be read as 6th tower, level-6 unit No.3 and apartment 6063. The respondent had shown the marketing plan/brochure and the BDA plan both to the complainant, which clearly establishes the fact that the tower No.6 mentioned in the brochure is the tower No.5 as per BDA plan. The respondent has received OC for tower No. 5 which is tower No.6 as per the marketing plan / brochure. Thus, it is clear that OC has been received for complainant apartment No. 6063. The said apartment of the complainant was ready long back for handing over. The project completion date is September 2018. The RERA Act is not applicable to the present case as the project is completed and OC was received much before the completion date mentioned in the RERA Registration Certificate. These main grounds, among others, contended in the objections, prayer to dismiss the complaint.

5. I have heard Sri Suhail Ahmed Advocate for the complainant and heard Sri Mohammed Sadiq Advocate for respondent through Skype. The written argument has been filed on behalf of both complainant and respondent. Perused the records and the written argument.

6. The points that would arise for consideration are:



- (1) Whether the complainant is entitled for compensation for delay in handing over the possession of the apartment ? If so, to what extent?
- (2) What order?

7. My findings on the above points are as under:

Point No. 1: Yes, to the extent as shown in the final order.

Point No. 2: As per final order, for the following:-

REASONS

8. Point No.1: The facts that the parties have entered into agreement to sell, construction agreement, complainant and her husband together agreed to purchase "Schedule-B" property and get construct the apartment through respondent, mentioned in agreement, jural relationship of parties, are admitted. The respondent is admitting the delay in handing over possession of the apartment to the complainant and her husband but contending that it is a marginal delay of 8 months only and that too, due to force majeure. That according to respondent de-monetization, shortage in supply of river bed sand due to State Govt. policy and heavy rain between 2015 to 2017 are the force majeure reasons for such marginal delay for handing over possession of apartment to the complainant but at any stretch these reasons shall not be considered as reasons for delay in handing over possession of apartment, much less, as contended by the respondent.

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9. The contention of the respondent is that the construction, of the project has been completed, including apartment of the complainant, OC has been obtained but despite intimation, since, 2 years complainant not come forward to take possession and take the conveyance deed thereby committed breach of terms of agreement and liable to pay interest to the respondent. This fact is being contended in written argument, as also learned counsel for the respondent submitted the same. Per contra learned counsel of the complainant submits that the OC Dt. 04.07.2018 has been issued by the BDA excluding tower No.6, in which, the booked apartment of the complainant is situated, as such, it cannot be said that apartment is ready and OC has been obtained much less as contended by the respondent. The copy of OC Dt. 04-07-2018 issued by the BDA discloses that the said OC is Partial Occupancy Certificate (here-in-after referred POC) in respect of 1,408 residential units constructed in the project excluding tower No.6 of the project. Therefore, this OC evidences that as on 04.07.2018 the apartment of the complainant was not ready on all respects which is in tower No.6 in the project and unless the apartment is complete in all respect it cannot be said that the apartment was ready long back as contended by the respondent. In this context it is worth to quote the relevant observations of their lordships, in the ruling reported in ILR 2014 KAR 2863 in the case Bangalore Housing Development and Investment Vs. Bruhat Bangalore Mahanagara Palike, rep., by its Commissioner and Other. The relevant portions reads as under:



"BANGALORE MAHANAGARA PALIKE BUILDING BYE-LAWS, 2003-BYELAW 5.6 – Occupancy Certificate (POC) with various terms and conditions and its subsequent withdrawal – Challenge to – Writ petitions filed by the landowner and the builder – Opinion of the Authorised Officer is mandatory before the grant of Occupancy Certificate – HELD, 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.- Unit the building or the part thereof is completed in terms of plan sanction and the Authorised Officer has so opined, with regard to the same, no Occupancy Certificate can be granted. (Para 10,12.(c))

FURTHER HELD,

(a) Bye -Law-5.7 postulates various requirements. The first is that no person shall occupy or let-in any other person to the building or part thereof, until an Occupancy Certificate to such a building or part thereof has been granted. Therefore, until and unless an Occupancy Certificate is granted, no building or part of it, can be occupied. Secondly, the grant of Occupancy Certificate shall be only after the opinion of the officer is to the effect that in every respect, the building or part thereof is complete, according to the plan sanction and that it is fit for use for which it was erected.

