BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
K.PALAKSHAPPA
ADJUDICATING OFFICER
Date: 20th August 2019

Complainant :

1. CMP/181021/0001476
Samir Bhagwat
G-508, Ozone Evergreens
Haraluru Road
Bengaluru

2. CMP/181130/0001696
Himanshu Dwivedi
102, Needs 3 Apartment
Haraluru Road
Parappana Agrahara
Bengaluru

3. CMP/181201/0001702
Asis Kumar Patra
B204, Ozone Evergreens
Haraluru Road
Bangalore.

4. CMP/181128/0001688
Shahul Hamid NKM
3/82, Kandiyan Street
Chakkarappalli, Ayyampet
Tamilnadu

5. CMP/181127/0001678
V. R. Karthik
Manar Elegance
A-408, Somasundara Palya
HSR Layout Second Sector
Bengaluru

6. CMP/181126/0001674
Garima Singh
A-505, Manar Elegance
A-408, Somasundara Palya
HSR Layout Second Sector
Bengaluru

7 CMP/181122/0001655
Vikas Goutam
A-5B, Green Garden
Ranchi, Jharkhand

8. CMP/181122/0001651
Rahul Sharma
H – 1901, Ajmera Infinity
Neeladhri Road, Electronic City Phase I,
Bengaluru

9. CMP/181120/0001641
Rahul Garg
Veni 907, SJR Verity
Kasavanahalli Main Road
Near Amruta Collage
Bengaluru

20/08/19

10. CMP/181030/0001595
Prasad Sogi
409, 9th Main A Block
AECS Layout, Kudlu
Bengaluru

11. CMP/181028/0001561
Gaurav Shukla
203, A Block
Innovative Aqua Front Apartment
Lake view road
Near Rama Temple
Doddanekkundi
Bengaluru

12. CMP/181026/0001501
Vignesh Kumar V
1/6/292, Sivanadamnagar
Sivakashi, Virudhunagar District,
Tamilnadu

13. CMP/181026/0001496
Rahul Sinha
B-333, Road No.4,
Ashok Nagar, Ranchi District
Jharkhand.

AND

Opponent : Blue Waters Phase-I
SJR PRIME CORPORATION PVT LTD,
No. 1, SJR Primus, 7th Floor,
Koramangala Industrial Layout, 7th Block
Koramangala, Bengaluru -560095.

20/08/19

JUDGEMENT

1. Samir Bhagwat, has filed his complaint under Section 31 of RERA Act against the project "BLUE WATERS PHASE 1" developed by SJR PRIME CORPORATION PVT. LTD., bearing complaint no. CMP/181021/0001476

2. At this stage I would like to say that there are 13 similar cases filed against the same builder and all of them have been taken for disposal.

3. Sri Vikas Mahendra Advocate as well as the advocate representing the developer has agreed to dispose of the above these complaints on the same facts and law. Hence, all these complaints have been taken to pass the common judgment. In this regard the brief facts of first case are as follows:

> *I would like to say that the complainant in complaint no. 1476 has given his grievance and finally sought for delay compensation from the developer. Similarly the other complainants also sought the same kind of relief and therefore I am going to discuss regarding the merits of the case in this complaint which refers to other cases.*

4. In pursuance of the summons issued by this authority but, Shri. Vikas Mahendra Advocate has appeared on the behalf all the complainants. Shri Vighnesh Advocate appeared on behalf of the developer.

5. The Developer has filed his written objections and ultimately I have heard the arguments on both sides

6. The point that arise for my consideration is

Whether the complainants prove that they are entitled for delay compensation along with other kind of reliefs?

7. If so, what is the order?

8. My answer is affirmative in part for the following

REASONS

9. The complainants have filed their respective complaints seeking the relief of delay compensation. It is the case of the complainants that the developer is liable to pay the delay compensation as per the agreement since the developer had to complete the project on or before the completion date given in the respective agreement of sale. But the developer has not accepted the same and it is his submission that he has given the date of completion as 30/06/2019 to the RERA and in support of the same he has taken so many contentions. I am going to discuss the same as per the law evidence and oral arguments made by the parties.

