BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI I.F. BIDARI
DATED 02nd NOVEMBER 2021

Complaint Nos. CMP/ 200903/0006498, CMP/201006/0006775, CMP/200825/0006418, CMP/200828/0006461, CMP/200813/0006353, CMP/200312/0005632, CMP/200312/0005698, CMP/200326/0005806, CMP/200312/0005699 and CMP/210106/0007398

1. Complainant in complaint No.CMP/200903/0006498

Mr. Shachindra S

Flat No.5016, Prestige Bagamane Temple Bells,

Tower 5, 1st Floor, RR Nagar,

Bengaluru Urban - 560098.

2. Complainant in complaint No.CMP/201006/0006775

Mr. Pramod SM

No.19, Salonee, Behind Christ King School,

Ramamurthy Nagar,

Bengaluru Urban – 560016.

3. Complainant in complaint No.CMP/200825/0006418

Mr. Arun Kumar Shettar

Flat No.3196, Prestige Bagamane Temple

Bells, Tower 3, 19th Floor, RR Nagar,

Bengaluru Urban – 560098.

4. Complainant in complaint No. CMP/200828/0006461

Mr. K Mahadevaiah
Flat No.2043, Prestige Bagamane Temple Bells,
RR Nagar,
Bengaluru Urban – 560098.

5. Complainant in complaint No. CMP/200813/0006353

Mrs. Nagamani
Flat No.4143, Prestige Bagamane Temple Bells,
Rajarajeshwarinagar,
Bengaluru Urban – 560098.

6. Complainant in complaint No. CMP/200312/0005632

Mrs. Ashwini Shreenivasa Murthy
6162, Prestige Bagamane Temple Bells,
Rajarajeshwarinagar,
Bengaluru Urban – 560098.

7. Complainant in complaint No.CMP/200312/0005698

Mr. Vinay Sathyanaryan
Flat No.6161 Prestige Bagamane Temple Bells,
Tower 6, 16th Floor, RR Nagar,
Bengaluru Urban – 560098.

8. Complainant in complaint No.CMP/200326/0005806

Mr. Chandan J

No.920, 5th West Cross, Ashoka Road,

Kumbare Geri,

Mysore – 560001.

9. Complainant in complaint No.CMP/200312/0005699

Mrs. Pavithra Vinod

Flat No.6115 Prestige Bagamane Temple Bells,

Tower 6, 11th Floor, RR Nagar,

Bengaluru Urban – 560098.

10. Complainant in complaint No.CMP/210106/0007398

Mr. Amrish Shahi

F-0244, Brigade Golden Triangle, Huskur,,

Bengaluru Urban – 560049.

(By. Smt. Shilpa Rani and Associates Advocates)

Versus

Common respondent in all the complaints

Prestige Estates Projects Limited.,
The Falcon House, No.1,
Main Guard Cross Road,
Bengaluru Urban – 560001.

(By. Sri. Mohammed Sadiq Advocate)

COMMON-JUDGMENT

The Complainant Mr. Mr. Shachindra S in complaint No. CMP/200903/0006498, Complainant Mr. Pramod SM in complaint No. CMP/201006/0006775, Complainant Mr. Arun Kumar Shettar in complaint No. CMP/200825/0006418, Complainant Mr. K Mahadevaiah in complaint No. CMP/200828/0006461, Complainant Mrs. Nagamani in complaint No. CMP/200813/0006353, Complainant Mrs. Ashwini Shreenivasa Murthy in complaint No. CMP/200312/0005632, Complainant Mr. Vinay Sathyanaryan in complaint No. CMP/200312/0005698, Complainant Mr. Chandan J in complaint No. CMP/200326/0005806, Complainant Mrs. Pavithra Vinod in complaint No. CMP/200312/0005699 and Complainant Mr. Amrish Shahi in complaint No. CMP/210106/0007398, respectively have filed their separate complaints under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent Prestige Estates Projects Limited., (here-in-after referred as respondent) for the delay compensation as sought in their respective complaints under the RERA Act. The respondent in all these complaints is same and relief sought in the complaints is also almost similar, as such, the complaint Nos. CMP/201006/0006775 (here-in-after

