

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Date 3rd AUGUST 2020

Complaint No.	CMP/191010/0004378
Complainants	Raushan Anand Door No. 204, Spring Bloom Apartment, Muthasandra Main Road, Varthur, Bengaluru-560087. Rep.By: Abheek Saha, Advocate.
Opponent :	R-1 Shrivision Towers Private Limited, R-2 Shriprop Homes Pvt. Ltd., Rep. By Managing Director, No. 40/43, 4 th Cross Road, 8 th Main Road, RMV Extension, Sadashivanagar, Bengaluru-560080. Rep. By Prakash Hedge, Advocate. R-3 Ramesh Ramachandra Kalpattu Director Sri Vision Towers Private Limited Rep. By Managing Director, No. 40/43, 4 th Cross Road, 8 th Main Road, RMV Extension, Sadashivanagar, Bengaluru-560080.

Done
03/08/2020

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	<p>R-4 Rajesh Yashwant Shirwatkar Director Sri Vision Towers Private Limited And Director, Shri Prop Homes Pvt., Ltd., Rep. By Managing Director, No. 40/43, 4th Cross Road, 8th Main Road, RMV Extension, Sadashivanagar, Bengaluru-560080.</p> <p>R-5 Krishna Veeraraghavan Director, Shrivision Towers Pvt., Ltd., Rep. By Managing Director, No. 40/43, 4th Cross Road, 8th Main Road, RMV Extension, Sadashivanagar, Bengaluru-560080.</p> <p>R-6 Gopala Krishnan Jagadeeshwaran Director, Shri Prop Homes Pvt., Ltd., No. 40/43, 4th Cross Road, 8th Main Road, RMV Extension, Sadashivanagar, Bengaluru-560080.</p> <p>R-7 Narasimha Murthy Nagendra Director, Shri Prop Homes Pvt., Ltd., No. 40/43, 4th Cross Road, 8th Main Road, RMV Extension,</p>
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Deputy
03/07/2020

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	Sadashivanagar, Bengaluru-560080. R-3to R-7 Remained Absent
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J U D G M E N T

1. This complainant has been filed by the complainant under Section 31 of RERA Act against the project "Sri Ram Green Field Phase-1" developed by Shrivision Towers Private Limited. His complaint reads as under:

FACTS OF THE CASE & GROUNDS OF COMPLAINT: After going through the advertisements of the respondents, their website, pamphlet, brochure , the representation of the respondents, the complainant was under the impression that the project is with all necessary approvals, permissions, infrastructure, liquidity of the builder to complete the project in time and also because of representation of timely delivery of respondents, they persuaded the complainant to book the apartment and finally Agreement for sale and construction agreement dated 28th Mar. 2018 was executed between the Complainant and the Respondent wherein the complainant booked an apartment bearing flat no. D- 1307, 13th floor, Tower D of Building 1 ?Shriram Greenfield project? and having 2 bedrooms and 1 study room, carpet area measuring 80.10 sq. meters /862.20 sq. ft. and super built up area of 113.80 square mts. / 1225 sq. ft. (which includes proportionate shares in common areas such as passages, lobbies, lifts and staircases) along with access to an exclusive balcony area of 3.88 sq. mts./41.76 sq. ft., one covered car parking space in the lower basement level/Upper basement Level/Ground Level and the complainant agreed to Pay a consideration amount of Rs. 52,59,450.00 (Rupees Fifty Two Lakhs Fifty Nine Thousand Four Hundred and Fifty Only) (inclusive of other charges but except taxes, GST, stamp duty and registration fees) as per the sale agreement dated 28th Mar. 2018 and as per the demand note dated 9-April-2018 towards the flat and land along with proportionate undivided share of land, construction cost and other miscellaneous expenditure.

That the clause 13 and 14 of the sale & construction agreement dated 28th Mar. 2018 states about completion and delivery of the

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apartment and the Respondents very carefully avoided mentioning the specific delivery date in those clauses which should have been the material part of the Sale and construction agreement and thus abusing their dominant position. In such scenario it can only be presumed that the Respondents intended to make immediately delivery to the complainant of the complete constructed flat upon signing the agreement, considering also that the Respondents raised demand notes one after another in immediate succession and collected more than 85% of the flat cost amount by June 2018 i.e., within 2 month from signing the Sale agreement and recently again issued a demand note dated 7th Aug. 2019 for Rs.5,72,967/- though commensurate actual work for the flat has not been completed and also the Respondents through mail dated 29th May 2018. Complainant made payment without prejudice and the respondents issued an email dated 30th Sept., 2019 confirming having received the same amount. That thus substantial part of the consideration for the flat has already been paid by the Complainant to the Respondents but still did not receive delivery of the flat.