10. The developer has given the list of events causing the delay in completion of his project.

11. The counsel for the complainants submits that the complainants are entitled for delay compensation since the developer has failed to deliver the possession as agreed in the agreement. But it is the case of the developer that he was prevented from executing the work under the guise of force majeure. The developer has listed those causes saying that they are the main reasons for the delay.

12. The developer has given the list of events causing the delay in completion of his project.

(1) Non-Availability of River Sand
(2) Transporters' strike
(3) Sand Lorry Owner's strike
(4) Cauvery Strike
(5) Demonitization
(6) Enactment of Goods and Services Tax
(7) Delay owing to the Order of Stay granted by the Civil Court,
(8) Heavy Rainfall.

The learned counsel for the complainants has submitted that the reasons given by the developer for delay are not real causes for delay since he has analysed with reasons on each ground.

(1) Non-Availability of River Sand

The Respondent has made reference to an Order of the NGT Chennai as to prohibited use of river sand. At the first instance, the Respondent neither cared to name the case wherein this order was passed nor provided a suitable citation so that the contents of this order can be verified. Moreover, the Respondent has not produced the relevant orders along with its objections. Further he said that proving the same even if it exists, did not have any impact on the project at all. It is his case that the Respondent has also not produced any correspondence exchanged between the Respondent and the Complainant wherein the Respondent informed the Complainant about the delays caused as a result of the NGT Order.

2) Transporters' strike

There is a provision for buffer stock in the site about 20 days' of raw materials being kept as standby for such eventualities. It is submitted that the Respondent could have stored raw materials in the vacant land for the purpose of utilization in the event of any strike/disruption that took place. In these circumstances, the Respondent cannot now define 'Force Majeure' to include actions

that it could have anticipated and in respect of which necessary precautions could have been taken. Moreover maximum delay of 60-90 days only would be attributable to the strike which is negligible when compared to the whole duration of a project. Therefore, the Respondent has failed to provide any proof of delay on the basis of the said strike and this reason is liable to be ignored.

(3) Sand Lorry Owner's strike

The Respondent has contended that Sand Lorry Owners Strike placed substantial restrictions on transport of the sand and this resultantly delayed the Project by several months even after the strike was called off. The Respondent has not pointed out at the very first instance when the strike took place and the exact number of days of delay.

(4) Cauvery Strike

The Respondent has contended that the Cauvery Strike caused hindrances to the supply of raw materials such as steel, cement and sand. Most masons were from Tamil Nadu and unavailable during the period of the strike. It is an admitted fact that the Respondent maintains detailed labour records regarding to the number of masons present at the Project each day, the nature of work being undertaken by them, etc. However, the Respondent has not adduced any of these records to prove that there was indeed a dearth of masons during the Cauvery Strike. The Respondent has not made any submissions to show that the strike actually affected the project, and has not adduced any labour records to show that labour was indeed affected during the strike.

(5)Demonitization

The Respondent has argued that the demonetization in 2016 caused delay of about 6–8 months in the project schedule. However, the claims of delay in this regard are not by the Respondent who has been provided any documentary evidence nor has he personally requested for these documents from the Respondent. No investigation was conducted about the status of the project at the time of Demonitization and no information provided by the Respondent. It is submitted that there is absolutely no consistency in the computation of delay as there was no delay caused in the first place. The Respondent has, therefore, failed to discharge the burden of proof to establish that the event affected the project site, let alone prove any cause of justifiable delay.

(6) Enactment of Goods and Services Tax

The Respondent, in its objections, has argued that the enactment of the GST regime severely affected the project schedule. The Respondent has not provided proof to show that impact of GST on the project. The Respondent has not given the project schedule to show the alleged delay in supply of raw materials from its suppliers during this period, emails or any other form of communication has not been put on record to show that there was genuine difficulty in implementation of the GST. It is undeniable that the implementation of GST was public knowledge well before the said act came into force. In these circumstances it is clear that the Respondent's inaction with respect to implementation of GST is tantamount to negligence and willful delay. This cannot provide any basis to avoid any legal liability.

