BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Date: 30th January 2019

Complainant : 1. CMP/180227/0000517
Mohammad Sabir Hussain
Tetra 1102, SJR Watermark,
Subh Enclave, Harlur Road,
Off Sarjapur Road,
Bengaluru – 560102.

2. CMP/171204/0000299
Karan Sharma
2A Victor Plaza, 4th cross,
Vinayaka Nagar B block,
Bengaluru – 560017

3. CMP/171210/0000315
Nagabhushan Basavanahalli Srinivas
#33, C Cross, Rajivnagar, 7th cross,
7th main, Banashankari 3rd stage,
Bengaluru- 560085

4. CMP/171204/0000297
Rathod Megha and Vora
Prashantkumar Bipichandra
102, Mahaveer pear-2, Harur Road,
Ambalipura, Off Sarjapura Road,
Bengaluru – 560102

5. CMP/171203/0000294
Gaurav Gupta
Flat G5 Propulsive, 4th cross, BK
Abbaiah Layout, B. Narayanapura,
Bengaluru- 560016

6. CMP/171213/0000324
Krushna Sahoo





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B205, Rajarajeshwari Nivas,
Vajapayee Nagar, Bomanahalli,
Hosur road, Bengaluru- 560068

7. CMP/171119/0000235
Jaipaul K Antony,
GP1-208, Green Park Regency
Hosa Road, Bengaluru- 560035

8. CMP/171202/000292
Venkata Sivannarayana Golla
13-5, Ramalayam Street,
Podili, Andhra Pradesh-523240

9. CMP/171206/0000305
Akshya Pradhan
B-1, M S crystals,
Malleshpalaya, Bengaluru- 560075

AND

Opponent : BLUE WATERS PHASE 1,
SJR PRIME CORPORATION PVT LTD,
No. 1, SJR Primus, 7th Floor,
Koramangala, Bengaluru -560095.

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JUDGEMENT

1. Mohammad Sabir Hussain has filed this 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/180227/0000517. Similarly other complaints are also seeking the same relief. Sri Vikas Mahendra Advocate as well as the 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. In this regard I would like to refer the complaint of first case in CMP/180227/0000517.

2. The brief of facts case is as follows:



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*"Project Name:Bluewaters Phase 1 [PR/KN/170811/001196 SJR PRIME CORPORATION PRIVATE LIMITED BLUE WATERS PHASE 1] Unit details: Flat No.807, Block 11 Alston Sale and Construction Agreement executed on: 08-APRIL-2015 Committed Project completion date as per agreement: JANUARY 2017 Grace period as per agreement:6 months (completed on JUNE 2017) Sir, As of today, I have paid more than 80% of the unit's total cost. I have also made all payments within the date specified by the builder in the construction linked payment demands of the builder. The builder charges 18% interest for any delay of payment on the buyer part, where as the builder is liable to pay only Rs.3/- per square feet per month for delays beyond the grace period, which also has never been paid till date. Though it is more than a year since the project completion date, the project's overall structure itself is not complete, and it would take at least 2 more years to reach a livable state suitable for possession. Due to the delay, my ownership cost has gone higher due to: 1. Interest burden from bank loan pre-EMIs and EMIs 2. Higher ownership cost due to service tax increases by the government 3. Perceived loss of interest beyond the committed completion date for the amount paid from my savings and bank loan. 4. Perceived loss of income from rent from the committed completion date. We have been meeting with the builder with these concerns and requesting expedited construction, but to no avail. I am highly stressed about the delay and related financial pressures.*

*Relief Sought from RERA : Compensation at prevailing rate prescribed by RERA"*



I would like to say that the complainant in complaint no. 517 has given his grievance and finally sought for compensation for delay 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.

3. In pursuance of the summons issued by this authority the case was called on 03/07/2018. The Developer has expressed to talk to settle the issue with the Complainant since there are some other cases filed against the same project. Further a meeting was convened on or before 20/07/2018 and therefore the case was posted to 25/07/2018.

