

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 11th August 2021

Complaint No.	CMP/200331/0005816
Complainant:	Sri. Aniruddh Varma ITC MudFront, Flat B-401, 8 Jeevanhalli Man Road, MSO Colony, Maruthisevanagar Cox Town, Bengaluru – 560 005 (By. Smt. Sujatha. H. H Advocate)
Respondent:	Purvankar Limited., 130/1 Ulsoor Road, Bengaluru – 560042. (Miss. Sonali Sylvia Authorised signatory)

J U D G M E N T

Sri. Aniruddh Varma (here-in-after referred as complainant) has filed this complaint bearing no. CMP/200331/0005816, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent M/s Purvankara Ltd., (here-in-after referred as respondent), seeking relief of delay compensation and adherence to the cost sheet agreed at the time of booking.

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

The respondent M/s Purvankara Ltd., is developing a Real Estate Project Purva Palm Beach (here-in-after referred as project) in

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piece and parcel of converted immovable property, being southern portion of Sy. No.19 (measuring 8 acres 21/5 guntas), sy. No.87 (measuring about 3 acres 20 guntas), and sy. No.88 (measuring 8 acres) in all measuring, 20 acres 1.5 guntas, including 7882.10sq.mts., relinquished, in favour of Bengaluru Development Authority (here-in-after referred as BDA), for civic amenities, situated at Kyalasanahalli Village, Bengaluru East Taluk, described as schedule A property, in the agreement of sale dated 20.05.2014. The complainant has entered into an agreement of sale and construction agreement both the dated: 20.05.2014 (here-in-after referred as agreement of sale and construction agreement respectively) with the respondent to purchase undivided share measuring about 535.761sq.ft., described as schedule B property in the agreement of sale out of schedule A property and to get construct an apartment (here-in-referred as flat) bearing No. PB-WB-302, being constructed in schedule A property, on 3rd floor, in PB-WB- Block/Wing in the project, having carpet area of 1,189 sq.ft., with a parking area, described as schedule B property in construction agreement dated 20.05.2014 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated in the agreements. The complainant alleged in the complaint that he has booked aforesaid flat for total consideration amount of Rs. 84,83,760/-. As per cost breakup and payment schedule, total amount was Rs.95,34,256/- out of which he has paid 98% of sale consideration amount i.e., Rs.90,88,877/-. As per the terms of the construction agreement, the flat was supposed to be handed over by March 2019 but respondent had failed to do the same. It is contended that the respondent did reply that the date of handing over possession of

the flat was supposed to be 05.09.2019. The respondent denied to pay, delay compensation as per RERA Act, even though the project is registered under K RERA as on-going project. Therefore the complainant has filed this complaint U/Sec. 18 of the RERA Act, for the relief sought.

3. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent has appeared through it's authorised signatory. The respondent has filed the statement objections admitting the fact that complainant has entered into an agreements. The respondent has constructed and completed the project. The Brahat Bengaluru Mahanagara Palike (here-in-referred as BBMP) has granted Occupancy Certificate (here-in-after referred as OC) dated 26.03.2019. The complainant did submit booking form on 23.04.2014, subsequently agreements have been executed on 20.05.2014. As per the terms of the agreements respondent was to deliver possession of the flat within 42 months from date of receiving commencement certificate (here-in-after referred as CC) or execution of agreement whichever occurs later, subject to complainant's timely payment. The BBMP has issued CC on 23.09.2015. Therefore the date of delivery of possession of the flat was on or before 23.03.2019. The first intimation of the inspection of the flat was sent to complainant on 22.04.2019, consequently first inspection was conducted on 04.05.2019, subsequently snags outlined during joint inspection were repaired. Thereafter final inspection intimation was sent to complainant on 07.06.2019, requesting him to be present on 12.06.2019 but complainant sought re-schedule the inspection date, accordingly re-schedule date was intimated to the complainant as 22.06.2019. The complainant instead of keeping

