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

Complainant: 1. CMP/180416/0000746
Lakshman Singh,
Sector 3, House No.78
Mukta Prasad Colony
Lalgarh Biknar District
Rajastan

2. CMP/180414/0000736
Shreekantha Acharya
Pride Apartments, G-402
Bilekanahalli, Bannerughatta Road
Bengaluru

3. CMP/180409/0000676
Satya Prakash Biswal
Plot No.1579/2927, Lane 5, Bhim Nagar,
Gandamunda, Korda District,
ODISSA

4. CMP/180409/0000675
Vipin G Menon
Harini, Thottekattu Lane,
PunkaunamThrissur District, Kerala

5. CMP/180401/0000734
Samir Subhas Savarkar
L-304, Purva Panorama, Kalena Agrahara
Bannerughatta Road
Bengaluru

6. CMP/180409/0000673
Rajiv Kumar
813/B1, 2nd Floor, 4th Cross
27th Main Road, BTM Second Stage
Bannerughatta Road
Bengaluru

7. CMP/180410/0000691
Nikhil Haridas
Flat No.226, Aravalli Apartments
Alkananda, South Delhi.

8. CMP/180421/0000766
Manish Bishonoi Singh
F-205, Shastrinagar
Meerut District, UP.

9. CMP/180412/0000713
Ranjan Kumar Sahoo
S-200, Nandhi Sunrise Apartment
Doddenakundi, Marathahalli Post,
Bengaluru

10. CMP/180414/0000731
Ritesh Kothari
A-1302, Octacrest
Lokhandawala, Kandivali East,
Mumbai, Suburban Maharashtra.

11. CMP/180414/0000730
Akhilesh Kumar
B-7, 21, BGL 18-8th Floor
Cisco Systems Pvt. Ltd.,
Cessna Business Park
ORR, Kadubisanahalli
Bengaluru

12. CMP/180420/0000765
Prathiba Rao
C/o. K.R.Purushothhama Rao
Flat No.C1-6071, Sobha Forest View, Sedor,
Kanakapura Main Road
Bengaluru

13. CMP/180409/0000682
Ghulam Quadir
Flat No.104, Sait Teja Prestige,
1st Main, 15th Corss, Pai Layout
Bengaluru.

14. CMP/180409/0000689
Rahul A Shalke
L-303, Purva Panorama
Kalena Agrahara
Bannerughatta Road
Bengaluru

15. CMP/180414/0000732
Tariq Mannan
D-345, Prestige Palms
ECC Road, Near ITPL
Whitefield, Bengaluru

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16. CMP/180411/0000710
Soundarya Dasari
616, 12th Cross, 27th Main,
Sector 01, HSR Layout,
Bengaluru

17. CMP/180412/0000717
Vinutha Sirumath
37001, Mantri Residency
Kalena Agrahara, Bannerughatta Road
Bengaluru

18. CMP/180414/0000739
Pavan Mane
Door No.206, Viva Block
SJR Verity Apartments
Kasavanahalli
Bengaluru

19. CMP/180411/0000707
Ravi Chaudhary
A-1103, HM Symphony
Jail Road
Bengaluru

20. CMP/180415/0000743
Lakshmikanth
Mundalapati
C/o Vidyasagara Sudula
11-1-178, Seethaphalmandi
Hyderabad District. Telangana

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21. CMP/180409/0000674

Nagaraja A
02, 1st Cross, Nrupathunga Nagar,
JP Nagar, 7th Phase
Bengaluru
Rep by: Shri. Vikas Mahendra Advocate
AND

Opponent : PALAZZA CITY
SJR PRIME CORPORATION PVT LTD,
No. 1, SJR Primus, 7th Floor,
Koramangala, Bengaluru -560095.
Rep by: Shri Vignesh Advocate

JUDGEMENT

Lakshman Singh has filed this complaint under Section 31 of RERA Act against the project "PALAZA CITY" developed by SJR PRIME CORPORATION PVT. LTD., bearing complaint no. CMP/180416/0000746

2. At this stage I would like to say that totally 22 cases have been filed against the same builder and all of them have been taken for disposal.