4. On 25/07/2018 the advocate Sri Vignesh representing the Developer was present and filed his objections to the main Complaint. The counsel for the



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Complainant sought time to file rejoinder as against the allegations made in the written objections.

5. On 01/08/2018 when the case was called the advocate representing the Developer has filed 3 I.As., under Sec 35 and 71 of the RERA Act. The copy of those I.As., have been served on the other side.

6. The counsel for the Complainant submits that he will submit his argument on maintainability on these I.As.,. Accordingly on 13/08/2018 I have heard the arguments on these three applications and posted the matter for orders. On 20/08/2018 I have rejected all 3 IAs,. and directed the parties to start the argument on merits. But I am able to hear the arguments on merits only on 19/12/2018 and reserved the case for orders because the Developer went an appeal questioning the orders passed by this authority on Interim Applications in Appeal no. 48/18 which was filed before the appellate tribunal.

7. On 03/10/2018 when the case was called the advocate representing the complainant has filed the copy of the judgment passed by the Appellate Tribunal where this authority has directed to record the evidence of expert within 30 days. Accordingly I have recorded the evidence of expert and other witnesses. Finally I have heard the arguments on both sides.

8. The developer has filed 3 Interim applications numbered as I.A. No. 1 to 3 seeking permission of this authority for cross-examination of Complainant, examine the developer himself as witness and to cross examine the expert Narayana Reddy who has filed the affidavit in favour of the complainant. But after hearing the parties I have rejected all the 3 interim applications by an order dated 20/08/2018. Questioning the same the developer went in appeal where this authority has been directed to examine the expert.

9. In the meanwhile the complainant has filed an interim application in I.A. No., 4 seeking permission to cross-examine the expert of the developer which was allowed by consent. By this way evidence has been recorded by this authority as RW1 to RW4 and the expert of complainant Sri Narayana Reddy is examined as CW.1.

10. The sum and substance of the oral evidence led by the parties reveals that the complainant wanted to say that the reasons given by the developer for the delay has nothing to do for the completion of the project since it is the opinion of the 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. Of course during his cross-examination he has admitted that he never visited the site. 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 does not attract the ingredients of Force Majeure. I would say that as per this Act and the wording used in S.18, the exercise made by the parties in this case is a futile attempt. At the time of argument the learned counsel for the complainant 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 complainant was deprived the opportunity to enjoy the property and thereby he has sustained the loss.

11. Per contra the learned counsel for the developer submits that the complainant is not entitled for compensation towards rent since the complainant is not subjected for cross-examination and thereby submits that the evidence which is not subjected for cross-examination is not evidence. Further he also submits that the expert has not given any concrete evidence and he prays to rule out his evidence.

12. I would like to say that the Adjudicating Officer has to look into S.71 and 72 at the time of adjudging the compensation determining as per S.18.

13. As per Section 18 (1) proviso the consumer who is not going to withdraw from the project shall be paid by the promoter with interest including the compensation. During the course of calculating the delay compensation; the Authority has to look into Section 72 of the RERA Act. The Developer has failed to complete the project on or before January 2017 with grace period of 6 months. It means it comes to July 2017. But in this regard the developer has referred to clause of the agreement. Smt. Komala Legal head of the developer has submitted through affidavit by saying that as per clause 6.1 the due date was January 2017 with six months grace period. As per 6.5 if it is proved that the delay was willful delay then another 6 months grace period means it comes to January 2018. The developer has filed a certificate issued by C.A. dated 27.08.2018 to the effect that the developer has incurred Rs. 226.29 crores on the project as against the collection of the amount from the consumers was Rs. 191.66 crores. By this way the developer wanted to show that there was no any violation of S.72 of the Act. No allegation regarding the deviation of the amount to other projects. As per Sec.18 Delay Compensation has to be paid @ interest as prescribed. As per rule 16, it is said under.