That the respondents have used their dominant position to put unilateral clauses without any scope of negotiation in the sale agreement - construction agreement dated 28th Mar. 2018 and whereas the liability of the purchaser in case of default under the agreement ? the purchaser shall have substantial liability but the respondents have decided their liability in case of default which best suits their purpose. 12. That even at the end of the stipulated period and after a delay of more than 6 months the respondents still did not complete construction and hand over possession of the schedule apartment to the complainant as per sale agreement or the construction agreement. The fall out of the delay is that, hundreds of apartment allottees including the complainant had to bear huge financial losses, their hard earned money are now blocked with the respondents and the complainant stands in a situation with no residence in his name at Bengaluru and no further liquidity to purchase any other property in Bengaluru or anywhere else. The complainant is presently staying in a rented apartment and being forced to pay rent for the same apart from clearing the EMI's every month against the loan amount taken by the complainant for the flat purchased from the Respondents. The complainant had fulfilled his part of the obligation and had paid, adhered to all the demand note as was insisted by the respondents though proportionate construction was not completed before raising such demand note and thus the Complainant though complied the demand note but paid the same under protest and without prejudice. Thus all such

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payments though cleared by the complainant but made without prejudice and without waiving any of his legal rights. That even after the expiry of the stipulated time and considerable delay thereafter the respondents still did not handover possession of the flat to the complainant aggravating the already difficult situation of the complainant. 15. That after the lapse of almost 6 months from the scheduled date of taking possession, the complainant is still waiting to get possession of the flat as agreed by the respondents and is under mental agony, depression and the acts of the respondents and their officials have resulted in frustration, harassment for the complainant and their family members. They are not able to lead a happy contented family life and also under pressure to pay the EMIs and also paying rent for staying at other places. 16. That from the time of entering into the sale agreement and construction agreement, the respondent have given false hope to the complainant and illegally retained the money of the complainant and many other allottees without giving possession. That the above facts and circumstances only points to the negligence and unfair trade practices, of the respondent. 17. The series of email from date of purchase till date annexed herewith and marked as Annexure P2 to P10 further evidences the negligence, unfair trade practices of the Respondents and proves the contention advanced by the complainant herein through this complaint. 18. That moreover time to time when various flat owners visited the project site it was found that Towers which they claim to have been completed still have seepage issues and other structural issues which shows the poor quality of the construction work done by the Respondents and resulting in permanent defects and damages to the flats due to negligence, unfair trade practices of the Respondents. 19. That because of the action of the respondents, the complainant suffered mentally, their health broke down and is now under continuous pressure having invested in the project of the respondents and having tied their hard-earned money with the project of respondents for so long. 20. That while time has been made essence with respect to apartment allottees obligations to pay/make scheduled payment and perform all the other obligations under the agreement, the Respondents have conveniently relieved itself by not making time as essence for completion in fulfilling its obligations, more particularly handing over physical possession of apartment by completing construction within the stipulated time and obtaining OC, CC and other statutory obligations and certificates. In other words, the respondent has enriched itself by crores of rupees from the apartment allottees including the advance collected from the present complainant without handing over possession as agreed.

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21. The complainant submits that the omission by the respondent in fulfilling their obligations by taking some definite steps, and wilful default on the part of the respondents in completing the project, as the complainant is entitled to recover the loss of his bargain. 22. CAUSE OF ACTION: The cause of action for the present complaint arose on 31.03.2019 after expiry of the stipulated time for completion of the project and failure of the Respondents to deliver as per agreed terms and the cause of action is a continuous one. 23. NO PRAYER Wherefore, it is humbly prayed that, in the facts and circumstances of this case, this Hon'ble Tribunal / Authority may be pleased to:

- (i) Direct Respondents to allow Third Party expert quality inspection / Third Party expert engineer inspection of the flat at option of the Complainant and any snags, defects if identified shall be rectified by the Respondents immediately with 15 days thereafter;
- (ii) Direct Respondents to immediately give possession / registration of the scheduled property as agreed in Sale agreement and construction agreement along with Occupancy certificate, Completion certificate and all amenities;
- (iii) Direct the respondents to pay delay interest starting from 1.4.2019 as per Section 16 of the provision of the Karnataka Real Estate (Regulation and Development) Rules, 2017 r/w provisions of REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 till date of completion /possession handed over to the complainant along with Occupancy certificate, Completion certificate and all amenities. The highest marginal cost of lending rate of State bank of India as on the date of filing is 8.45 % and thus the effective delay interest rate shall be + 2% i.e., 10.45%;
- (iv) Direct Respondents to pay Rs. 12,00,000/- (Rupees Twelve Lakhs only) as compensation for harassing, creating mental agony, unfair trade practices, negligence towards the complainant;
- (v) Direct the Respondents to pay Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) as cost of litigation and legal expenses;
- (vi) Any other relief which the Adjudicating Officer / Tribunal / Authority deem fit in the facts and circumstances of the case.

PRAYER Wherefore, for the reason stated above, the complainant most humbly prays that this Hon'ble Authority

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03/04/2020

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may in the interim, be pleased to: a) Allow the Complainant to carry Third Party expert inspection / Third Party expert engineer inspection in the flat / apartment and necessary directions and orders may be passed to the respondents for the same and any snags, defects if identified shall be rectified by the Respondents immediately with 15 days thereafter; b) Any other interim relief which the Tribunal / Authority deem fit and proper in the facts and circumstances of the case;

Relief Sought from RERA : Delay interest, Compensation, Inspection & Others

2. In pursuance of the summons issued by this authority Sri Abheek Saha Advocate has appeared on behalf of the complainant. Sri Prakash Hegde Advocate has appeared on behalf of the developer first and second respondents. Other respondents remained absent.
3. The complainant has filed this complaint against 7 respondents alleging that R.3 to R7 are the directors of the first respondent and as such they are also developers. Sri Prakash Hegde advocate has appeared on behalf of first and second respondents. The other respondents remained absent in spite of notice served on them.
4. The learned counsel for the complainant has filed an Interim Application under Section 36 and 37 of the Act seeking a direction to the developer to have 3rd party inspection. After hearing the parties the said Interim Application was dismissed by an order dated 22/01/2020. The developer has filed a memo under rule 30 stating that the present format of complaint is not in accordance with rules framed there under. After hearing the parties the same memo was dismissed by an order dated 17/02/2020.
5. After filing the objections to the main matter by the opponent the matter stood for arguments. However the learned counsel for the complainant has taken summons to PDO of Mandoor Village panchayath to speak on the Occupancy Certificate dated

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01/08/2019 issued by Mandoor Gram Panachayath. However the said Official has failed to appear despite of service of summons issued by this authority. Even though he has not appeared but sent a requisition to grant some time to appear for the said purpose. The learned counsel for the complainant has discarded the same and proceeds to submit his argument by reserving his right to summon him in case situation warrants.

6. The case was set down for arguments on 31/03/2020, but due to lock down the case was not called on that day. After lock down was lifted the hearing date was fixed on 12/06/2020 and on that I have heard the arguments in part. In the meanwhile as per the office order the case was heard through virtual hearing by using Skype and reserved for judgment. .
7. The point that arise for my consideration are:
 - a) Whether the complainant proves that he is entitled for delay compensation as sought in his complaint?
 - b) If so, what is the order?
8. My answer is affirmative for the following

REASONS

9. The complainant has entered in to an agreement of sale with the developer on 28/03/2018 in respect of flat bearing No. D-1307, 13th floor, Tower D of building 1. As per the agreement the developer has agreed to complete the project on or before 31st March 2019 but the developer has failed to complete the same and as such this complaint is filed seeking for delay compensation. It is his further case that the developer has given the possession of the same on 2nd February 2020 but amenities are still not provided with some

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snags. According to complainant there is delay of 10 months 3 days in putting him in possession of the same and as such he is entitled for the delay compensation for the said period.

10. In the present case some of the important admissions are there. The complaint is the consumer is not in dispute. The agreement of sale was executed on 28/03/2018 is also admitted. The complainant has taken the possession of the unit on 2nd February 2020 is also admitted. The complainant has referred to delay compensation which has been offered by the developer but not admitted the same means the developer is aware that he is liable to pay delay compensation. It means the complainant is entitled for delay compensation is proved but the only question is as to how much compensation and from which period.