3. Sri Vikas Mahendra Advocate representing the complainants as well as Sri Vighnesh advocate representing the developer has agreed to dispose of the above complaints on the same facts and law. Hence, all these complaints have been taken to pass the common judgment.

4. Further it is also agreed on both side that the evidence recorded in CMP No. 746 be taken as the evidence to other complaints also. In view of the same I have taken up this matter by discussing about the oral and documentary evidence placed by the parties.

5. In this regard I would like to refer the brief facts of first case for discussion which is as follows:

I entered into an agreement of sale and an agreement to construct for an apartment with SJR Prime Corporation (the builder), on [24-06-2013]. As per the agreement to construct, I was to be handed over possession of the apartment on [30-06-2016]. Even with the grace period, which was a period of 6 months from the abovementioned date of delivery, I was entitled to receive possession latest by [31-12-2016]. As of today, the builder is nowhere close to handing over possession of my apartment to me and I have no visibility on the date of delivery/possession of my apartment from them. Therefore, there has been an enormous delay in handing over of my apartment to me. The latest estimated rate of completion provided by the builder projects a completion date of [30-06-2018], the losses presently computed on the basis of this projected date of completion. I reserve the right to revise these numbers on a pro-rated basis, based on actual possession dates in the event even these dates are not adhered to. This is further subject to the builder also handing over all the amenities along with the apartment, as stipulated in the agreement. We have repeatedly approached the builder seeking an update on the status of the construction and compensation for the delay in handing over of possession of our apartments and timely delivery of the same, with a view to agree on final date of possession. However, the builder has not accepted our demands, has refused to cooperate and has in fact, refused any form of compensation for the delay already suffered by us. Due to the inordinate delay in delivery, I, as a buyer, have suffered monetary losses on the following aspects: 1. Loss

in rent exclusive of maintenance. Until I am able to reside in my own apartment, which the builder has delayed the handing over of; I have been deprived of the right to rent my property and earn rent on the same as a result of not getting possession even as of today. For the dimension of my apartment, the market rate for rent presently is [Rs 30,000 pm]. I am suffering a loss of this sum every month. These sums from the date of promised possession are for the Builder to bear on account of their delays. 2. Loss of income tax benefit Due to non-occupancy of the apartment, I am also unable to avail income tax benefits.

Relief Sought from RERA: Compensation for delay in possession.

6. I would like to say that the complainant in complaint no. 746 has given his grievance and finally sought for compensation for delay from the developer. Similarly the other complainants also sought for 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.

7. In pursuance of the summons issued by this authority the case was called on 13/07/2018. The advocate Sri Vikas Mahendra has filed vakalath on behalf of all the complainant but the developer did not appear. On 25/07/2018 Shri. Vignesh Advocate has appeared on behalf of the developer. The developer has filed his objections by denying the case made out by all the complainants. In view of the same I have put all the cases for hearing on merits.

8. Heard and reserved for judgment.

9. The point that arise for my consideration is

    a. Whether the complainants have proved that they are entitled for delay compensation along with other kind of reliefs?

    b. If so, what is the order?

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10. My answer is affirmative in part for the following

REASONS

11. The counsel for the complainants submits that each of complainant has filed their respective complaint seeking the relief of delay compensation. It is the case of the complainants that the developer is liable to pay the delay compensation from the month of July 2016 since as per the agreement the developer had to complete the project on or before June 2016. 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 with the evidence and oral arguments made by the parties.

12. It is the submission that the oral evidence given on behalf of the developer cannot be looked into because it is not sufficient to hold that the developer was prevented from executing the work under the guise of force majeure. Per contra the learned counsel for the developer has examined the expert & other witnesses to give the reasons for the delay.

13. 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.

14. In addition to it the developer has examined 3 witnesses on his side, all of them have given their oral evidence on the above points. The oral evidence given by the witnesses and the points raised by the developer to establish as to why he could not be able to complete the project within the time given under Agreement of Sale and Construction Agreement.