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*"Rate of interest payable by the promoter and the allottee:- The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent"*

14. But the word compensation has not been defined in this Act. In this regard I would like to take the following commentary:

*Adjudication of Compensation: The Act provides for compensation to the Allottee for false advertisement, structural defect failure to complete construction or deliver, defective title, and failure to discharge the other obligations under the Act, Rules or Regulations or Agreement. This section enables the authority, to appoint adjudicating officer for the purpose of adjudging the compensation*

*The word compensation is not defined under this Act, However, section 72 lays down the factors to be taken to account while adjudging the quantum of compensation namely, the amount of disproportionate gain or unfair advantage made, loss caused as a result of default and the repetitive nature of such default and other factors.*

*The Act unlike Consumer Protection Act and all other previous enactments strike a balance to protect the interests of both promoter and allottee. Subject to the Act and Rules and Regulation made there under the parties are free to enter into agreement and both the promoter and the allottee are bound by the same. The Promoter has a right to cancel the agreement as per the terms of the agreement, for reasons to be reviewed by the authority. They may approach the adjudicating Authority for adjudging the compensation.*

15. Further the authority has to keep in mind of S.72 also while awarding compensation as per S.71 of the Act.

*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:-*





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*e. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

*f. The amount of loss caused as a result of the default;*

*g. The repetitive nature of the default;*

*h. Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.*

16. From the above position of law it is clear that the Authority will have to take the notice of Section 72 along with Section 18. The Developer is going to complete the project since he is developing the same. The developer has given the date of completion to this authority as June 2019. In view of the same the developer is bound to compensate the complainant since the delay is proved. However as per my discussion it is clear that as there is no any allegation regarding the deviation of funds to another project and as such I feel that the complainants are entitled for delay compensation alone.

17. By keeping the above principle in mind, I am going to discuss on the points raised by the rival parties. Admittedly the Complainant has sought for delay compensation. It is also an admitted fact that delay has been caused in completion of the project. As per the construction agreement the project was to be completed on or before January 2017 but even till today the project is not completed. The Developer has given the completion date to this authority as 30/06/2019. In this connection it is the argument of the developer that the complaint is premature one since he has given the date for completion of the project as 30th June 2019 as per S.4(2)(1)(c) to RERA. It is not correct to submit in such a fashion on the ground that the Act has facilitate the developer to complete the project by giving a fresh date but it does not mean that the compensation cannot be calculated from the date mentioned in the agreement. Hence, the stand taken by the developer has no force.

18. In the written argument it is submitted that the delay has not been proved by the complainant. It is his submission that the complainant though filed his affidavit, but failed to tender himself for cross-examination and as such he submits that the delay has not been proved. But I am not going to accept his submission for the simple reason that the delay has already been proved when the project has not been completed as per the terms of the agreement. Hence, there is no need to prove the delay by leading any kind of oral evidence as against the documentary evidence.

19. I have already referred that the prayer made by the Developer for recording the evidence was rejected by the authority. The same was set aside by the Appellate Tribunal. The expert has been examined. Expert has given his own reasons for the delay caused. According to the expert the strike conducted by

South India Transports Welfare Association, Sand Lowry Owners, Strike as a result of Cauvery Water Dispute, Demonetization, GST and heavy Rainfall are the main causes for delay in non completion of the project on time. In addition to it the expert also said that the majority number of consumers have requested the Developer to effect modification of their respective flats. I am not going to accept the said submission since the word Force Majeure is defined in the Act. The developer has not given any reason to show the delay was caused because of any one of the grounds of force Force Majeure and I am not going to accept those causes are attracting the ingredients of Force Majeure.

20. For the above said reasons it was the case of the developer that the delay was caused is beyond his control and as such it is the main contention of the developer that the complainant is not entitled for the delay compensation.It is also the submission on behalf of the developer to the effect that the date of completion given to the authority is a statutory date. It prevails over any date given in the agreement. In this way it is his argument that the complaint is premature since the date of completion is only 30/06/2019 and as such he pray to dismiss the complaint as premature. In this regard he has stated in his written arguments which reads as under:

> *"The date given before the authority has not yet come. Therefore, filing of the complaint itself becomes absolutely premature. When the cause of action itself has not arisen, no grievance can be adjudicated. The date given by the developer is 30/06/2019, which has been accepted by the authority. Once the same has been approved, it becomes a statutory approval having utmost significance and cannot be circumvented in any manner".*