(Para 11)

(b) The first part of Bye-Law 5.7 clearly narrates that no person can occupy the building or part thereof without an Occupancy Certificate. Admittedly, persons have been inducted prior to grant of POC. It is contrary to law. The occupation of the building or part thereof is opposed to law. No person can be inducted in any manner

whatsoever, without an Occupancy Certificate by the Corporation. Therefore, all such persons who have been inducted prior to the grant of POC, are in illegal occupation. (Para12.(a))

- (c) *The second part of Bye-Law-5.7 is to the effect that the concerned officer has to opine, that the Occupancy Certificate sought for the building or the part thereof is complete in terms of the sanction plan. Therefore, if the building or the part thereof is not completed in terms of the plan sanction, no such Occupancy Certificate can be granted. Even otherwise, the Authorized Officer should opine that the building or part thereof is completed.*

(Para 12.(b))

- (d) *No POC can be granted on conditions. A POC to be granted should be absolute on completion of the building or part thereof in all respects, in tune with the plan sanction. Therefore, even for the sake of arguments if it is to be accepted that the conditions imposed are formal in nature, the same is beyond the scope of Law. Bye-Law 5.7 does not make any distinction between a formal and an informal condition. It does not speak of any condition. The language used in Bye-Law 5.6 where it is clarified with regard to obtaining of such permissions would also stand applicable, when a POC has to be granted under Bye-Law 5.7.*
(Para 15.(c))

- (e) *The withdrawal of POC shows non fulfillment in terms of the plan sanction. Even on the day the POC was granted various works had to be done. Even after 14 months only 25% of it was completed. However, whatever may be the percentage of the completion of the work, the fact on record is that on the day the POC was granted,*

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the building was not complete in every respect as per the plan sanction, which is a mandatory in terms of Bye-Law 5.7. Therefore, the withdrawal itself will also show that grant of POC, itself is erroneous due to the building not being complete in every respect according to the plan sanction. – BANGALORE MAHANAGARA PALIKE BUILDING BYE LAWS, 2003 – BYE-LAW 5.7 – OCCUPANCY OR LETTING OF THE NEW BUILDING – DISCUSSED. (Para18)”

10. The complainant with his written synopsis Dt.23.10.2020 has produced another copy of OC Dt.04.03.2020, subsequently the respondent through memo Dt.13.01.2021 has produced the copy of said OC Dt. 04.03.2020. These copies of OC Dt. 04.03.2020, evidences that the BDA has issued the said OC in-respect of 256 residential units in the project, including the residential units constructed in tower No. 6. The learned counsel for the respondent drawing the attention of the authority to the copies, of the buildings plans of project approved by the BDA and copies of marketing plan/brochure of the respondent, submits that tower No.6 mentioned in the brochure is the tower No.5 as per BDA plan, but this version cannot be accepted because as per the BDA approved plan there are only 9 towers in the project buildings and complainant's apartment is shown in tower No.6 and the copy of plan sanction letter Dt. 21.03.2014 discloses, that BDA sanctioned the building plan of the project subject to conditions mentioned there in. The condition No. 3 is that construction of the building in the project must be as per sanctioned plan. The condition No.4 is that OC has to be obtained from the competent authority after completion of construction of building and residential apartment. Admittedly in

the BDA approved plan no where it is shown or mentioned that tower No. 5 in BDA plan is not the tower No. 6 mentioned in the marketing plan/brochure. Therefore, there is no hesitation to hold that the OC Dt.04.07.2018 is not the OC for the apartment of the complainant in the tower No. 6 of the project. This apart the OC Dt. 04.07.2018 is excluding tower No.6 and only OC Dt. 04.03.2020 OC is in-respect of the tower No. 6. As per clause 5(b) of the construction agreement the due date of handing over possession of the apartment of the complainant with grace period of 6 months is October 2017, on which date the construction of the apartment of the complainant was not completed and even tower No.6 was not included in OC Dt. 04.07.2018, as such, there is no force in contention of the respondent that apartment was ready to hand over on 04.07.2018 itself.