(7) Delay owing to the Order of Stay granted by the Civil Court, Bangalore.

The Respondent has also not produced the order of the Civil Court Bengaluru dated 23 December 2016 but argued that the Civil Court order restricted any construction from taking place, resulting in a delay up until the time that the Respondent secured an order by the High Court of Karnataka on 23 February 2017 and the order that only prevents the Respondent from alienating the property and does not, in any manner whatsoever, prohibit the Respondent from developing the property. The High Court of Karnataka also does not refer to the restriction on any developmental activity when setting aside the order of the Civil Court in its order dated 23 February 2017.

13. The counsel for the complaints has made his mode of denying the case of the developer by showing that the reasons urged by him for delay has not caused great impact in completing the project as a whole. I would say that there is no evidence which was supported regarding the heavy rainfall directly affected on the construction because it was rightly submitted that in case of heavy rainfall or strike of sand transport lorry owner, the developer could have attended the other works of the project. I find some force in his submission. In my view, the grounds urged by the developer are not having any direct effect on the completion of the project as a whole. In case of shortage of sand, he could have completed other works by balancing the total work of the project. The developer can maintain the construction work for a period of 10-15 days even though the supply of material was stopped for any reasons because every developer used to have buffer stock of every material and it can be made use for the construction.

14. But it was the submission made on behalf of the respondent that when he has shown genuine inability, the adjudicating authority has got all the power to mould the relief is the argument placed on behalf of the developer. According to him the same was upheld by the Bombay High Court in para 123 of the judgment as well. The complainant must establish that they have suffered loss but here the complainants' have failed to do so.

15. The developer represented by his advocate has submitted that the complaint itself is not maintainable since it is premature one. According to the developer the cause of action will arise to the complainants only when there is failure on the part of the developer to complete the project on or before the date given to RERA i.e. 30/06/2019 and as such the present complaints are all liable to be dismissed as premature.

16. Second ground is that there is no wilful default on the part of the developer in non-completing the project because of the circumstances which are beyond his control due to unforeseen situation and untimely demand made by the complainants for alteration of their respective units.

17. According to the developer there is no delay in completing the project. The date so fixed and approved by the authority is the date to be considered for completion of the project. According to him until the statutory date is reached, the complainants will not get any cause to file these complaints. The learned counsel for the developer has made it clear that the date has been given by the developer as per Sec. 4(2)(l)(C) and the same was accepted by the authority in terms of Sec. 5 of the Act. But I would like to say that there is no force in the above submission because in the same Neelkamal case, this point has been made it clear that the contractual terms cannot be rewritten. Further the Hon'ble High Court of Bombay said that ongoing project means where the

20/08/19

development work was not completed as on 01/05/2017 and as such an opportunity has been given to the developer of such ongoing project for completion of the project. But it does not mean that the date given in the agreement which was fixed by mutually understanding is of no use.

18. It is the strong contention of the Respondent that Section 18 of the Act is prospective in nature and therefore, the Complainants are not entitled for compensation under the said Section, as claimed. Section 18 of the Act clearly provides that it is applicable to all ongoing projects under the ambit of the Act.

19. It is the argument of the counsel for the complainants that the present Act is retroactive in its application. This has also been categorically held by the Hon'ble High Court of Bombay in ***Neelkamal Realtors v. Union of India*** **WP 2737/2017** in which the Court has relied upon series of case laws to hold that the legislature is fully competent to enact laws having retrospective/ retroactive operation. The Hon'ble Court has also held that the provisions of the Act cannot be struck down on the ground of challenge that the operation of the Act is retroactive in nature.

20. The arguments made on behalf of the developer that the sale agreement and the construction agreement were executed prior to commencement of this Act means RERA Act is not applicable has no force at all. Section 3 of the Act, read with Rule 4 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 (**'Rules'**) clearly set out that the Act applies to all on-going projects. The said position of law has also been settled by the Hon'ble Bombay High Court in ***Neelkamal Realtors v. Union of India*** **WP 2737/2017** which has clarified the retroactive nature of the enactment and upheld its constitutional validity on that basis. In the same decision (para 127), it was also held that the interest

payable is compensatory. Therefore, the payment of interest payable cannot be said to be penal in nature.