21. Per contra the learned counsel for the complainant submits that the developer was expected to deliver the possession as per the agreement but in the meanwhile this Act came into force. As per Sec. 4(2)(1)(c) the developer can change his date of completion of his project but he cannot rewrite the clauses of the agreement. This kind of submission has been made to say that merely because the developer has changed his date of completion does not mean that the complainant is not entitled for delay compensation from the date agreed in the agreement. It means he is entitled for the compensation from the date mentioned in the agreement. I would say that there is no dispute regarding the same. I have already said that developer has given reasons for the delay but the learned counsel for complainant has attacked on those points. Moreover the date given by the developer while registering his project is on his own calculation which is nothing to the right of claiming the compensation. He has given the assurance to the authority as well as to the consumers that he is able to complete the project on or before 30/06/2019 for which the authority has given approval. It does not mean that the date of completion can be rewritten by him with the authentication of the authority. Hence, the argument of the developer that the complaints are all premature has no force.





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22. Now coming to the delay caused in non-completion of the project. I would say that the expert has given his own reasons in support of the stand taken by the developer. At the time of argument the counsel for the complainant has drawn my attention to the veracity of the witness examined on behalf of the developer. In my view the complainant has successfully destroyed the evidence of the witnesses examined on behalf of the developer.

23. I would say that the developer has utterly failed to connect the events of demonization, GST, Cauvery water strike and other events which are all main cause for delay. The events took place in the year 2014-2015 has no direct bearing on the delay caused to the developer. The expert has given evidence by saying that at the time of excavation, the developer has found a big rock. It was to be removed by blasting the same. But at the time of cross examination of RW2 has said that the blasting was treated as illegal whenever the blasting was doing exceeding the limited area, particularly in quarry area. I would say that there is no concrete 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.

24. I found full 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 buffering 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 reason because every developer used to have buffer stock of every material and it can be made use of the construction. Therefore the reason afforded by the developer has no place.

25. I would like to go through the written submission made on behalf of the complainant. The learned advocate for the complainant has submitted that the expert report is riddled with inconsistencies making the entire report wholly unreliable. For instance:

    a. *At para 7 of the report, the expert states that one of the assumptions he has made as regards modifications is that, there would be need for some customers. In direct contradiction to this, in his cross- examination he states that he has proceeded on the assumption that modification were requested "well in advance" which he himself clarified to mean no rework would have been necessary.*

    b. *During his cross examination, the expert identified a list of documents he was provided by the respondent to enable him to prepare his report. He specifically clarified that*

*beyond these documents he did not receive any other documents and all other information was received orally. In direct contradiction to this statement, later in his cross examination, he identifies a number of other documents which were allegedly provided to him.*

c. *At para 1 of his expert report, the expert states that the practice of maintaining buffer stock is not practiced in Bengaluru. In direct contradiction to this, during his cross examination, he states that a buffer stock of 7-20 days is maintained as a norm.*

d. *At para 1 of his expert report, the expert states that the practice of maintaining buffer stock is not practiced in Bengaluru due to lack of space availability. In direct contradiction to this, he clarifies in his cross examination that about 75% of the project land was vacant and therefore had ample space.*

e. *At para 4 of his expert report, the expert states that his observation on demonetisation are specific to the project. In direct contradiction to this in his cross examination he states that his statements regarding demonetisation were generic and not specific to the project.*

f. *At para No.7 of his report, the expert states that procurement and approval phases inherent in any modifications have a significant impact on the timelines on the project. In direct contradiction to this, during his cross examination he states that during approval and procurement phase of any modifications, the project as a whole does not come to a standstill.*

26. The counsel for the complainant has referred to the above evidence to say that the reasons for delay given by the developer are not helping him. But it was the argument of the developer that the delay in completing the project is beyond his control. By reading the above evidence I hold that the complainant has succeeded in destroying the evidence recorded on behalf of the developer.

In support of the same the advocate has relied upon decisions.....