15. Now I would like to take the effectiveness of oral evidence and the grounds for delay urged by him.

16. One Madhusudhan is the chief financial officer in the respondent office who has examined as RW-3 has given his evidence stating that

> *In November 2016, when the Central Government came up with the scheme of demonetisation, activities in the construction completely slowed down for few months mainly due to non-availability of liquid cash which was needed. While the payments for daily wage labourers were made by us to the contractors supplying the labour, the non-availability of liquid cash in turn affected the labour contractors, since they were required to open bank accounts for the labourers to pay them wages as compared to the previous industry practice where the labourers would be paid in cash by the sub-contractor. Since most of the labourers were illiterate and from varied backgrounds, it was imperative that bank accounts were opened for the said labourers and only thereafter could payments be made to them. The opening of the bank accounts for the said labourers resulted in the project since the labourers were withheld by the contractors to open their bank accounts. Further, since the labourers were paid weekly wages by the sub-contractor, non-payments of the wages by the sub-contractor owing to lack of liquidity in the country and difficulty in opening bank accounts for the labourers resulted in the labourers not*

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turning up for work and further affected the respondent to meet their requirement of labour. I state that during this period, labourers left abruptly without any intimation. It was impossible to mobilize labourers for 4-5 months thereafter, as they worked for wages which could not be paid to them by the contractor without them opening bank account. There was no alternative to overcome this issue, except to wait for the effect of demonetisation to reduce and for the liquidity in the economy to be restored------.

17. One Kumara Swamy being the head of the department who is examined as RW-2 has refered to excavation and sand lorry owners strike.

It is submitted that subsequent to completion of excavation and during the period of casting of column footings, plinth beams, erection of columns, construction of beams and slabs, several factors that were outside the control of the respondent company resulted in delays to the said project. I state that the delay in completion of the project was affected by South India Transporters Welfare Association strike, sand lorry owners strike, Cauvery Water Dispute, Heavy Rainfall, court orders etc. I state that the said delays are not attributable to the respondent. Several events had occurred that the respondent was not in control of and such force majeure incidents have led to delays although the date fixed for completion of the Project before RERA has not been violated. I state that the delay, if any, is neither wilful nor within the control of the respondent.

I state that the Sand Lorry Owners' strike which recurred repeatedly in the years 2013,2014, and 2015, and the South India Transporters Welfare Association Strike which recurred in 2016 and 2017. This severely affected the construction activities being carried out during the said period of time. It is pertinent to note that each of the said strikes had occurred for periods of approximately two weeks and raw materials that were crucial for construction activities being carried out during the said time. I further state that the construction activities being carried on at that time were affected not only during the period of such strike but also for nearly a week to 10 days after the strike had been called off. I state that the reason for the delays caused to construction activities of the said project after a strike is called off is because once the strike came to an end, though the demand for raw materials increases exponentially, the supply will not be able to meet the demand. This also resulted in the increase in the price of raw materials. Thus, during and even after the strike, the effect of the strike could be felt. The strike affected the procurement of all raw materials and specifically sand.

18. One Nagendra was examined as Rw-1 on behalf of the developer also has deposed on his expert report given on behalf of the developer.

19. In this regard the learned counsel Shri. Vikas Mahendra submits that the oral evidence led by the parties reveals that the complainants wanted to say that the reasons given by the developer for the delay is nothing to do for the completion of the project as a whole since it is the opinion of expert that the developer could have attended other works during heavy rain and during the course of strike. Further he has given the list of days for consuming the work for modification. In the same way the witnesses examined on the

side of the developer also failed to give any concrete evidence to believe that the progress of the project was hampered on account of strike and non-supply of materials. Further I say that the developer has not brought any evidence to say that the delay caused to him will attract the ingredients of Force Majeure. I would say that as per this Act and the wordings used in S.18, the oral evidence may help the developer to say that he has not committed any kind of negligence in completing the project. The same may be at the best to say that the developer has no any wilful default in completion of the project which may attract S.72 of the Act and thereby the developer may show his bonafideness and nothing more. At the time of argument the learned counsel for complainants submits that he is entitled not only for delay compensation but also entitled for compensation for rent and loss sustained by him due to delay. He also submits that the complainants have been subjected to deprive to the opportunity to enjoy the property and thereby he has sustained loss.