21. Section 18 of the Act provides that in the event the promoter fails to complete or is unable to handover the possession of an apartment, plot, or building as the case may be in accordance with the terms of the agreement, the allottee is given the right either to withdraw from the project, without prejudice to any other remedies available, be entitled to the amount paid by him/her for the said project, along with interest as applicable or he/she shall be paid interest for every month of delay in case of continue with the project till the handing over of possession at such rates as may be prescribed. As evident from the object and wordings used in Section, the very purpose of Section 18 is to compensate the Complainant for any delay caused while completing the project and handover of possession of the respective unit. It is also pertinent to note that the legislature has prescribed the rate of interest by referring to prevailing market rates, to compensate for the interest rate loss suffered by innocent homebuyers either in repaying the interest on the home loans, or on account of losing interest on their savings they have invested. The Respondent fails to take note of any of these aspects in making its argument, and for that reason this argument has no merit.

22. The Respondent has extensively argued that Section 18 can apply only after crossing the date given by the Respondent while registering with RERA. As such it is the argument of the developer that this authority may direct the complainants to take the compensation only from the date of default from the date mentioned in the RERA application.

23. The learned counsel for the developer has referred to some of the above decisions of MUMBAI RERA to say that the compensation may be ordered to pay in case the developer fails to give the possession on or before date mentioned in the RERA application.

25/08/19

24. It is the firm argument on behalf of the complainants that the date given in the agreement shall prevail over the date given to RERA application. In this connection he said that this position is settled by the decision of the Bombay High Court in ***Neelkamal Realtors v. Union of India*** **WP 2737/2017 (para 256)**.

The relevant portion of the judgment reads:

> *"Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(l)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(l)(C) he is not absolved of the liability under the agreement for sale...257. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month's delay till handing over of the possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it."*

25. In the present case, the Construction Agreement, in Clause 6.1 states that the date of possession is **30/06/2016** with 6 months grace period in some cases among the list of complainants made as above. The Respondent has not given possession to the Complainant on that day or before it. Therefore, it is submitted that compensation shall be given in accordance with Section 18(1)(a) of

the Act read with Rule 16. The case of the Complainants is supported by the decisions of various Real Estate Regulatory Authorities throughout the country.

26. In the case of **Tufail Ahmed Abdul Quddus & Ors. v. Pramod Pandurang Pisal & Ors. (COMPLAINT NO: CC006000000023023)**, the Maharashtra Real Estate Regulatory Authority (MahaRERA) was pleased to give compensation for every month of delay from the date of possession as agreed in the agreement.

27. A similar decision has been made in **Subodh Adikary v. Reliance Enterprises (COMPLAINT NO: CC006000000055349)** delivered by the Maha RERA. From the above reasons it is clear that the citations given on behalf of complainants and developer gives its own effect but the date given to the customer shall be the guideline for determination.

28. The counsel for the complainants submits that in the event the Respondent had performed his obligations and delivered the possession within the specific date of possession, then the Complainants could have rented out the flats and earned rent. Shri Vikas Mahendra advocate submits that evidently the developer fails to give possession as agreed means he is bound to pay the delay compensation in accordance with the sale agreement. At the time of argument he has drawn my attention to some of the judicial observations made in different cases to show that the present act is beneficial to home buyers.

29. Coming to the argument canvassed on behalf of the complainants that the developer cannot take the shelter under the willful delay. It is submitted on behalf of counsel that the reasons given by the developer for alleged delay on account of force majeure is not correct because it is well-established proposition of law that in order to prove the delay, a party must demonstrate:

(1) the event said to have caused delay actually occurred;

(2)the event of delay impacted identifiable activities on the project;

(3)the impacted activities were crucial to, or lay in the critical path of the project thereby impacting overall project completion; and

(4)the overall impact on the project could not be mitigated.