referred as complaint No. 6775), complaint No. CMP/200825/0006418 (here-in-after referred as complaint No. 6418), complaint No. CMP/200828/0006461 (here-in-after referred as complaint No. 6461), complaint No. CMP/200813/0006353 (here-in-after referred as complaint No. 6353), complaint No. CMP/200312/0005632 (here-in-after referred as complaint No. 5632), complaint No. CMP/200312/0005698 (here-in-after referred as complaint No. 5698), complaint No. CMP/200326/0005806 (here-in-after referred as complaint No. 5806), complaint No. CMP/200312/0005699 (here-in-after referred as complaint No. 5699) and CMP/210106/0007398 (here-in-after referred as complaint No. 7398), are clubbed in complaint No. CMP/200903/0006498 (here-in-after referred as complaint No. 6498) for disposal of all these complaints by common judgment, hence these complaints are taken together for disposal by common judgment.

2. The brief facts of the complaints relating to complaint Nos. 6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398 are as under:

The respondent Prestige Estates Projects Limited., is developing a Real Estate Project Prestige Bagamane Temple Bells, in converted immovable property, bearing (i) Sy. No. 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 (vii) Sy. No. 57/2 measuring 1 acres 31 guntas, 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 agreements of sale of undivided share of land. The complainant Mr. Shachindra S along with his wife Mrs. G. C. Roopa in complaint No. 6498, the complainant Mr. Pramod S.M in complaint No. 6775, the complainant Mr. Arun Kumar Shetter in complaint No. 6418, the complainant Mr. Mahadevaiah along with Mrs. M.C. Shilpa in complaint No. 6461, the complainant Mrs. Nagamani along with Mr. Divakar in complaint No. 6353, the complainant Mrs. Ashwini Shreenivasa Murthy along with Mr. Shashidhar in complaint No. 5632, the complainant Mr. Vinay Sathyanarayan along with Mrs. Santhoshi. S in complaint No.5689, the complainant Mr. Chandan J along with Mrs. Varsha Rajgopal in complaint No. 5806, the complainant Mrs. Pavithra Vinod along with Mr. Vinod Kumar Muddappa and the complainant Mr. Amrish Shahi in complaint No. 7398, respectively, have entered into their respective agreements of sale of undivided share of land and agreements of construction dated: 04.01.2017, 05.01.2015, 06.01.2015, 01.06.2015, 20.05.2016, 16.12.2015, 21.01.2015, 23.01.2015, 01.01.2015 and 21.06.2016 respectively (here-in-

after referred as agreements of sale and construction agreements respectively). The complainant Mr. Sachindra S along with his wife Mrs. G. C. Roopa in complaint No. 6498 has entered into agreement of sale and construction agreement both dated 04.01.2017 with the respondent to purchase undivided shares measuring about 1373/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 5016, being constructed on Schedule-A property, on 1th Floor/Level, in Block/Tower – 5th in the project, of super built-up area measuring 1373 sq.ft., with a parking area, described as Schedule-C, in construction agreement dated 04.01.2017 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

3. The complainant Mr. Pramod SM, in complaint No.6775, has entered into agreement of sale and construction agreement both dated 05.01.2015 with the respondent to purchase undivided shares measuring about 648/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 7046, being constructed on Schedule-A property, on 4th Floor/Level, in Block/Tower – 7th in the project, of super built-up area measuring 648 sq.ft., with a car parking area, described as Schedule-C, in construction agreement dated 05.01.2016 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

4. One Mrs. Roopashree B C W/o Mr. Shashi Kumar P V did enter into agreement of sale and construction agreement both dated 06.01.2015 with the respondent to purchase undivided share measuring about 1168/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 3196, being constructed on Schedule-A property, on 19th Floor/Level, in Block/Tower – 3rd in the project, of super built-up area measuring 1168 sq.ft., with a parking area, described as Schedule-C, in construction agreement dated 06.01.2015 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. Thereafter the said Mrs. Roopashree B C, assigned her said undivided afore said right title interest in the schedules A, B and C properties acquired through agreements dated: 06.01.2015 in favour of complainant Mr. Arun Kumar Shettar and his wife Mrs. Ramya S, through agreement of assignment deed dated:27.07.2018 and said Mr. Arun Kumar Shettar has filed aforesaid complaint No. 6418.