20. The developer has given the above events causing the delay in completion of his project for which the learned counsel Shri. Vikas Mahendra attacked by referring to other circumstances.

(1) Non-Availability of River Sand

The Respondent has made reference to an Order of the NGT Chennai that 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 adduced these orders along with its objections or sur-rejoinder. 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 adduced any correspondence was exchanged between the Respondent and the

Complainant wherein the Respondent informed the Complainant about the delays caused as a result of the NGT Order. The Complainant vehemently rejects any suggestion that information of possible delays in construction were shared by the Respondent.

*(2) Transporters' strike :-**RW 1**, during his cross-examination, was confronted with a certified copy of the transcript of his own cross examination in the SJR Blue Waters Case wherein the same reason for delay had been stated. However, in the course of his cross-examination in the SJR Blue Water Case, he had agreed that buffer stock is maintained in the site without about 20 days' of raw materials being kept on standby for such eventualities. **RW 1** also stated that when he visited the site when preparing the report (in 2018), he saw that 75% of the land was vacant. It is submitted that the Respondent could have stored buffer 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, **RW 1** has stated in his expert report that a delay of 60-90 days would be attributable to the strike [**Surrejoinder, Expert report, para 1**]. However, when confronted with his own cross examination in the SJR Blue Water Case, he admitted that the actual delay would be for about 30-40 days of delay. The Respondent's expert report ought to be discarded on the basis of such blatant contradictions alone. 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 by this Hon'ble Authority.*

(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. As in all other arguments, the Respondent has not pointed out at the very first instance when the strike took place and the exact number of days of delay. The Respondent has, instead, produced evidence that gives inconsistent dates of the strike and unsupported testimonies of witnesses – which only casts more doubt on whether the events even took place, the reason for the delay and the impact of the strike.

(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. **RW 2** has also stated that most masons were from Tamil Nadu and unavailable during the period of the strike. **RW 2** has also admitted 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 [**Annexure R 1, Surrejoinder**]. However, the claims of delay in this regard is by the expert, **RW 1**, appointed by the Respondent who has neither been provided any documentary evidence nor has he personally requested for these documents from the Respondent. **RW 1** has written an expert report on the project and calculated this baseless period of delay with no documentary evidence, no investigation was conducted about the status of the project at the time of Demonitization, and no information provided by the Respondent. In direct contract to RW 1, RW 3 states that a delay of 4-5 months was caused because of demonetization. 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.

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It is undisputed fact that the implementation of GST was in 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 said that an order of the Civil Court Bengaluru dated 23 December 2016 as Annexure D to the Objections and has 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 [**Objections, para 13(f)**]. It is submitted that **Annexure D to the Statement of Objections** is an 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.*

21. 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 impacted in completing the project as a whole. I would say that there is no evidence supporting 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.

22. I find force in his submission. In my view, the grounds urged by the developer are not having any direct effect on the project. In case of shortage of sand, he could have completed other works by balancing the total work of the project. The witness examined on the side of developer admitted that there was buffer system. It means 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 since every developer used to have buffer stock of every material and it can be made use for the construction.

23. 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. The complainants have filed an affidavit with rental agreements and statement of accounts and emails of whose veracity is unknown. The complainants have further failed to tender him/her for cross examination and as such it must be discarded and it is the case of the developer that the complainants have therefore miserably failed to discharge the burden placed on them to prove that loss sustained by them.

24. The developer represented by his advocate 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 there is failure on the part of the developer to complete the project on or before the date given to RERA ie. 30/06/2019 and as such the present complaints are all liable to be dismissed as premature.

25. 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.

26. 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 the developer the date fixed by the authority overrides the date mentioned in the agreement. 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 should be the actual date for completion of his project. 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.

27. 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 to 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.

28. It is the argument of the counsel for the complainants that the present Act is retroactive in its application. This also has been categorically held by the Hon'ble High Court of Bombay in ***Neelkamal Realtors v. Union of India*** **WP 2737/2017 (para 128)**, in which the Court has relied upon a series of case laws to hold that the legislature is fully competent to enact laws are 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.