30. It is the say of the complainants that the Respondent has completely failed to discharge his burden of proof. The Respondent has failed to show how the above listed events in its Reply are beyond his control. It is the case of the complainants that the Respondent has not identified specific delays in terms of days/weeks caused as a direct result of the events. The Respondent has also failed to identify why it was unable to proceed with construction even though the so called events are not directly affected on the present issue.

31. One more fold of submission was made by the respondent is that delay in making payments by the Complainants resulted in the delay of the project. To this stand it is replied by the complainants that the Respondent has risen very serious allegations of payment delayed by the Complainant which is outrageously false. Of course it is the duty of the consumer to pay the installment regularly since S.19 imposes the same by fixing the responsibility on the developer.

32. Therefore, it is the submission on behalf of the complaint that the Respondent has miserably failed to prove:

a) There was any delay in making payment,

b) that the mode of making the evidently wrong calculation for payment delay,

c) that the delay by each individual complainant affect the construction in any manner; and

d) that the Respondent had not taken into account a possibility of such a delay.

33. In any event, the applicable law and the terms of the agreement do not permit the Respondent to attribute any alleged delay in making payment to the delay in handing over possession of the apartment. At the best, the Respondent could have claimed interest for delay in making payments under the Act, which the Respondent has now foregone.

34. The complainants Advocate tried to submits that the events shown by the developer causing delay has no meaning. He also submits that there is no proper evidence to say that the project has been stalled on account of the events as described by the developer.

35. Per contra the Respondent contends that the RERA is not applicable to the present case as there is no 'Agreements for Sale'. The Respondent has urged that the RERA does not envisage application to a situation where sale has been affected by a combination of an 'Agreement to Sell' and a 'Construction Agreement' and applies only to those agreements strictly titled as 'Agreement for Sale' contained in a single document. It is submitted that the Respondent's argument is against the basic principles of contract law and against the basic rules on interpretation of statutes.

36. It is for this reason that in the definition of an 'Agreement for Sale' in sub-section (c) of Section 2, the RERA defines 'Agreement for Sale' as "*an agreement entered into between the promoter and the allottee*". This includes within its definition any agreement that results in sale of an apartment and thereby the learned counsel Sri Vikas Mahendra submitted and concluded that the arguments made on behalf of the developer is meaningless.

37. Now another important point is that as per the agreement clause the date of completion mentioned with grace period of 6 months. Shri Vikas Mahendra Advocate submits that in order to fix the completion date, there is no need to add another 6 months grace period since it is grace period which cannot be added as a matter of course.

38. Per contra on behalf of the developer it was submitted that generally 6 months grace period should be added to the date of completion which is the practice in real estate business. Apart from this he is having another 6 months as grace period if there is no willful delay on the part of the developer in completion of the project. In this regard, he has referred to different clauses of the agreement and submitted that *in the* event this authority were to hold that the date to be taken into consideration is the date in the construction agreement and sale agreement, then it is pertinent to note that clause 6.1 of the construction agreement provides that the date for completion of the project with 6 months grace period for completion of the project. Further, clause 6.4 of construction agreement states that the respondent is also entitled to a further period of 6 months for "willful delay" in delivery of the apartment.

39. It was strongly opposed by the complainants' counsel on the ground that the delay has been caused which is sufficient to hold that the complainants are entitled for compensation. Some of the complainants have paid the amount since the year 2014 and eagerly awaiting for the completion of the project. The developer who was expected to deliver the possession in the month of January 2017 has taken the benefit of extension by virtue of this RERA Act. The complainants who have paid the consideration amount cannot be made to wait for another 30 months. This kind of arguments was placed by the complainant counsel because it was submitted by the developer that the delay compensation cannot be granted as a matter of course. In order to get the compensation the complainants have to prove actual loss sustained by them as per Sec. 12 of the Act. In response to this submission, the counsel for the complainant submits that waiting for completion of project for a period of 5 years itself is a pain and he should not be made to wait for another two and half years for no fault on the part of complainants. In this way it is his say that factually he has sustained loss of income, enjoyment of his own property, payment of rental and loss of income tax benefits, are all examples of losses which attract Sec. 12 of the Act. By referring to these points Shri Vikas Mahendra Advocate submits that he sustained loss not only in the form of money but also in the form of kind. Therefore he submitted that the stand taken by the developer that the complainants are not eligible for delay compensation as they have not sustained any loss holds no water.