11. Against the case of the complainants the respondent has submitted so many points on different angles. I am going to answer to those points which have been raised by him during the course of arguments. According to complainant the dead line given by the developer was 31/03/2019 but the developer says that the complainant has agreed for the completion period as 36 months with 6 months grace period. At the time of argument Sri Prakash Hegde submitted that there is no delay as alleged by the complainant since 42 months to be computed from the date of agreement, but it is not correct. In this regard the learned counsel for the complainant has drawn my attention to the clauses of agreement. He submits that Completion Period and Completion Date are separately defined under clause 1(1.1) of the Sale and construction agreement dated 28/03/2018. Where the completion period is the total period required for the completion of the project from date start of construction of the entire project to the end and

Done
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the period has been expressly described under clause 13.1 of the sale and construction agreement dated 28/03/2018 as 36 months. Now the respondent during arguments submitted that this 36 months period starts from the date of execution of agreement which is not correct. In this connection I shall see the definition clause at page No. 4 and 5 of the agreement where clause i and j are very important.

Definition Clause

i:- completion period shall mean the time period specified in clause 13.1 of this Agreement for completion of the project.

Definition Clause j:-

Completion date means 31.03.2019 for phase -1

Now we shall read clause 13.1 at page No. 11

COMPLETION OF THE PROJECT:

13.1: That in the absence of conditions relating to force majeure and/or breach by the purchaser/s in compliance of the obligations under this Agreement, the builder will complete the construction of the PROJECT within 36 months with an additional time of six months grace period(COMPLETION PERIOD) It is clarified the completion period is the actual duration required for completion of construction of the project and in independent of the completion date.

12. I fully agree with the argument placed on behalf of the complainant. The difference between Completion Period and Completion date has been clearly defined in the documents and as such the argument submitted by the counsel for the developer has no force.

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13. In view of the same it is to be noted that the deadline given by the developer to the complainant in the agreement of sale was March 2019. It is an admitted fact that the possession was given on 2nd February 2020 means it is not in accordance with the terms of agreement of sale since it was to be completed on or before March 2019.
14. Against the case of the complainant the respondent has contended that the clauses contained in two agreements entered into between the parties, i.e., the Sale Agreement and Construction Agreement to be read. In this regard it is submitted that the complainant has given agreement to the land owner to purchase UDS and agreement given to the promoter to construct the flat. In view of the same the promoter is only a contractor to build the house in accordance with the plan. The landowner who has received the amount to give land is necessary party. Further Sri Hegde submitted that respondent No. 3 to 7 are nothing to do with this project and they are not necessary parties. By taking two types of argument it is his submission that the present complaint is bad for non-joinder of necessary parties and bad for mis-joinder of parties. By highlighting this aspect the learned counsel for the developer submits that the present complaint is not maintainable and the same is liable for dismissal. But the same is not acceptable for the simple reason that there is no need to make the land owner as party since the developer as defined in the Act covers the plea taken by the developer. He is bound to answer to the claim of the complainant. There is a provision to file an affidavit in form B while filing the application for registration of project where he sworn to a fact that he will not discriminate between the allottees. When that being the case now the developer cannot contend that the complainant has not given authority to him regarding the land.

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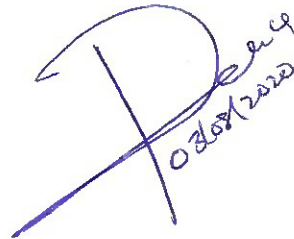
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I would say that there is no concept of construction of agreement itself. Under the above circumstances the developer cannot argue that the complainant has agreed to construct the flat by the developer and agreed to buy land from the land-owner. I would say that the argument placed before me is fully against to the definition of "promoter" as defined in S.2(zk).

15. I would like to say that section 18 clearly provides for payment of compensation where the promoter has failed to give possession in accordance with the terms of the Agreement to Sell or as the case may be, duly completed within the date specified therein. It is pertinent to note that the statute has been clearly drafted to indicate that where possession is not handed over by the developer within the date specified in the agreement, the other terms of the Agreement to Sell are not relevant. Therefore, the argument of the respondent does not hold water.