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himself present on the spot, raised dispute over the final dues payable by him towards flat. The respondent sent intimation on 03.07.2019, to the complainant, requesting him to register and execute sale deed and to take possession. The final inspection was conducted on 06.09.2019 and subsequently complainant signed off as flat complete in all aspects. The complainant failed to discharge his duty contemplated U/Sec. 19(6) and 19(11) of RERA Act, as despite the respondent was ready to execute and register the conveyance deed and handover the possession of the flat but complainant declined to do so, to avoid payment of legitimate dues payable to the respondent. The respondent denied the allegation that respondent delayed to handover the possession of the flat. The complainant is jointly responsible for completing conveyance and possession, paying dues payable to the respondent in-respect of flat as contemplated U/Secs. 19(11) and 17(1) of RERA Act. The infrastructure charges mentioned in cost break-up sheet are mere projection of the actual cost which will be incurred at the time of possession. The said charges are levied at actual as such charges are bound to alter. Therefore the complainant cannot assert that infrastructure cost mentioned in the cost break-up at the time of the booking of the flat remain unaltered. The respondent has clarified and replied, the queries of the complainant through telephone and email exchanges. The complainant is liable to pay due balance amount to the respondent as mentioned in email dated 24.02.2020. The respondent as gesture of goodwill and compromise is ready to pay compensation to the complainant as per clause 15 of construction agreement from 01.04.2019 to 06.09.2019 which comes to Rs. 38,959/-. Therefore the respondent adjusting said compensation amount, instructed to the complainant, to pay

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balance amount of Rs.8,79,911/- through email dated 24.04.2020 but complainant declined to do so, raising dispute in-respect of payment of this amount. Thus complainant is in-contravention of the provisions of the RERA Act and K-RERA Rules, as such, complainant is not entitled for compensation. Per contra the respondent for the contentions raised in the statement objection is contending that, it is entitle for the counter claim to receive balance due amount of Rs.8,79,911/- with interest and to demand for holding charges in-respect of flat as per agreements. These main grounds among others urged in the statement objections, prayer to direct the complainant to settle all dues payable as prayed in counter claim, also to direct to execute and register the conveyance deed for the complainant flat and take possession after full payment dues payable by him to the respondent and to accept Rs.38,959/- as adequate compensation payable to the complainant.

4. Heard Smt. Sujatha H.H. Advocate for the complainant and heard Miss. Sonali Sylvia Authorised signatory for the respondent, through Skype. The written argument is filed on behalf of complainant. Perused the records, materials and the written argument.

5. The points that would arise for consideration are:

- (1) Whether the complainant is entitled for compensation? If so, to what extent?
- (2) Whether the respondent is entitled for the relief sought in the counter claim?
- (3) What order?

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

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

Point No.2: In the negative.

Point No.3: As per final order, for following:-

REASONS

7. Point Nos.1 & 2: These points are taken together for discussion for convenience also to avoid repetition of facts. The records disclose that complainant Aniruddh Varma, has entered into construction agreement Dt.20.04.2014 and Agreement of sale Dt. 20.04.2014 respectively with the respondent to purchase undivided share in the "Schedule A" immovable property described in the agreement of sale, and to get construct aforesaid flat bearing No. PB-WB-302 in the project, on 3rd floor for consideration amount of Rs. 84,83,760/- subject to terms and conditions of the agreement. The fact of parties entering into these agreements is admitted one. As per the terms of the construction agreement the flat was to be handed over to the purchaser within a period of 36 months from the date of receipt of CC or execution of agreement whichever is later with grace period of 6 months thereafter. Admittedly the agreements are executed on 20.04.2014, much prior to coming in to force of the RERA Act. Therefore it is just to consider as to whether the provisions of RERA Act 2016 and K-RERA Rules 2017, are applicable in the present case or not. Admittedly project has been registered with Karnataka RERA as the project in question in this case as an ongoing project as per the provisions of RERA Act and K-RERA Rules. The Hon'ble Haryana Real Estate Appellate Tribunal in appeal Nos. 52 & 64 of 2018 decided on 03.11.2020, in appeal No 52/2018, in the case of Emaar MGF

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Land Limited Vs. Ms. Simmi Sikka and another and in appeal No. 64/2018 in the case of Ms. Simmi Sikka Vs. M/s. Emaar MGF land Limited, among others observed that provisions of the Act shall become applicable even to an unregistered project or projects which do not require registration with respect of the fulfillment of the obligations as per the provisions of the Act, Rules & Regulations framed there-under. Therefore, it is made clear that in the instant case the project in question is ongoing project so, required to be registered, accordingly same is registered with K-RERA, which is an admitted fact, as such, the provisions of the RERA Act and K-RERA Rules are made applicable to the present case though the agreements were entered between the parties on 20.04.2014, before coming to the force of RERA Act.