5. The complainant Mr. K. Mahadevaiah along with Mrs. M C Shilpa, in complaint No. 6461, has entered into agreement of sale and construction agreement both dated 01.06.2015 with the respondent to purchase undivided shares measuring about 1160/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 2043, being constructed on Schedule-A property, on 4th Floor/Level, in Block/Tower – 2nd in the project, of super built-up area measuring 1160 sq.ft., with a parking

area, described as Schedule-C, in construction agreement dated 01.06.2015 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

6. The complainant Mrs. Nagamani along with Mr. Divakar, in complaint No. 6353, has entered into agreement of sale and construction agreement both dated 20.05.2016 with the respondent to purchase undivided shares measuring about 1160/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 4143, being constructed on Schedule-A property, on 14th Floor/Level, in Block/Tower – 4th in the project, of super built-up area measuring 1160 sq.ft., with a parking area, described as Schedule-C, in construction agreement dated 20.05.2016 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

7. The complainant Mrs. Ashwini Shreenivasa Murthy along with Mr. Shashidhar J C, in complaint No. 5632, has entered into agreement of sale and construction agreement both dated 16.12.2015 with the respondent to purchase undivided shares measuring about 1376/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 6162, being constructed on Schedule-A property, on 16th Floor/Level, in Block/Tower – 6th in the project, of super built-up area measuring 1376 sq.ft., with a

parking area, described as Schedule-C, in construction agreement dated 16.12.2015 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

8. The complainant Mr. Vinay Sathyanarayana along with Mrs. Santhoshi S, in complaint No. 5698, has entered into agreement of sale and construction agreement both dated 21.01.2015 with the respondent to purchase undivided shares measuring about 1373/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 6161, being constructed on Schedule-A property, on 16th Floor/Level, in Block/Tower – 6th in the project, of super built-up area measuring 1373 sq.ft., with a parking area, described as Schedule-C, in construction agreement dated 21.01.2015 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

9. The complainant Mr. Chandan J along with Mrs. Varsha R, in complaint No. 5806, has entered into agreement of sale and construction agreement both dated 23.01.2015 with the respondent to purchase undivided shares measuring about 1168/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 6136, being constructed on Schedule-A property, on 13th Floor/Level, in Block/Tower – 6th in the project, of super built-up area measuring 1168 sq.ft., with a parking

area, described as Schedule-C, in construction agreement dated 23.01.2015 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

10. The complainant Mrs. Pavithra Vinod along with Mr. Vinod Kumar M, in complaint No. 5699, has entered into agreement of sale and construction agreement both dated 01.01.2015 with the respondent to purchase undivided shares measuring about 1587/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 6115, being constructed on Schedule-A property, on 11th Floor/Level, in Block/Tower – 6th in the project, of super built-up area measuring 1587 sq.ft., with a parking area, described as Schedule-C, in construction agreement dated 01.01.2015 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

11. The complainant Mr. Amrish Shahi, in complaint No. 7398, has entered into agreement of sale and construction agreement both dated 21.06.2016 with the respondent to purchase undivided shares measuring about 1369/1208084th, undivided right title and interest and ownership, described as Schedule-B property, in the agreement of sale, out of schedule-A property and to get construct an apartment bearing No. 7137, being constructed on Schedule-A property, on 13th Floor/Level, in Block/Tower – 7th in the project, of super built-up area measuring 1369 sq.ft., with a parking area, described as Schedule-C, in construction

agreement dated 21.06.2016 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

12. The complainants in their respective complaints alleged that respondent was supposed to complete construction of their aforesaid apartments in the project and to handover the possession of their respective apartments, on or before 30.06.2018 and should have obtained OC by that time. The respondent has obtained OC, on 29.06.2019, causing a delay of almost one year. Therefore the respondent is liable to pay interest to the complainants on the amounts deposited from 30.06.2018 to 29.06.2019. The respondent refused to pay interest for delay as demanded by the complainants, contending that there is no delay on the part of the respondent. The complainants have regularly paid the amounts to the respondent as and when the demands have been raised by the respondent. The delay caused by the respondent has put the complainants in financial crisis. Therefore prayer of the complainants to grant them relief as prayed in their respective complaints.