29. 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 ongoing 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 that the same is retroactive nature of the enactment and uphold 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

30. Section 18 of the Act provides that in case the promoter fails to complete or is unable to handover possession of respective apartment, plot, or building as the case may be in accordance with the terms of the agreement, the allottee is given the right 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. Should the allottee choose or intend not to withdraw from the project, he/she shall be paid interest for every month of delay, till the handing over of possession, at such rates as may be prescribed. As evident from the object and wordings used in the said section, the very purpose of Section 18 is to compensate the Complainant for any delay caused in handing over the possession. It is also pertinent to note that the legislature has prescribed rate of interest by referring the 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 failed to take note of any of these aspects in making his argument, and for that reason this argument has no merits.

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31. The Respondent has extensively argued that Section 18 can apply only after the date given by the Respondent while registering with the 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 mentioned in the RERA application. In support of the same the developer has given the following Mumbai RERA citations which are as under:

Before the Maharashtra Real Estate Regulatory Authority MUMBAI
Comp. CC 004000000010032

Before the Maharashtra Real Estate Regulatory Authority MUMBAI
Comp. CC 006000000000262
Jyothindra Nathalal Kansara: Complainant
Versus
Adani Estate Pvt.Ltd : Respondent

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

32. However, the said argument does not stand the scrutiny of the decision of the Bombay High Court in ***Neelkamal Realtors v. Union of India*** **WP 2737/2017 (paras 127 and 256)**.

33. It is the firm argument on behalf of the complainants that the date given in the agreement shall prevail over the date given to the 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)**.

34. 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."*

35. In the present case, the Construction Agreement, in Clause 6.1 states that the date of possession is **30/06/2016**. The Respondent has not given possession to the Complainant on that day or before it in the present case. Therefore, it is submitted that compensation 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.

36. In the case of **Tufail Ahmed Abdul Quddus & Ors. v. Pramod Pandurang Pisal & Ors. (COMPLAINT NO: CC0060000000023023)**, 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.

37. 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 date given to the customer shall be the guideline for determination for completion of the project

38. The counsel for the complainants submits that in the event the Respondent had performed its obligations and delivered possession with in the specific date, 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 argument he drawn my attention to some of the judicial observations made in different cases to show that the present act is beneficial to home buyers.

39. It is submitted by the complainant 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 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

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

40. 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 listed events are beyond his control. 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 affected and caused for delay.

41. One more submission was made by the respondent is that delay in making payments by the Complainants resulted causing 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 Complainants and has provided a delay period that is outrageously false. To prove this, the Respondent has adduced multiple inconsistent tables that are purportedly ledger accounts. The Respondent alleged that delayed payments were made by 17 Complainants and has specified the number of days of delays in the **Objections, the Expert Report with the Surrejoinder** and **Document No. 1 with the Evidence Affidavit of RW 3.** In all these documents, the only real semblance of documentary evidence is **Document No. 1 with the Evidence Affidavit of RW 3.** It is submitted that this document's veracity is questionable, and its contents cast inconsistency with the rest of the averments of the Respondent. A table showing the inconsistent number of days of delay in all the documents is as under:

Sl No.	Complaint No.	Buyer Name	Alleged period of delay in Objections	Alleged period of delay in Expert Report	Alleged period of delay in RW 3's Affidavit
1	180410/0000691	Shri Nikhil Haridas	527 days	527 days	905 days
2	180411/0000707	Shri Ravi Chaudhary	527 days	527 days	756 days
3	180411/0000746	Shri Laxman Singh	516 days	516 days	620 days
4	180411/0000731	Shri Ritesh Kothari	516 days	516 days	1055 days
5	180411/0000734	Shri Sameer Sawarkar	516 days	530 days	1221 days
6	180411/0000730	Shri Akhilesh Kumar	527 days	527 days	627 days
7	180409/0000689	Shri Rahul A Shelke	516 days	516 days	582 days
8	180411/0000710	Soundarya Dasari	527 days	527 days	1113 days
9	180411/0000713	hri Ranjan Kumar Sahoo	516 days	516 days	1244 days
10	180411/0000739	Shri Pavan Mane	516 days	516 days	1092 days
11	180411/0000766	ri Manish Bishnol Singh	141 days	141 days	227 days
12	1		5	5	
13	180409/0000682	Shri Ghulam Quadir	516 days	516 days	1092 days
14	180420/0000765	Shri Prathiba Rao	516 days	516 days	322 days
15	180409/0000680	Shri Sunil Kumar Gupta	530 days	530 days	2352 days
16	180416/0000749	Shri Asok Viswanatha Menon	453 days	453 days	250 days
17	180409/0000675	Shri Vipin G Mennon	530 days	527 days	Not listed