8. The records disclose that dispute between the parties is with regard to payment of alleged balance due amount of Rs.8,79,911/- mentioned in copy of the email dated 24.04.2020, forwarded by the respondent to the complainant, which includes infrastructure charges and 2% balance consideration amount of the flat etc.,. The contention of the complainant is that the infrastructure charges shown in the said email is more than the amount mentioned in cost break-up sheet at the time of booking of flat, as such, he raised the dispute, declined to execute the conveyance deed and take possession. Per contra contention of respondent is that said amount mentioned in email dated 24.04.2020 is as per the terms if the agreements and charges are levied on actual. Therefore the respondent has sought relief under counter claim in-respect of said amount. As per the provisions contemplated U/Sec. 71 of RERA Act, the Adjudicating Officer has jurisdiction to adjudicate compensation

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only U/Secs. 12, 14, 18 and 19 of the RERA Act, as such, the dispute between the parties with regard to the infrastructure charges much less as contended by the parties is not coming within the jurisdiction of the Adjudicating Officer as the same is not partaking the character of compensation U/Sec. 12, 14, 18 and 19 of the RERA Act. At the best the Hon'ble K-RERA Authority has jurisdiction to decide about the alleged variance of infrastructure charges amount, which is in connection with amenities. The counter claim made by the respondent in this case is not maintainable, since nowhere Section 31 of RERA Act provides for counter claim much less as sought by the respondent. The respondent if aggrieved with regard to the alleged infrastructure amount in connection with the flat much less as alleged in the objection statement he may file a complaint against the complainant in accordance with law, if permissible. Therefore the counter claim of the respondent is not liable to be considered in this case, before the adjudicating officer, hence I am inclined to consider only the aspect of compensation in this case.

9. The one of the contention of the respondent is that it has constructed and completed the project, consequently BBMP has granted Occupancy Certificate dated 26.03.2019. The respondent along with statement of objections has produced copy of Occupancy Certificate(Partial) (here-in -after referred as OCP) bearing No.BBMP/Addl.Dir/JD Sought/0560/2013-14 dated 29.12.2018, as Annexure -1, issued by the BBMP subject to conditions mentioned therein. The respondent in the statement of objection has stated that BBMP has granted OC bearing No. 89/2018-19 dated 26.03.2019 and same is attached at Annexure -1 with objection statement but this fact may be

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crept in due to typographical mistake as Annexure -1 is copy of OCP dated 29.12.2018 mentioned above. The parties have produced copy of CC dated 23.09.2015, issued by the BBMP. This facts makes it clear that this CC dated 23.09.2015 shall be taken as bases for determining the date of delivery of the flat as this CC has been issued subsequent to agreement of sale and construction agreement both dated 20.04.2014. Under the circumstances as rightly submitted by the learned counsel for the complainant the respondent, ought have been handed over possession of the flat in question to the complainant on or before 23.03.2019 including 6 months grace period. Therefore, there is no hesitation to hold that there is a delay in handing over possession of the flat. The respondent in the objection statement among others is contending that as the gesture of the goodwill and compromise it inclined to pay compensation from 01.04.2019 to 06.09.2019 to the tune of Rs.38,959/-. The main contention of the respondent is that complainant is in contravention of provisions of RERA Act and delay in handing over possession of the flat is due to fault part of the complainant and not due to fault of the respondent. The respondent in objection statement in many words and Miss. S.S authorised signatory of the respondent submitted that construction of the project has been completed and OC has been obtained. Admittedly the respondent has not produced OC but has produced only copy of the OCP dated 29.12.2018 Annexed with objection statement as Annexure -1, discussed above. This OCP is subject to fulfillment of conditions imposed under condition No.15 therein. Therefore it may safely be concluded that OC has not been obtained from the competent authority as such there is no force in the contention of the respondent that it has obtained

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OC and construction of project has been completed. 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 V/s. Bruhat Bangalore Mahanagara Palike, rep., by its Commissioner and Other. The relevant portion reads as under:

"BANGALORE MAHANAGARA PALIKE BUILDING BYE- LAWS, 2003-BYE-LAW 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. (Para 12.(c))

(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 fulfilment 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, 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

*NREW
(Para18)"*

BUILDING

DISCUSSED.