27. In the case of State of Gujarat

v.

Maheshwari Mills

Criminal Appeal 1283 of 1992, the High court of Gujarat held that;

*"Having regard to the principles laid down in the above decision, it is apparent that the evidentiary value of the*





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*opinion of the expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus, the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be crosschecked. Therefore, the emphasis has been on the data on the basis of which the opinion is formed. Mere assertion without mentioning the data or basis is not evidence, even if it comes from expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value. The facts of the present case are required to be tested in the light of the principles laid down in the above decision.*

28. In case of DLF Homes Panchkula Pvt. Ltd.,

V.

L.S. Dhanda and Ors,

A decision of the National Consumer Dispute Redressal Commission pronounced on 12 December 2018, the Hon'ble commission has been pleased to hold that:

*" ....we may further note that, as already stated in para 47 and 48 above, availability of land as well as approvals from competent authorities, as and when due, being fundamental basic requirements of a housing project, are decidedly the builder co.'s primary responsibilities, and not of the consumer, and force majeure, unforeseeable circumstances, irrespective of its various 'liberal' or 'strict' interpretations, and irrespective of its various interpretations in different sets of facts, can, but, not be nebulously and irrationally argued for anything and everything related to the builder co.'s responsibilities for completion of the project without cost or time overruns.*

29. The above referred decisions have been submitted and said that the report of the expert is admissible to some extent. It is also his submission that developer should take care about his project. But I would say that this principle is applicable to the expert of the complainant also.





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30. Per contra on behalf of the developer it was submitted that the delay should be proved to be a "wilful". There is nothing on record to show that the delay was wilful, even assuming that there is any delay, the wilful nature of the delay is a significant factor. It must be deliberate and with malicious intent. Further he submitted that the entire effort put by the developer is to complete the project within time has no benefit is accrued by him by any delay. According to developer there is no delay and in any event in the absence of wilful delay there is no question of any claim that can be made against the respondent.

31. In continuation of the argument, it was submitted that the respondent has expended over 200 crores in the development and construction on the projects. The respondent has borrowed heavily from banks and continues to pay interest on the loans that are time bound. The respondent has deployed infrastructure, men, material, machinery, tools and plants towards the execution of the project. The materials and labour charged have increased disproportionately over the years. The respondent has consistently faced hurdles beyond its control and has taken all steps to ensure proper and speedy execution of the project. The delays are neither wilful nor within the control of the respondent. The delay in the project has therefore, severely affected the respondent itself. The respondent has spent much more than what has been received from the consumers for the project. Therefore, there is no justification to state that the respondent would benefit by delaying the project. The respondents have spent money for the development from their own funds, from bank loans etc. And having spent so much money, to be mulcted with any other liability is not fair.



32. Therefore, when the respondent has shown genuine inability, the adjudicating authority has 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 himself/herself for cross examination and as such it must be discarded and it is the case of the developer that the complainant has therefore miserably failed to discharge the burden placed on him to prove that loss has been suffered by him.

33. The learned counsel for the developer has submitted that the

> *"During the period of construction, the developer faced several hurdles were beyond their control. These delays are not attributable to the Respondent. The events that led to the delay have been detailed in the pleadings and*

*in the evidence affidavits submitted by the Developer face save hurdles during the construction of the project, from the very inception. From being faced with hard rock during excavation, the sand lorry owners strike, transporters strike, Cauvery strike, heavy rainfall, demonitization and rolling out of the goods and service tax, the developer has faced several hurdles that have hindered construction. It is pertinent to state that these force majeure events affected the project both directly and indirectly. Even the smallest of hindrances can have a serious cascading effect on construction projects".*

34. This is the reason given by the developer and said that there is no delay and the same was supported with grounds. It is also submission that the delay must be wilful delay. If not, the complainant is not eligible for compensation. In this regard he has referred clauses of his agreement. It says as under:

> *Delay should be proved to be "wilful". There is nothing on record to show that the delay was wilful, even assuming that there is any delay, the wilful nature of the delay is a significant fact. It must be deliberate and with malicious intent. I submit that our entire effort is to complete the project within time as no benefit is accrued by us by any delay. There is no delay and in any event in the absence of wilful delay there is no any claim that can be made against the Respondent.*

35. But I would say as per S.18 the delay is sufficient to grant the delay compensation. The attempt made by the developer to say that the delay was not within his control has no place here. In view of the proviso shown in Section 18 of the Act, I have to award delay compensation. In view of the commentary as per S.71 and 72 of the Act, the complainant is entitled for the delay compensation. However it is clear that the complainant has given the amount and till today they are waiting for the goods which are not yet delivered to them. Under these circumstances I would say that the developer has given some more evidence supporting his stand.

36. Smt. Komala legal head of the developer has filed her affidavit contending that the delay has not been construed in view of the date mentioned in the RERA as 30/06/2019 and also she said that as per clause of the agreement 6 and said that the original date for completion was January 2017 with 6 months grace period means it comes to July 2017. Further she said that in case failure to prove wilful delay the developer will get another 6 months time and thereby she wanted to say that the actual date of completion was January 2018. It is also

her case that then only the complainant is eligible to get the delay compensation at the rate of Rs. 3 sq. ft,. But it is not correct to say that the delivery date shall be calculated as January 2018 since the question of proof of wilful delay does not arise in view of S.18 of the Act. Hence, I hold that the developer was expected to deliver the possession by completing the project maximum by July 2017. In support of the 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 give 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."*

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"*

I have already answered to this point holding that the date mentioned in the agreement shall be the date to be computed for delay compensation.

37. However the developer has brought to my notice that he has incurred his own amount to complete the project. In this regard he has produced an important

document issued by C.A. dated 27/08/2018 where in the CA has certified that the developer has collected the amount from the consumers as Rs. 191.66 crores as against the total cost incurred towards the project was Rs. 226.29 crores. In my view it is also better evidence on the side of the developer to consider S.72 while granting the delay compensation in favour of the complainants. With all these observations I would say that the complainants are definitely entitled for delay compensation as per S.18 of RERA. I would say that the Advocate Sri Vikas Mahendra has vehemently submitted that each complaint is entitled for other kinds of compensation like rental loss and opportunity cost.

38. In this regard the Advocate representing the complainants has given the list of relief and requested the authority to grant the above reliefs.

a. Date of Possession : 01 January 2017
b. Delay till 17 December 2018 from 01 January 2017: 23.5 Months
c. Date of Possession with the 6 month grace period: 01 July 2017.
d. Delay till 17 December 2018 from July 2017: 7.5 months
e. Date as to calculation of compensation: 12 December 2018.
f. Date as per Registration Certificate: 01 June 2018
g. SBI Marginal Lending Rate as of 12 December 2018: 8.75%
h. Compensation rate as per Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017: 2% + 8.75% = 10.75%
i. Loss in Rental income as per Annexure A to supplementary Affidavit: Rs. 23,500.
Total amount already paid by customer(construction linked cost): Rs. 48,09,771.

| Calculation Of Loss | Amount of Compensation |
|---|---|
| **A. Loss from Date of Possession to 17 December 2018** | |
| Loss on account of loss of rental income till 17 December 2018 from January 2017(Rs. 23500* 23.5) | Rs. 5,52,250/- |
| Loss on account of interest rate loss till 17 December 2018(Rs. 4809771*10.75%)/12*23.5 | Rs. 10,12,557/- |
| **Total** | **Rs. 15,64,807/-** |
| **B. Loss till Date of Registration from date of Possession** | |