42. Therefore, it is the submission on behalf of the complainants 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 regarding possibility of such a delay.

43. It is the strong argument on behalf of the complainant that no one event as described by the developer is able to prove that the action of the complainants has caused the delay in the process of completion of project. At best, the Respondent could have claimed interest for delay in making payments under the Act, which the Respondent has now foregone.

Sl No.	Force Majeure Event	Date/Year according to Respondent's documents
1	Hard Rock found when excavating [*Evidence Affidavit of RW 2, para 6, 7 & 8*]	- Excavation commenced in April 2013 [*Evidence Affidavit of RW 2, para 6*] Excavation April 2013 and Hardrock found 20 days after this [*Cross examination of RW 2*]
2	Heavy Rainfall *First time in Expert Report, Surrejoinder*] [Evidence Affidavit of RW 2, para 8]	- May, June, July, August, September, October- Year not specified [*Evidence Affidavit of RW 2, para 8*]
3	NGT Chennai order that restrained Respondent from using river sand [*Objections, page 6*]	- No date specified
4	Sand Lorry Owners Strike [*Objections, page 6*]	- 2013, 2014 and 2015 [*Evidence Affidavit of RW 2, para 10*] - 2013 and 2014 for 1 month each year [*Cross examination of RW 2*] - November 2016 and April 2017 [*Cross examination of RW 1*]
5	Karnataka State Lorry Owners Strike *First time in Expert Report, Surrejoinder*]	- 2016 and 2017 [*Evidence Affidavit of RW 2, para 10*] - September or October when Slabbing work was going on [*Cross examination of RW 2*] - April 2015 and April 2016 [*Cross examination of RW 1*]
6	Cauvery Strike [*Objections, page 6*]	- September 2016 [*Evidence Affidavit of RW 2, para 10*]

44. It is submitted that the Respondent has made up these force majeure events, and most of them did not occur. Even if they did occure there is no material to prove that they are affected the project. The Respondent has been inconsistent in every argument made pertaining to these force majeure events. Before rebutting each of these events individually, the Complainant submits the following table highlighting the inconsistencies in timelines of each event that has been brought before this Hon'ble Authority in the pleadings, evidence and in cross examination of **RWs 1-3**:

.st week of September 2017 [*Cross examination of RW 1*]

7	Demonitization [*Objections, page 7*]	- November 2016 [*Evidence Affidavit of RW 3, para 8*]
8	Enactment of the Goods and Services Tax [*Objections, page 7*]	- No date specified
9	City Civil Court Order [*Objections, page 7*]	City Civil Court Order dated 03.12.2016 vacated by High Court on 23.02.2017 [*Objections*]
10	Delay in Making Payments [*Expert Report, Surrejoinder*]	- No Date specified
11	Modifications List [*List for First time in Expert Report, Surrejoinder*]	- No Date specified

45. Through this chart the complainants' Advocate tried to submit 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.

46. Now another important point is that as per the agreement clause the date of completion mentioned was June 2016 with grace period of 6 months then it comes to December 2016. 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.

47. Per contra on behalf of the developer it was submitted that generally 6 months grace period should be added to the date of completion and it 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 completing the project. In this regard, he has referred to different clauses of the agreement and submitted that *in the* event that this authority were to hold that the date to be taken into consideration is the date in the construction agreement and sale agreement, it is pertinent to note that clause 6.1 of the construction agreement provides that the date for completion of the project to be June, 2016 with 6 months grace period for completion of the project. Therefore, the date of completion of the project in circumstance not covered under clause 6.2 of the construction agreement would be December, 2016. 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.