16. It is the case of the developer that the complainant is not entitled to the relief as prayed for in sub-paragraph No. (i) and (ii) of the prayer column since it amount to specific performance of the condition of the agreement which is covered by Section 12,14,18 and 19 of the act. It is his submission that this authority cannot issue any such kind of direction for the specific performance of the contract for which this authority has no jurisdiction. S.18 and 19 of the Act have been replaced to give possession of the unit agreed in the agreement of sale which is an alternative to the Specific relief Act and as such the contention taken by the developer cannot be accepted.


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17. It is his further submission that the amount paid by the complainant is not a sale consideration since he has purchased UDS from the land owner and he has given some contract to the developer to build the flat. I have already said that the definition of the word PROMOTER as per S.2(zk) he cannot raise such kind of defence.
18. It is his further contention that there is no pleading so far as defective title is concerned. I would say that there is no need to plead regarding defective title since S.18(2) speaks about the defective title and there is no limitation to take action against the developer as against the defective title. When that being the case the argument submitted on behalf respondent falls on the ground. It is the liability of the developer to give flats to each consumer with perfect title and he cannot escape from the liability based on technical defect of the complaint. More over here the strict principles of Civil Procedure code and Indian evidence act will not be applicable. Hence, his arguments cannot be accepted.
19. At the time of argument the learned counsel for the developer has raised some more technical points. According to him the Adjudicating Officer has not recorded plead guilty as said in rule 30(2)(d) and points for determination has not been framed and as such the present complaint is not maintainable. I would say that the Sri Prakash Hegde advocate has put in appearance on behalf of the developer by filing his vakalath and also filed a memo under R.30 stating that the complaint is not maintainable. Further he has filed his detailed objections denying his liability to pay the delay compensation. Accordingly the developer has placed his intention to contest the same.

Done
03/08/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

20. It is his further argument that the complaint filed by the complainant is not in accordance with the form which is meant for the said purpose. He also submits that in order to know whether the complaint is filed covering the violation of S.12, 14,18 and 19 or not it should be in the same manner. In this regard it is submitted by the counsel for the complainant that his complaint is as per the rules laid down by Karnataka Real Estate Rules 2017 and the page No. 2 of the complaint mentions the provision of the Act and the rules under which the complaint has been submitted before the authority. Further he submitted that entire complaint when read together clearly reveals that the same has been filed for contravention of Section 12,14,18 and 19 of the Act. Further I say that the contention taken by the developer is not correct since the complainant has applied through online to take action against the erred developer for the appropriate relief. By reading the complaint it is understood what kind of violation he has made and as such there is no need to record separately. Therefore I would say that the developer tried to discard the case of the complainant by raising some technical grounds but his submission cannot be accepted in view of intention of this act. In this regard I would like to take the assistance of some observation made by **HARYANA REAL ESTATE APPELLATE TRIBUNAL** which reads as under:

As per preamble the enactment of the Act was required to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building or the sale of the real estate project in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector and to establish an adjudicating mechanism for the speedy dispute redressal between the promoters/developers and the home

Devi
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buyers. The basic purpose for enactment of the Act was to provide the special platform to the consumers for redressal of their grievances against the defaults and malpractices of the promoters/builders. It was felt that several promoters had defaulted and the consumers who had spent their hard earned money had no specialized forum to approach to get the speedy remedy. Thus, in a way the Act is a beneficial legislation to the consumers but at the same time it also provides certain remedies to the promoters for the recovery of the dues and other matters.

It is the intention of the Act and therefore it shall not be defeated under the colour of technical grounds.

21. Further it is 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 relief. I would say that the developer has utterly failed to connect the events of demonization, trucker strike, shortage of input material and skilled labour and other events which are all main cause for delay. The events took place has no direct bearing on the delay caused to the developer. In my view, the grounds urged by the developer are not having any direct effect on the project.
22. As per the discussion made by me the developer shall pay the delay compensation from the due date and accordingly in the present case the developer has to pay the delay compensation from April 2019 till the date of possession is delivered. Even though the developer has taken the OC in the month of August 2019 but he has given the possession in the month of January 2020 without completing the amenities which is a clear violation of S.19(10) of the Act.