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| | |
|---|---|
| Loss on account of loss of rental income till 01 June 2019 from 01 January 2017(Rs. 23500*30) | Rs. 6,81,500/- |
| Loss on account of interest rate loss till 01 June 2019 (Rs. 4809771*10.75%)/12*30 | Rs. 12,49,538/- |
| **Total** | **Rs. 19,31,038/-** |
| **C. Loss if calculated with a 6 month Grace Period** | |
| Loss on account of loss of rental income till 17 December 2018 from July 2017(Rs. 23500*17.5) | Rs. 4,11,250/- |
| Loss on account of interest rate loss till 17 December 2018(Rs. 4809771*10.75%)/12*17 | Rs. 7,54,031/- |
| Total | Rs. 11,65,281/- |
| **D. Loss till date of registration from extended date of Possession** | |
| Loss on account of loss of rental income till 01 June 2019 from July 2017(Rs. 23500*23) | Rs. 5,40,500/- |
| Loss on account of interest rate loss till 01 June 2019(Rs. 4809771*10.75%)/12*23 | Rs. 9,91,013/- |
| Total | Rs. 15,31,513/- |

39. In this fashion the complainants are seeking the reliefs from the developer. But I have already discussed about Sec. 18 R/W Sec. 71 & 72 of the Act. I have also referred a letter issued by Chartered Accountant where the amount collected from the consumer has been utilised for construction in full and the developer himself has incurred his finance. Under the above circumstances the above kinds of relief cannot be granted.

40. The complainant has said that their possession was on 1 January 2017 but as per the agreement 6 months grace period, which means 1st July 2017. Ofcourse I have already discarded the plea of developer to add another 6 months if there is no wilful delay. But however the learned counsel for the complainants submit that 6 months grace period cannot be counted as a default. Of course but it is a practice of developers to add grace period in all the

agreements which was signed by the parties. Hence, I hold that parties have agreed to complete the project maximum by the end of 1st july 2017.

41. Another plea of the respondent is that the developer will pay the delay compensation @3% 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 @10.75% commencing from July 2017 till the notice of possession is issued.

42. The learned counsel for developer has given a decision at the fag end of the case 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.

43. 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. He also replied stating that the present decision is rather helpful to Complainants than the developer. The submission made by the developer has no force at all. 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 judgment is not on a case which was decided under RERA and as such I am not going to consider the same for which reason the developer has relied on this judgment.

44. 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 regarding the learned counsel Shri Vignesh has said that none of the complainant has 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"*

From the above principle 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 aspect.

45. Before going to pass final order I would say that as per S.71(2) of RERA, the complaint shall be closed within 60 days from the date of filing. And as per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 03/07/2018 which was posted to 25/07/2018 to enable the parties to talk on terms of settlement. But talks were failed and the developer has filed objections, the complainant has filed the rejoinder, the developer has filed the Sur-rejoinder. The Developer has filed 3 I.As., under Sec 35 and 71 of the RERA Act. I have heard on them on 13/08/2018 and on 20/08/2018 I have rejected all 3 IAs,. and directed the parties to start the argument on merits. But the matter in CMP 517 alone went to Appellate Tribunal and after recording the evidence I could able to hear the parties in full only on 19/12/2018 and reserved the case for orders. Again the developer has filed appeal in other complaints which are CMP/171204/0000299, CMP/171210/0000315, CMP/171204/0000297, CMP/171203/0000294, CMP/171213/0000324, CMP/171119/0000235, CMP/171202/000292, CMP/171206/0000305, and still appeal filed in other 7 complaints awaiting orders. However the developer has produced one more citation on 28/01/2019 and again I heard the parties and reserved for judgment. In view of these reasons these complaints could not be disposed of within 60 days. With this observation I proceed to pass following order.

## ORDER

1. The Complaints No. CMP/180227/0000517, CMP/171204/0000299, CMP/171210/0000315, CMP/171204/0000297, CMP/171203/0000294, CMP/171213/0000324, CMP/171119/0000235, CMP/171202/000292, CMP/171206/0000305, have been allowed.

   a. The developer is hereby directed to pay delay compensation in the form of interest at the rate of 10,75% for every month of delay on the respective amount paid by him to the developer by each of the complainant.

   b. The developer is hereby directed to complete the project on or before 30/06/2019 by obtaining the Occupancy Certificate

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

   d. The original shall be kept in CMP 517 and copies of the judgment will be kept in other files.

   e. Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 30/01/2019)



30/01/19

(K.PALAKSHAPPA)
Adjudicating Officer