40. But it was the argument on behalf of developer that the Adjudicating officer has to decide the compensation factor not only by looking into Sec. 18 but also with the aid of Sec. 71 and 72 of the Act. In this regard it is submitted as under:

"No basis for the claim of compensation as sought by the complainants under section 72 of the Act.

Section 72 states the factors that require to be taken into consideration for adjudging the quantum of compensation or interest while deciding a complaint filed under Section 18 of the RERA Act. Section 72 states as follows:

72: Factors to be taken into account by the Adjudicating Officer

While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely:-

(a) The amount of disproportionate gain or unfair advantages, wherever quantifiable, made as a result of the default;

(b) The amount of loss caused as a result of the default;

(c) The repetitive nature of the default;

(d) Such other factors which the adjudicating officer consider necessary to the case in furtherance of justice.

It is submitted that the power of the Adjudicating officer to adjudge the quantum of compensation or interest must be exercised judicially. Due regard to the factors listed under section 72 of the Act requires to be considered by the adjudicating officer in order to adjudge the quantum of compensation"

41. Per contra the learned counsel for the complainant has given the decision:

"In case of Praveen Kumar v. SVS Buildcon CMP No. N-BPL-17-0010, Madhya Pradesh Real Estate Regulatory Authority and Shashi Gupta v. SVS Buildcon CMP No. N-BPL-17-0006, MPRERA,(para 6)

Proposition: Compensation for delay can be claimed regardless of registration and the date given for registration.

Para 6:- we now deal with issue

(b). If the claim that the Authority has jurisdiction over the project after, and only after, it has been duly registered were to be accepted, it would result in as absurd situation, e.g., supposing a project which required registration chose not to apply for registration; or if it did not comply with the essential requirements of clear land title, or statutory permissions etc., still the Authority would be barred from acting against the promoter on the grounds that the project was not registered. It would means that having committed one default of the law (ignoring the requirement to apply for registration, or having applied, failing to qualify for registration), this very act of default would further protect the defaulter from any penal action and insulate the defaulter from legitimate claims made by the aggrieved customers. Such an absurd interpretation of the law cannot be maintained."

43. Similar to the above decision, the counsel for the complainant has also given two more decision citated as :

" Tufail Ahmed Abdul Quddus and ors v. Pramod Pandurandg Pisal and Ors. CMP no. CC00600000000023023 AND

Subodh Adikary v. Reliance Enterprises CMP no. CC006000000055349"

44. By referring to the above decisions the learned counsel for the complainants submits that in view of the above observations made in the citations the concept of the developer that the date shall be computed from the date given in the registration itself is not correct.

45. I would say that the law has made it clear that the date mentioned in the agreement is the date for computing the completion of the project. Hence, I have no any hesitation to say that the plea taken by the developer is not sustainable. With all these observations I would say that the complainants are definitely entitled for delay compensation as per S.18 of REFA.

46. Another plea of the respondent is that the developer will pay the delay compensation @3 Rs., per sq. ft., cannot be accepted in view of Sec. 18. Hence, I hold that the complainants are entitled for the relief of compensation on the amount paid by them with interest @ 2% on the rate of 10.75% commencing from the due date with grace period till the possession is delivered.

47. However at the time of argument, Shri Vikas Mahendra has drawn my attention to award compensation on the loss sustained by him. He submits that each complainant may be awarded compensation towards rent they are paying. In this regard the learned counsel Shri Dhyan Chinnappa has said that none of the complainants have produced or proved the payment of rent and loss sustained by them. At the cost of repetition I would say that the Authority has to balance the claim of parties. In this regard I would refer the commentary:

> *" while deciding whether the allottee is entitled to any relief and in moulding the relief, the following among other relevant factors should be considered:*
>
> *(i) whether the layout is developed on 'no profit no loss' basis or with commercial or profit motive;*
>
> *(ii) whether there is any assurance or commitment in regard to date of delivery of possession;*
>
> *(iii) whether there were any justifiable reasons for the delay or failure to deliver possession;*
>
> *(iv) whether the complainant has alleged and proved that there has been any negligence, shortcoming or inadequacy on the part of the developing authority or its*

officials in the performance of the functions or obligations in regard to delivery; and

(v) whether the allottee has been subjected to avoidable harassment and mental agony"

48. From the above principles and as per the discussion made by me it is clear that the developer had a commitment to deliver the possession but it was not possible due to justifiable reasons and no proof of negligence. Hence I hold that the award of interest on the amount paid by them is sufficient to cover all these aspects.

49. By culminating the above discussion it is clear that the complainants are the customers of the project where the developer is developing his project. The consumers had paid considerable amount to the developer. It is nobody's case that the developer has stopped the development work. It is their grievance that there is delay in completing the project. The developer has given the date of completion as 30/06/2019 while registering his project with RERA as per S.4 of the Act. But the question is regarding the fixation of date of commencement of compensation. According to some of the consumers the developer shall pay the compensation as per RERA commencing from the date mentioned in the chart submitted on behalf of the complainants.

50. The learned counsel for the developer has further submitted that the clause 6.4 has been inserted for which the complainant has signed the same by agreeing to obey the said clause also. When that being the case it is his submission that the authority cannot read only the clause 6.1 and 6.2 but also 6.4 which is having binding in nature on the parties. He also drawn my attention as to why the clause 6.4 should not be read is a point for consideration and what is the logic behind to read only 6.1 clause which is favorable to consumer but not reading the clause 6.4 whch is favorable to developer.

51. The authority has to give its decision on this issue and as such he submits that for the same reason a District Judge has been appointed as Adjudicating Officer to adjudicate the same. It is his submission that the clauses of the entire agreement have to be read but not isolated. The consumers are taking only those clauses which are beneficial to them by leaving the clause which is favourabvle to the developer. The developer has agreed to deliver the unit to each of the complainant as per the chart but he was restrained from the unforeseen circumstances in completing the project within the time. Under these circumstances the authority has to read other clauses of the agreement and to grant another 6 months time as per clause as grace period.

52. In this case the learned advocate representing the developer has vehemently submitted that he has placed the evidence with all necessary figures to say that the developer was prevented from executing the works as intended by him. It is nobody's case that the developer was absconding. It is not their case that the developmental works was stopped without any justification. In view of the same I would like to say that though the prayer of the developer for extension of another 6 months is granted but his submission is to be appreciated by holding that the consumer is entitled for the delay compensation as per S.18 of the Act and nothing more.

53. Of course it is the case of the complainants that they are entitled for delay compensation only because of non completion of the project with in time as mentioned in the agreement. But they have not taken cognizance of their role in causing the delay by demanding for alterations. Their contribution also is there for the justifiable delay and as such the complainants cannot attribute the delay against the developer alone. He also refers to the sand lorry owner strike, cauvery water strike, demonetisation are also caused obstructions

like the natural calamity and therefore his argument also to be accepted. I would say that the complainants are seeking delay compensation. Some of the agreements have been executed where the completion date is December 2016 and in some of the other cases it is mentioned as December 2017. The chart prepared by the counsel for complainants is as under:

Name	CMP	Date of possession	Does Clause 6.1 of Construction Agreement provide for an extension of 6 Months?
Samir Bhagwat	CMP/181021/0001476	January 1, 2017	Yes
Rahul Sinha	CMP/181026/0001496	January 1, 2017	Yes
Vignesh kumar	CMP/181026/0001501	December 1, 2017	Yes
Gaurav Shukla	CMP/181028/0001561	January 1, 2017	Yes
Prasad Sagi	CMP/181030/0001595	January 1, 2017	Yes
Rahul Garg	CMP/181120/0001641	January 1, 2017	Yes
Rahul Sharma	CMP/181122/0001651	December 1, 2017	Yes
Vikas Gautam	CMP/181122/0001655	January 1, 2017	Yes
Garima Singh	CMP/181126/0001674	December 1, 2017	Yes
V R Karthik	CMP/181127/0001678	January 1, 2017	Yes
Shahul Hameed N K M	CMP/181128/0001688	January 1, 2017	Yes
Himanshu Dwivedi	CMP/181130/0001696	December 1, 2017	Yes
Asis Kumar Patra	CMP/181201/0001702	January 1, 2017	Yes