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23. The counsel for complainant submits that in the event the Respondent had performed his obligations and delivered the possession within the specific date of possession, then the complainant could have enjoyed his flat. Advocate for complainant submit that evidently the developer fails to give possession as agreed means he is bound to honour his claim in accordance with the sale agreement. I would say that it is the choice of the complainant either to continue with the project or to demand for delay compensation immediately when the terms of agreement are violated. In the present case, the complainant has opted for delay compensation from the due date.
24. At the time of argument the learned counsel for the developer said that the complainant has sought for Rs. 12,00,000/-towards harassment, creating mental agony and unfair trade practice. He further submits that there is no logic on this prayer as to how he is entitled for the same when it is not within the power of RERA authority. I find some force in this argument. The authority has to look into the other aspects while determining the quantum of delay compensation by going to S.72 of the Act. The Adjudicating Officer has to take into consideration as to management of the money collected from the allottees. If there is no proof of disproportionate gain or unfair advantage made by the developer from the amount collected from the allottees or invested the money in any of other project then the question of grant of compensation under the colour of unfair trade practice does not arise. I would say that the complainant never alleged against the developer on any count as mentioned in S.72 of the Act. When that being the case as rightly argued by Sri Hegde the complainant is not entitled for the prayer

[Handwritten signature]
D. Hegde

of Rs. 12,00,000/-as compensation apart from S.18 of the Act. Further the Hon'ble Apex Court Has said as under:

When compensation for mental agony can be granted: - in the case of Ghaziabad Development Authority v. Union of India, (2000)6 SCC 113 wherein whilst considering a case of breach of contract under Section 73 of contract Act, it has been held that no damages are payable for mental agony in case of breach of ordinary commercial contract.

It is the case of the developer that he has obtained the occupancy certificate in the month of August 2019 and hence he has called the complainant to take sale deed.

25. It is also his allegation that the complainant has failed to make final payment and not ready to take sale deed. At this stage it is better to discuss some facts. The learned counsel for the complainant has raised his voice against this Occupancy certificate on the ground that the said OC was issued by a non-competent authority. In this regard he has made an attempt to call the PDO of Gram Panchayath to speak on the said document. But unfortunately the said official has not appeared on the ground of accidental works in connection with covid-19. The learned counsel for the complainant also has not taken any further steps on this aspect. However I say that there was no need to call the PDO of gram panchayth since it is not correct on this authority to say as to the competency of issuance of said document. The complainant had to question the validity of the same before the competent authority. It means there is an Occupancy Certificate which proves of completion of project. It is alleged that the developer has not completed the works to make the flat as habital one. Further as per S.19(10) of the Act, the possession shall be delivered within two months from the date of

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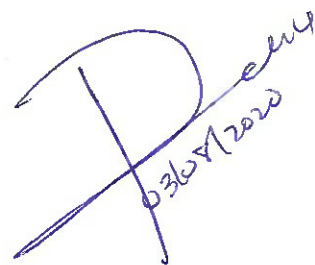
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OC but here the possession was given in the month of January 2020 which is in violation of S.19(10) and hence, the developer has to Delay compensation from April 2019 till the date of possession is delivered.

26. At the time of argument it was brought to my notice that the developer has issued notices to the complainant by demanding to pay holding charges for late payment of instalments or amount payable to him. I would say that there is no concept like holding charges. As per S.19 (6) (7) of the Act there is a liability on the developer as well liability on the allottee with regard to payment and other aspects. The developer has to follow the same and thereby the developer shall not go beyond the same and as such any amount which is not covered by the Act becomes illegal and as such the developer has to demand only amount legally payable by the complainants. With this observation I allow this complaint in part.

27. As per Section 71(2) of the Act the complaint shall be disposed of within 60 days. This complaint was filed on 10/10/2019 where the parties have appeared 21/11/2019. The counsel for the complainant has filed an Interim application. Per contra the developer has filed a memo under rule 30. After hearing parties on these two interim applications and after receiving the objections and the matter was posted for arguments on 31/03/2020. In the meanwhile on account of natural calamity COVID-19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2010. In view of the office order the case was called through Skype and finally heard the parties and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.

A handwritten signature in blue ink, followed by the date '03/07/2020' written vertically.

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ORDER

- a) The complaint filed in CMP/191010/0004378 is hereby allowed.
- b) The developer is hereby directed to pay delay compensation on the total amount paid by the complainant towards purchase of flat @ 2% above the MCLR of SBI commencing from April 2019 till the date of possession is delivered. (MCLR to be calculated @ which is prevailing as on today)
- c) The developer is also directed to pay Rs. 5,000/- as cost to each case.
- d) Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 3/08/2020).

(K.PALAKSHAPPA)
Adjudicating Officer.

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