13. There-after receipt of the complaints from the respective complainants, notice was issued to the respondent. The respondent has appeared through its Advocate in all these complaints. The respondent has filed separate statement objections/written submissions in all the complaints, contending that complainants have filed false complaints. The complaints are not maintainable for the reasons (i) Except, the complaint No.7398, the remaining complaints are hit by non-joinder of necessary parties. (ii) The provisions of RERA Act, is not applicable in these complaints. The possession of the respective

apartments were handed over to the complainants in complaint Nos.6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398 on 01.12.2018, 23.07.2019, 26.04.2019, 26.08.2019, 19.01.2019, 20.05.2019, 18.01.2019, 03.08.2019, 08.02.2019 and 15.12.2018 respectively and said complainants started residing in their respective apartments from 22.06.2019, 23.07.2019, October 2019, 10.06.2020, 13.09.2019, 14.02.2020, 26.06.2019, 03.08.2019, 07.08.2019 and 15.05.2019 respectively. The complainants, apartments were 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 OC. The BBMP was delaying to issue OC for the project, hence respondent wrote reminder dated: 05.06.2018 requesting to issue OC. The complainants through their respective letters stated in the objections have acknowledged of taking possession of their respective apartments. 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 complainants. It is contended that the delivery of possession was liable to be extended as per clause 5(a) & (b) of construction agreements. The complainants had failed to pay instalment amounts in time as per Annexure–II of the construction agreements and Annexure–I of agreements of sale. The respondent is 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 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 because of force majeure factor though project was completed well in time. Therefore respondent is not liable to pay delay compensation to the complainants. These main grounds among others contended in statement objections prayed to dismiss the complaints with exemplary cost.

14. I have heard the Smt. Shilp Rani, learned Advocate for the complainants, and heard Sri. Mohammed Sadiq Advocate for respondent relating to all the complaints, through Skype. The written argument is filed on behalf of complainants. Perused the materials, records and the written argument.

15. The points that would arise for consideration are:

Point No.1: Weather the complainants in complaints Nos. 6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398 are entitled for the compensation for delay in handing over the possession of their respective apartments? If so, to what extent?

Point No.2: What order?

16. My findings on the above points in the complaint Nos. 6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398 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

17. Point No.1, in all the complaint Nos. 6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398: The fact that the complainants in aforesaid complaints Nos. 6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806 and 5699 and the assigner Mrs. Roopashree of complainant in complaint No. 7398, respectively, have entered in to an aforesaid, their respective agreements of sale and construction agreements, to purchase undivided interest in Schedule – A property and to get construct residential apartments mentioned therein in the project for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein are not in dispute. The one of the contention of the respondent is that the provisions of

RERA Act, are not applicable in these complaints. Admittedly the agreements are entered between the parties prior to coming into force of 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 cases 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 Honb'le 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 present cases 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 cases though the agreements were entered between the parties, prior to coming into force of the RERA Act.

18. Smt. S.R. learned Advocate for the complainants submit that the respondent had agreed to complete the construction of apartments and handover same to the complainants on or before 30.06.2018 with 6 months grace period and complainants have made payments as per agreements but respondent failed to obtain OC, on or before 31.12.2018 and received the OC, on

29.06.2019, as such, the respondent is liable to pay the compensation to the complainants for delay in handing over possession of the apartments as per provisions of RERA Act and K-RERA Rules. The learned counsel during argument as also in the written argument submitted that problems that arise in planning, execution and completion of the project are the responsibility of the builder/developer/respondent and not that of the consumers/complainants. The learned counsel in support of the argument placed reliance on the judgment passed by the Hon'ble NCDRC in the case of DLF Homes Panchkula Pvt. Ltd., vs DS Dhanda and others (MANU/CF/0837/2018). Per contra Sri. M.S. learned advocate for respondent submits that the Vrishabawathi River which is presently a Nala/Rajakaluve 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 reminders 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 possession of the respective apartments were handed over to the complainants in complaint Nos.6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398 on 01.12.2018, 23.07.2019, 26.04.2019, 26.08.2019, 19.01.2019, 20.05.2019, 18.01.2019, 03.08.2019, 08.02.2019 and 15.12.2018 respectively, there-after they are residing in their respective apartments, hence the complainants are not entitle for delay compensation, as there is no fault on the part of the 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 copies of letters dated: 01.12.2018, 23.07.2019, 26.04.2019, 26.03.2019, 19.01.2019, 20.05.2019, 18.01.2019, 03.08.2019, 08.02.2019, 15.12.2018 respectively, wherein it is stated that the possession of their apartments have been handed over to the complainants in complaint Nos. 6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398 respectively. No doubt these documents discloses that complainants were given possession of their respective apartments as aforesaid but without OC and according to complainants said possession was only to commence interior work and not legal possession, copies of emails forwarded by the respondent to the complainants annexed with the written arguments of the complaints disclose the same. As rightly submitted by the learned Advocate for complainants the possession of the apartments said to have given to the complainants as discussed above is without OC, as such, same is not amounting to 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 effect that in every respect, the building or part thereof is compete, 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 stands 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 BUILDING – DISCUSSED. (Para18)"

