

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 L.F. BIDARI**  
**DATED 27<sup>TH</sup> SEPTEMBER 2021**

<b>Complaint No.</b>	<b>CMP/191212/0004967</b>
<b>Complainant:</b>	Mr. Ravi Shankar M Unit No 1082 ,Tower 1, Prestige Bagamane Temple Bells , Rajarajeshwari Nagar, Bengaluru Urban - 560098. (In Person.)
<b>Respondent:</b>	Prestige Estates Projects Limited The Falcon House, No.1, Main Guard Cross Road, Bengaluru Urban - 560 001 (By: Sri. Mohumed Sadiqh. B.A. Advocate, i.e., K V Legal)

**J U D G M E N T**

Mr. Ravi Shankar M (here-in-after referred as complainant) has filed this complaint bearing No. CMP/191212/0004967, under Section 31 of the Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the Prestige Estates Projects Limited, (here-in-after referred as Respondent) seeking relief of compensation for delayed possession.

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

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3. The respondent Prestige Estates Projects Limited., is developing a Real Estate Project Prestige Eagamane Temple Bells (here-in-after referred as project), in converted immovable property, bearing (i) Sy. Nos. 54 measuring 2 acres 25 guntas, (ii) Sy.No. 55 measuring 4 acres 36 guntas (excluding 2 guntas of "B" Kharab land), (iii) Sy.No. 56/1 measuring 20 guntas, (iv) Sy.No. 56/2 measuring 1 acres 35 guntas (excluding 9 guntas of 'B' Kharab land), (v) Sy.No.56/3 measuring 37 guntas, (vi) Sy.No.56/4 measuring 11 guntas and and (vii) Sy. Nos. 57/2 measuring 1 acres 31, totally measuring 12 acres 35 guntas, situated at Hosakerehalli Village, Uttarahalli Hobli, Bengaluru South Taluk, presently assessed to municipal taxes by Brahat Bengaluru Mahanagara Palike (here-in-after referred as BBMP) and assigned with municipal Nos. 1004/54,55, 56/2,4,5,6, 56/1, 56/3, 57/2 Ward No. 160 Raja Rajeswari Nagar, Hosakerehalli, Bengaluru, described as schedule A property, in the agreement to sell dated 23.12.2014. The complainant Dr. Ravi Shankar M along with his wife Mrs. Suma, has entered into an agreement to sell and construction agreement both the dated: 23.12.2014 (here-in-after referred as agreement to sell and construction agreement respectively) with the respondent to purchase undivided share measuring about 1376/1208084<sup>th</sup> undivided right title and interest and ownership, described as Schedule-B property, in the agreement to sell, out of schedule-A property and to get construct an apartment bearing No. 1082, being constructed on Schedule-A property, on 8<sup>th</sup> Floor/Level, in Block/Tower - 1 in the project, of super built-up area measuring 1376 sq.ft., with a parking area, described as Schedule-C, in construction agreement dated 23.12.2014 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant alleged in the

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complaint that he did book the aforesaid apartment, in the project on 08.08.2014 and got the agreement to sell and construction agreement on 23.12.2014. He made payments as per agreements. As per construction agreement the respondent has to give possession of the apartment on or before 30.06.2018 with 6 months grace period. The Occupancy Certificate of the project has been received on 29.06.2019. Therefore the respondent has to pay compensation to the complainant as per the RERA Act. These main grounds among others urged in the complaint, prayer to grant the relief as prayed for.

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 complaint is not maintainable for the reasons (i) The complaint is hit by non-joinder of necessary party. (ii) The RERA Act is not applicable to the present case as possession of the apartment was handed over to the complainant on 22.12.2018 and complainant also had moved in to the apartment and started residing in the apartment from 02.04.2019. The respondent without prejudice to the aforesaid is pleading that complainant along with Mrs. Suma had entered in to an agreement to sell and construction agreement both dated: 23.12.2014, to purchase undivided interest in Schedule – A property and to get construct residential apartment No. 1082 in the project. The complainant's apartment was constructed and development of the entire project was completed as on 01.06.2017. The architect had issued form of completion certificate dated: 02.06.2017. The consultant had issued structural stability certificate dated: 01.06.2017. The respondent on 08.06.2017 had filed application in the BBMP for issuance of Occupancy Certificate

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(here-in-referred as OC). The BBMP was delaying to issue OC for the project, hence respondent wrote reminder dated: 05.06.2018 requesting to issue OC. The complainant through letter dated 22.12.2018 as acknowledged of taking possession of the apartment. The BBMP finally issued the OC for the project on 29.06.2019. The BBMP delayed in issuing OC for the project. Thus the respondent is not liable to pay alleged delay compensation to the complainant. It is contended that the delivery of possession was liable to be extended as per clause 5(a) & (b) of construction agreement. The complainant had failed to pay instalment amounts in time as per Annexure-II of the construction agreement and Annexure-II of agreement to sell. The complainant was liable to pay Rs.1,09,278/- as on 21.05.2019 and also liable to pay interest on the said amount till he settles the said amount to the respondent. These main grounds among others urged in the complaint, prayer to dismiss the complaint with exemplary cost.