48. 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 the compensation. Some of the complainants have paid the amount since the year 2013-14 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 complainants 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 complainants submit that waiting for completion of project for a period of 5 years itself is a pain and he should not be made to wait

another two and half years for no fault on the part of them. In this way it is his say that factually he has sustained loss of his income, enjoyment of his own property, payment of rental and loss of income tax benefits, are all examples of losses which attract the provisions of 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.

49. 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;*

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

50. 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.

51. 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 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 RERA.

52. *Another attempt has been made by the Respondent by saying that the RERA is not applicable to the present case as there is no 'Agreement 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.

53. Advocate Sri Vikas Mahendra has vehemently submitted that each complaint is entitled for other kinds of compensation like rental loss and opportunity cost. But I have already discussed about Sec. 18 R/W Sec. 71 & 72 of the Act. There are no any allegations regarding diversion of fund collected from the consumers. Further I would say that the developer also undergone some obstacles while executing the development works of the project. I say that the reasons for delay offered by the developer commencing from

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excavation of mud till the completion of the work be taken into consideration while deciding the compensation factor. Under the above circumstances the above kinds of relief cannot be granted.

54. The learned counsel for developer has given a decision which is delivered by the Apex court in Civil Appeal No. 8442-8443/16 in M/s Shanti construction (p) Ltd., and another versus Assam State Electricity Board and others. Wherein the Hon'ble Apex court has given findings on "Applicability of Small Scale and Ancillary Industrial Undertaking Act, 1993". It was held by the court that the said Act is not retrospective and also not retroactive.

55. In this regard the counsel for the complainants has drawn my attention to para No. 27 where the Hon'ble Apex Court has framed the point for consideration. Answered that the Act is applicable to the agreement made prior to this Act. The Learned Counsel for the complainant also submits that the observation made by the Apex Court at para 58 as referred by the developer has no relevancy. On behalf of the complainants it is replied that the present decision is rather helpful to Complainants than the developer. Sri Vikas Mahendra advocate has analyzed the case of the developer and submitted that this case has no great affect. I would say that the RERA Act is not retrospective but it is retroactive and hence, the case referred by the developer has no relevancy. I find full force in his submission since the present judgment is not on a case which was decided under RERA and as such I am not going to consider the same for what reason the developer has relied on this judgment.

56. 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

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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"*

57. 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.

58. 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

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date of commencement of compensation. According to the consumers the developer shall pay the compensation as per RERA commencing from July 2016. But there is a clause for grace period then it comes to December 2016. It is the case of the developer that the authority cannot accept the date as January 2017 is the dead line to determine the date of compensation. He has drawn my attention to S.71 and 72 of the Act which I have already referred. In view of the discussion made as above I find some force in the submission made on behalf of the developer since as per S.18 which says that the consumer will be entitled for the relief either to grant delay compensation or refund of the amount when the developer has failed to complete the project within the time given under agreement of sale. Per contra he submits 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 the authority cannot read only the clause 6.1 and 6.2 but also 6.4 which is also 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 the clause 6.4 is favorable to developer. 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 the clause which is beneficial to them only is not correct. The developer has agreed to deliver the unit to each of the complainant as on 1/01/2017 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. In this regard the learned advocate representing the developer has vehemently submitted that he has placed the evidence with all necessary figures and opinion of the expert to say that the developer was prevented from executing the works as

intended by him. In order to reach the goal he has invested his own money to reach the goal. It is nobody's case that the developer was absconding. It is not their case that the development was stopped without any justification.