19. 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 apartments in question. Therefore it is made clear that the possession of the apartments handed over to the complainants as discussed above 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 the present complaints also liable to be dismissed. Per contra the Smt. S.R learned Advocate for complainants 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 the present complaints are also liable to 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 the terms of the construction agreements the complainants were still liable to pay sum balance mentioned in the respective statements objection in the cases and also liable to pay interest on the said amounts to the respondent till settlement of said amounts, as such, the complainants are not entitled for the compensation as complainants have committed default in payment of consideration amounts as per the terms of the agreements. Per contra Smt. S.R learned Advocate for the complainants submit that the complainants have made payments as per agreed terms. The learned counsel further submits that the terms of agreements are one sided and much favorable to the respondent same cannot take away the statutory right of the complainants accrued in their 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

complainants 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 apartments to the complainants with OC, on or before 31.12.2018 including 6 months grace period. 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 to the complainants 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. As per the provisions contemplated U/Sec. 31 of the RERA Act, any aggrieved person may file complaint before the authority or AO. Therefore the complaints are not bad for non-joinder of parties, much less, as contended by the respondent. Thus, I hold

point No.1, accordingly for consideration in complaint Nos. 6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398.

20. As per the provisions contemplated U/sec. 71(2) RERA Act, the complaints shall have to be disposed off within 60 days from the date of receipt the complaints. The complaint Nos. 6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398, have been filed on 03.09.2020, 06.10.2020, 25.08.2020, 28.08.2020, 13.08.2020, 12.03.2020, 12.03.2020, 26.03.2020, 12.03.2020 and 06.01.2021 respectively, 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.

21. Point No.2, in complaint Nos. 6498, 6775, 6418, 6461, 6353, 5632, 5698, 5806, 5699 and 7398: In view of my findings on point No. 1, I proceed to pass the following:-

ORDER

(i) The complaints filed by the complainants bearing Nos.:CMP/200903/0006498,CMP/201006/0006775, CMP/200825/0006418,CMP/200828/0006461, CMP/200813/0006353,CMP/200312/0005632, CMP/200312/0005698,CMP/200326/0005806, CMP/200312/0005699 and CMP/210106/0007398, are partly allowed against the respondent.

(ii) The respondent is hereby directed to pay delay compensation to the complainants in complaints bearing Nos.CMP/200903/0006498,CMP/201006/0006775, CMP/200825/0006418,CMP/200828/0006461, CMP/200813/0006353,CMP/200312/0005632, CMP/200312/0005698,CMP/200326/0005806, CMP/200312/0005699 and CMP/210106/0007398, 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 all these petitions.

(iv) The complainants may file memo of calculations as per this orders after 60 days in case respondent failed to comply with the orders, to enforce the orders.

(v) The office is hereby directed to retain this original common judgment in complaint No. CMP/200903/0006498 and copies of this common judgment be kept in complaints bearing Nos. CMP/201006/0006775,CMP/200825/0006418, CMP/200828/0006461,CMP/200813/0006353, CMP/200312/0005632,CMP/200312/0005698, CMP/200326/0005806,CMP/200312/0005699and CMP/210106/0007398.

(vi) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 02.11.2021)

9/11/21

I.F. BIDARI
Adjudicating Officer-1