5. The respondent has filed additional objection statement contending that BBMP had sanctioned building development plan of the project on 19.02.2015. The Vrishabawathi River which is presently a Nala/Rajakaluve runs on the western side of the project. The Hon'ble National Green Tribunal (here-in-after referred as NGT) in the matter between Forward Foundation & Ors vs. State of Karnataka had passed an order dated 07.05.2016, on the buffer zones i.e., maintaining certain distance between the development site and water bodies. After NGT order dated 07.05.2016, everybody including the BBMP, were in dilemma whether the buffer zone should be as per NGT order or as per the state Government master plan. The Hon'ble Supreme Court vide order dated: 05.03.2019 set-aside the NGT order dated: 07.05.2016. The respondent was not

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party in the aforesaid 2 proceedings and the project was not the subject matter in the said proceedings. The BBMP during this interim period was not inclined to issue OC even though the projects were completed as per sanction plans. There after the aforesaid Hon'ble Supreme Court order the respondent through a representation dated: 14.03.2019, requested to issue the OC for the project. The BBMP started processing OC, after approval from their legal departments to go ahead with issuing OC. The respondent was unable to get OC of the project for force majeure factor though project was completed well in time. Therefore respondent is not liable to pay delay compensation to the complainant and prayed to reject the complaint with exemplary cost.

6. I have heard the complainant and heard Sri. Mohammed Sadiq Advocate for respondent through Skype. Perused the materials and records.

7. The points that would arise for consideration are:

(1) Weather 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 complainant Dr. Ravi Shankar M along with his wife Mrs. Suma, has entered into an agreement to sell and construction agreement both the dated: 23.12.2014, with



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the respondent to purchase undivided share measuring about 1376/1208084<sup>th</sup> undivided right title and interest and ownership, described as Schedule-B property, in the agreement to sell, out of schedule-A property and to get construct an apartment bearing No. 1082, being constructed on Schedule-A property, on 8<sup>th</sup> Floor/Level, in Block/Tower - 1 in the project, of super built-up area measuring 1376 sq.ft., with a parking area, described as Schedule-C, in construction agreement dated 23.12.2014 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein are not in dispute. Admittedly the agreements are executed on 23.12.2014, 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 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 fulfilment 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, as such, the provisions of the RERA Act and K-RERA Rules are made applicable to the present case though the agreements were entered

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between the parties on 23.12.2014, before coming to the force of RERA Act.

9. The complainant submits that though he made payments as per agreements, the respondent failed to obtain OC, on or before 31.12.2018 but received the OC, on 29.06.2019, as such, the respondent is liable to pay the compensation for delay in handing over possession of the apartment as per provisions of RERA Act and K-RERA Rules. Per contra Sri. M.S. learned advocate for respondent submits that the Vrishabawathi River which is presently a Nala/Rajakalure runs on the western side of the project. The Hon'ble NGT in the matter between Forward Foundation & Ors vs. State of Karnataka had passed an order dated: 07.05.2016, on the buffer zones and after said order, everybody including the BBMP, were in dilemma whether the buffer zone should be as per NGT order or as per the state Government master plan. The learned counsel submits that the Hon'ble Supreme Court vide order dated: 05.03.2019 set-aside the NGT order dated: 07.05.2016 but the respondent was not a party in the aforesaid 2 proceedings and the project was not the subject matter in the said proceedings. The learned counsel submits that the BBMP till the order passed by the Hon'ble Supreme Court, declined to issue OC, even though the project was completed on 01.06.2017 and respondent had moved application before BBMP on 08.06.2017 and despite filing of remainders after the Hon'ble Supreme Court order there is a delay in issuing OC. The learned counsel submits that on 29.06.2019 the BBMP has issued the OC and earlier to that the complainant was given possession on 22.12.2018 and he has started residing in the apartment since 02.04.2019, hence the complainant is not entitle for delay compensation, as there is no fault on the part of the