59. 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. It is alleged by the developer that the complainants 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 only against the developer . He also refers to the sand lorry owner srtrike, cauveri water strike, demonitisation are also caused obstructions like the natural calamity and therefore his argument also to be accepted. I would say that the complainants are seeking the delay compensation from July 2016 by saying that there is no need to add any kind of grace period. But it is the practice in the real estate factor to add 6 months generally and hence, it could be said that the developer has to pay the compensation from January 2017. It was argued on behalf of the developer that another 6 months grace period also to be granted since the complainants have not been able to prove the wilful delay on the part of the developer. But is not acceptable since the general grace period of 6 months is always allowed as a customary practice. Of course the developer has vehemently argued that the date given as 30/06/2019 to statutory authority has to be considered as date of completion has now turned down by me. However the said dead line is also over now. Recently on 17/8/2019 the developer has filed a memo along with the copy of the Occupancy Certificate which was obtained by him on 30/5/2109. But mere obtaining the O.C is not sufficient since Section 19(10) of the Act imposes an obligation ion the developer for taking some steps. It is not the case of the developer that he has issued notice to the consumers asking them to take physical

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possession after the receipt of O.C. In view od thwe same the Developer shall pay the delay compensation till the actual physical possession is delivered.

60. In view of the above discussion I say that the all the Complainants are deserves to be allowed. Before concluding my decision I would like to refer to written argument filed by the respondent wherein at the end of the written argument it is said that the complainants in complaint no. 736, 713 and 674 to be dismissed without any second thought since the complainants have not claimed any proper and specific relief. According to developer in these complaints there is no cause of action.

61. But it is not correct to say so the complaint has to be read by understanding what the complainant wanted to say. More over as per Section 18 the consumer is entitled either for delay compensation or for refund of the amount when the developer has failed to complete the project as per the terms of the agreement. Therefore submission made on behalf of the developer that the complainants in complaint number 736, 713 and 674 does not disclose the cause of action has no force.

62. It is needless to say that the complainant will have to file through online and generally party himself will upload the particulars of complaint through online. Under these circumstances much importance to pleading cannot be given. The authority has to understand the case of the parties since the whole transaction was based upon the documentary evidence and hence, the point raised by the developer has to be rejected.

63. As per Section 71(2) of the Act the complainants shall be disposed of within 60 days. However, as per SOP 60 days shall be computed from the date of appearance of the parties. 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 have led the oral evidence took lengthy time for placing oral evidence and also for cross-examination. In addition to it the developer has filed objection, the complainant had filed rejoinder and surjoinder. Afterwards an appeal has been filed before the Appellate Tribunal in Appeal no. 92/2018.

64. Further the parties have placed lengthy argument and also filed the written arguments and finally today, judgement is being pronounced. Further the developer has given a representation to the authority on 3/05/2019 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. where in 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. Hence, the present cases have not been taken up for judgment and delay caused for the same.

65. The learned council for the developer has filed the memo on 30/7/2019 stating that he has filed write petition bearing no.11522-11525/19 and write 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 write petition. The said copy was sent to complainant through mail

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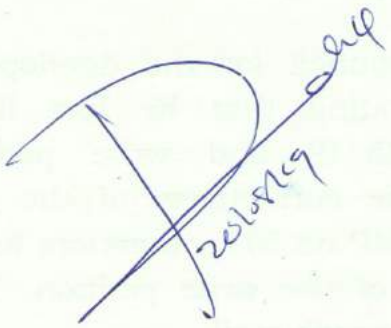
66. On 8/8/2019 again the learned council for the developer has filed an I.A u/s S. 18 R/W S. 71 of the RERA ACT stating that the matter may be Re-heard . The said application was served on the other side and same was posted to 9/8/2109 for hearing. The learned counsel for the complainant was present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

67. 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/180416/0000746;
CMP/180409/0000676;
CMP/180401/0000734;
CMP/180410/0000691;
CMP/180412/0000713;
CMP/180414/0000730;
CMP/180409/0000682;
CMP/180414/0000732;
CMP/180412/0000717;
CMP/180414/0000739; CMP/180411/0000707;
CMP/180415/0000743; CMP/180409/0000674
CMP/180414/0000736;
CMP/180409/0000675;
CMP/180409/0000673;
CMP/180421/0000766;
CMP/180414/0000731;
CMP/180420/0000765;
CMP/180409/0000689;
CMP/180411/0000710;

have been allowed.

a. 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.

b. The developer is also directed to pay Rs. 5,000/-as cost of each case.

c. The original shall be kept in CMP 746.

d. Intimate the parties regarding the Order.

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

(K.PALAKSHAPPA)
Adjudicating Officer.