11. The copies of account statement as on 16.08.2019 maintained by the respondent which are on record discloses that till that date the complainant and her husband together have paid Rs. 86,82,102/- but still Rs. 5,26,854/- is shown to be payable by the complainant to the respondent. As rightly contended by the complainant in this account statement as on 16.08.2019 the respondent has calculated interest for the months of October 2013, December 2013, February 2014, March 2014, April 2014 to July 2014 but admittedly the complainant and her husband have entered in to agreements in the month of August 2014. Therefore, it is made clear that the interest is being illegally calculated till July 2014 from October 2013 as discussed above. These materials on record



discloses that there is no substance in contention of respondent to the effect that the complainant has committed breach of terms of the agreements violating the provisions contemplated U/Sec. 10(6), (10) and (11) of the RERA Act. The materials on record discloses that in fact the apartment 6063 booked by the complainant in tower No.6, of the project was not ready and no OC was obtained in-respect of it on 04.07.2018 in spite of that unnecessarily since July 2018 the respondent keep on forwarding E-mail, after E-mails to the complainant directing her to take possession of the apartment, paying balance due amount and to take conveyance deed but in fact till 04.03.2020 no OC was obtained to said apartment. Therefore, materials on record evidences that unnecessarily the respondent has been harassing the complainant and her husband, causing them mental pain and agony. As already discussed above in view of the dictum of their lordships in ruling reported in ILR 2014 KAR 2863 the apartment of the complainant was not ready when OC Dt. 04.07.2018 was obtained but apartment was said to be ready for handing over possession when respondent obtained OC Dt. 04.03.2020. Under the circumstances it may safely said that the respondent has committed delay in handing over possession of the apartment since October 2017. Therefore, the respondent is liable to pay the compensation to the complainant from October 2019 for delay in handing over apartment, also liable to pay compensation towards mental pain and agony.

12. The learned counsel for the respondent referring to the Judgments passed by my learned predecessor in (1) CMP/190520/0003069 decided on 31.10.2019, in the case of Ashok Kumar Patil vs. Prestige Royale Gardens Phase II, (2) CMP/190820/0003964 decided on 11.02.2020, in the case of Rupinder Oberoi vs. Prestige Royale Gardens Phase I, (3) CMP/190519/0003075 decided on 04.01.2020, in the case of Deepak Sharma vs. Prestige Royale Gardens Phase I, (Copies of the judgments produced), submits that this authority has to pass judgment in this case following the same line in said judgments contending that facts of this case and facts of the cases in those judgments are similar. The said submission of learned counsel of the respondent not holds good for the reasons that in the aforesaid cases decided by my learned predecessor the OC Dt. 04.03.2020 was not produced and the said judgments are not binding on me to follow the same line of reasoning's in this case also.
13. The arbitration clause is mentioned in the agreement to sale and construction agreement entered between the parties in August 2014 in-spite of that this matter is not liable to be referred to arbitration in-view of the judgment in review petition (c) Nos.2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017 in the case of M/s Emaar MGF Land Limited v/s. Aftab Singh passed by the Hon'ble Supreme Court of India.
14. At the cost of repetition it be stated that the complainant has not committed breach of the terms of the

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agreements. The respondent is liable to pay compensation to the complainant for delay in handing over possession of the apartment by the way of interest @ 2% above the MCLR of SBI on the amounts received from the date of receipt of respective amounts till handing over of apartment with OC and till realization of the said amounts. At the same time the respondent is liable to pay an amount of Rs. 1,00,000/- as compensation to the complainant with interest @ 2% above the MCLR of SBI on said amount from the date of this order till realization of the said amount. Accordingly I hold this point No. 1 for consideration.

15. As per the provisions contemplated U/sec. 71(2) RERA Act, the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 03.01.2020, thereafter notices issued directing the parties to appear through Skype for hearing as because of COVID-19 pandemic the personal hearing before the Adjudicating Officer not yet commenced. The parties given the reasonable opportunities to contest the case, as such, the Judgment is being passed on merits, with some delay.

14. Point No.2: In view of my findings on point Nos. 1, I proceed to pass the following:-

ORDER

- (i) The complaint filed by the complainant bearing No.: CMP/200103/0005115 is partly allowed.
- (ii) The respondent is hereby directed to pay compensation to the complainant by way of interest @ 2% above the MCLR of SBI, on the

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respective amounts, from the respective dates of receipt of such amounts until handing over the possession of the apartment with OC till realization of the entire amount.

- (iii) The respondent is directed to pay an amount of Rs.1,00,000/- to the complainant towards mental pain and agony with interest @ 2% above the MCLR of SBI, on the said amount from the date of this order till realization of the said amount.
- (iv) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (v) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with the same to enforce the order.
- (vi) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 24.03.2021)


I.F. BIDARI

Adjudicating Officer-1