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respondent but for NGT order some delay in obtaining the OC. The learned counsel drawn the attention of the Adjudicating Officer (here-in-after referred as AO) to the documents produced in that regard. The respondent has produced, 1). Copy of Completion Certificate dated: 02.06.2017 issued by the Architect in Schedule – VIII (by-law No.5.5) with regard to completion of construction of project building. 2). Copy of Structural Stability Certificate dated: 01.06.2017 issued by the consultant. 3). Copy of application dated: 08.06.2017 submitted by the respondent before the BBMP for issuance of OC. 4). Copy of reminder dated: 05.06.2018 filed before the BBMP for OC. 5). Copy of OC dated: 29.06.2019 issued by the BBMP in respect of the project building. The copy of judgment dated: 07.05.2015, in OA No. 222 of 2014, in the case of the Forward Foundation A Charitable Trust & Ors vs. State of Karnataka & Ors passed by the Hon'ble NGT Principal Bench New Delhi and copy of order dated 04.05.2016 passed therein discloses that among others the order is being passed in respect of distance between project buildings and buffer zone including Rajakaluve's is being passed under condition No.1 of the said order. The copy of judgment dated 05.03.2019 passes by the Hon'ble Supreme Court of India in Civil Appeal No. 5016 of 2016 in the case of Mantri Tech Zone Pvt. Ltd., vs Forward Foundation and Ors and in connected appeals mentioned therein, among others set-aside the direction/condition No.1, passed by the Hon'ble NGT in the order dated: 04.05.2016. The respondent was not a party in both these proceedings as pleaded in the objections. The respondent has produced copy of letter dated 22.12.2018 wherein it is stated that possession of apartment No. 1082 has been handed over to the complainant. The copy of letter dated 01.04.2019 discloses that complainant reported that he has planned to move in to the

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apartment on 02.04.2019. The complainant has given feedback to the respondent on 22.12.2018. No doubt these documents disclose that complainant was given possession on 22.12.2018 but without OC and according to complainant said possession was only for interior purposes and not legal possession. As rightly submitted by the complainant the possession said to have given on 22.12.2018 without OC is not handing over of possession legally under law. 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-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*

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*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 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*

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*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 BUILDING – DISCUSSED. (Para18)”*

10. There is no dispute that the respondent obtained the OC dated: 29.06.2019 issued by the BBMP in respect of the project and the apartment in question. Therefore it is made clear that the possession of the apartment handed over to the complainant on 22.12.2018 was not legal possession as said possession was not accompanying the OC. Sri. M.S. learned counsel for the respondent drawn the attention of the AO to the copy of the judgment dated: 24.11.2020, in complaint No. CMP/200119/0005202, passed by the learned AO of this authority and submits that in view of said judgment instant complaint also be dismissed. Per contra the complainant drawing the attention of the AO to the copy of the judgment dated: 10.10.2019 in complaint No. CMP/190416/0002676, passed by the learned AO of this authority and submits that in view of said judgment instant complaint also be allowed in the same line as stated therein and prayed to grant the delay compensation. Sri. M.S learned counsel for the respondent submits that as per construction agreement as on 21.05.2019 the complainant was liable to pay Rs. 1,09,278/- and also liable to pay interest on the said amount to the respondent till settlement of the said amount. Therefore the complainant is not entitle for the



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compensation as he has committed default in payment of consideration amount as per the terms of the agreement. Per contra complainant submit that the terms of agreements are one sided and much favorable to the respondent, same cannot take away the statutory right of the complainant accrued in his favor under RERA Act. The perusal of contents of agreements discloses that terms of the said agreements are more favorable to the respondent than the complainant and appears as one sided. The Hon'ble Supreme Court of India (1) in Civil Appeal No. 12283 of 2018 in the case Pioneer Urban Land & Infrastructure Ltd. vs Govinda Ragavan with Civil Appeal No. 1677 of 2019 in the case Pioneer Urban Land & Infrastructure Ltd. vs Geetu Gidwani Verma and Anr, among others observed that the terms of agreements shall not take away the statutory right accrued to the complainant under the provisions of RERA Act, particularly under Section 18(1) of RERA Act, if terms of the agreements are one sided. Therefore there is no substance in the contention of the respondent in that regard. The respondent is under liability to obtain OC and hand over possession of the apartment to the complainant with OC. Under the facts and circumstances of the case when the Hon'ble Supreme Court on 05.03.2019 set-aside the order dated 04.05.2016 passed by the Hon'ble NGT in aforesaid AO No.222/2014, then the respondent at the best ought to have been obtained the OC, on or before 30.04.2019 but in fact respondent obtained the OC on 29.06.2019. Therefore it is just and proper to direct the respondent to pay delay compensation by way of interest @ 2% P.A. above the MCLR of SBI on the respective amounts from the dates of receipts of respective

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amounts from 01.05.2019 to 29.06.2019. Accordingly I hold this point 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 12.12.2019, 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.
12. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

**ORDER**

- (i) The complaint filed by the complainant bearing No.: CMP/191212/0004967 is partly allowed against the respondent.
- (ii) The respondent is hereby directed to pay delay compensation by way of interest @ 2% P.A., above the MCLR of SBI, on the respective amounts from the dates of receipts of respective amounts from 01.05.2019 to 29.06.2019.
- (iii) The parties are directed bear their own cost in this petition.



**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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- (iv) 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.
- (v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 27.09.2021)

**I.F. BIDARI**

Adjudicating Officer-1