54. But it is the practice in the real estate factor to add 6 months generally as grace period and hence, it could be said that the developer has to pay the compensation from June 2017 in some cases and June 2018 in some cases. Of course the developer has vehemently argued that the date given as 30/06/2019 to statutory

authority has to be considered as the date of completion has now turned down by me. However the said dead line is also over now. Hence, there is no merit in the argument of the developer and hence, the present complaints have to be allowed by directing the developer to pay the delay compensation commencing from 1st June 2017 till the possession is delivered.

55. As per Section 71(2) of the Act the complainants shall be disposed of within 60 days. In this case on 13/7/2018 the advocate representing the complainant was present but developer did not appear. On 25/7/2018 the advocate representing the developer was present. Now all the above said complaints are coming to close today which is certainly beyond 60 days. But the parties took lengthy time for submitting their objection statement.

56. In addition to it the developer has filed objections, the complainant had filed rejoinder and surjoinder. Afterwards an appeal has been filed before the Appellate Tribunal in Appeal No. 92/2018 questioning the correctness of this order on an interim application.

57. Further the developer has given a representation to the authority on 2/05/2019 with a request for transfer of these cases including other cases. Subsequently the developer has filed a writ petition to the Hon'ble High Court of Karnataka in W.P. No. 23554/2019 wherein he got an order to dispose of the representation date 2/05/2019 within 3 weeks and accordingly the authority was pleased to hear the parties and the representation given by the developer was disposed off on 12/07/2019 by a speaking order.

58. The learned counsel for the developer has filed the memo on 30/7/2019 stating that he has filed Writ Petition bearing no.11522-11525/19 and Writ petition no. 28573-28577/19 questioning the correctness of the judgement passed by this authority in CMP no 517. Therefore he requested this authority to wait outcome of the Writ Petition. The said copy was sent to complainant through mail

59. On 8/8/2019 again the learned counsel for the developer has filed an I.A u/s S. 18 R/W S. 71 of the RERA ACT stating that the matter may be Re-heard afresh. The said application was served on the other side and same was posted to 9/8/2109 for hearing. The learned counsel for the complainant was present and submitted his argument. The counsel for the developer failed to appear hence the matter was posted for judgement on its merits by dismissing the said application.

60. For the above said reasons it was not possible to complete the judgement within 60 days. Hence, I proceed to pass the following :

ORDER

The complaints filed in CMP/181021/0001476, CMP/181026/0001496, CMP/181028/0001561, CMP/181030/0001595, CMP/181120/0001641, CMP/181122/0001655, CMP/181127/0001678, CMP/181128/0001688, CMP/181201/0001702 and CMP/181026/0001501, CMP/181122/0001651, CMP/181126/0001674, CMP/181130/0001696 have been allowed.

The developer is hereby directed to pay delay compensation on the amount paid by each complainant commencing from January 2017 till the possession is delivered at the rate of 2% above the highest marginal cost of lending rate as fixed by the SBI.

The developer shall pay the delay compensation commencing from July 2017 in CMP/181021/0001476, CMP/181026/0001496, CMP/181028/0001561, CMP/181030/0001595, CMP/181120/0001641, CMP/181122/0001655, CMP/181127/0001678, CMP/181128/0001688, CMP/181201/0001702 and commencing from May 2018 in CMP/181026/0001501, CMP/181122/0001651, CMP/181126/0001674, CMP/181130/0001696 are concerned the developer is hereby directed to till the possession is delivered.

a. The developer is also directed to pay Rs. 5,000/-as cost of each case.
b. The original shall be kept in CMP 1476.

Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 20/08/2019)

(K.PALAKSHAPPA)
Adjudicating Officer.