10. The complainant being an allottee of the flat in question under the provisions of the RERA Act is expected to take possession of the flat only thereafter the respondent, builder complete the construction of the project with all amenities and thereafter obtain OC from the competent authority. Under the circumstance where the respondent till this day has not obtained OC of the project and only obtained OCP as such respondent cannot insist to the complainant to execute conveyance deed and to take possession of the flat in question much less as contented in the statement of objection. The materials on records prove that there is a delay in handing over possession of the flat with OC, to the complainant more than 2 years as due date for handing over possession of the flat was on or before 23.03.2019. Therefore there is no hesitation to hold that the complainant is entitled for the permissible interest on the respective amounts from the respective dates of paying respective amounts to the respondent to purchase aforesaid undivided share in the converted immovable property and flat in question, by way of compensation from 24.03.2019 till handing over of possession of the flat in question with OC. Smt. S.H.H. learned counsel for the complainant submits the complainant is paying house rent as till this day flat has not been delivered and company wherein the complainant is working is deducting HRA at Rs. 45,000/-per month and in fact the complainant is staying in rented house paying Rs. 45,000/- hence prayed to grant compensation towards hose rent at the rate of Rs. 45,000/- per month from 01.04.2019. The learned counsel in support of the argument placed reliance on the judgment dated 05.03.2020 in

appeal No. 384/2019 in the case of RR dwelling Pvt. Ltd vs Dipak Kumar and in appeal No. 375/2019 in the case of RR dwelling Pvt. Ltd vs Sri. Alok Johri, decided in the Hon'ble Uttar Pradesh Real Estate Appellate Tribunal reported in 2020 SCC online RERA (UP) 5 and also placed reliance on the judgment passed by the Hon'ble Karnataka Real Estate Appellate Tribunal in the judgment dated 23.04.2021 in the case of Mr. Vergheese Stephen vs M/s Total Environment Building Systems (P) Ltd., and another. Except copy of salary certificate for the financial year 2019-2020 of the complainant issued by the ITC limited, no other cogent and acceptable documents and materials produced to prove the actual house rent being paid by the complainant. The ratio and the principles mentioned in the aforesaid judgment relied upon by the learned counsel for the complainant are undisputed but same will be of no help to the complainant in this case, in respect of his claim for house rent, as facts of the said judgments and the facts of the case on hand are quite different. Therefore I am declined to grant the compensation to the complainant towards house rent. Thus I hold point No.1 accordingly for consideration and issue No.2 is answered in the negative for consideration.

11. 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 31.03.2020, 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.



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12. Point No.3: In view of my findings on point Nos. 1 and 2, I proceed to pass the following:-

ORDER

- (i) The complaint filed by the complainant bearing No.: CMP/200331/0005816 is partly allowed.
- (ii) The respondent is hereby directed to pay delay compensation to the complainant on the amount of Rs.90,88,877/- by way of interest @ 9% per annum on respective amounts, from the dates of receipt of respective amounts till 30.04.2017 and from 01.05.2017 @ 2% above the MCLR of SBI till the handing over of the possession of the flat with occupancy certificate.
- (iii) The counter claim of the respondent is hereby dismissed as not maintainable.
- (iv) The respondent is at liberty to approach the Hon'ble K-RERA Authority for the relief sought in-respect of difference amount of infrastructure charges etc., claimed in the counter claim in accordance with law, if permissible.
- (v) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (vi) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with this order to enforce the order.
- (vii) Intimate the parties regarding this order.
(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 11.08.2021)


I.F. BIDARI

Adjudicating Officer-1