ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority, Bengaluru

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

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

K.PALAKSHAPPA

Adjudicating Officer

Date: 03rd February 2020

Complainants

1. CMP/190508/0002951
   Nithin George
   B901, Oceanus Monarda, Kasavanhalli
   Main Road, Off Sarjapur,
   Carmelram P.O.
   Bengaluru-560035.

2. CMP/190420/0002717
   Chintu Raju & Neelu Sara Roy
   C301, Oceanus Monardan
   Kasavanahalli Carmelram P.O
   Bengaluru-560035.

3. CMP/190512/0002985
   Balaji Palekar
   Cerner Healthcare, 9th Floor, Wing B,
   Block H2, Manayata Tech Park,
   Nagawara, Bengaluru-560045.

4. CMP/190412/0002622
   Ananda A. Patel& Sarita Patel
   WLS053, DLF Woodland Heights
   Rajapura, Jigani, Anakal
   Bangaluru-560105.

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5. CMP/190514/0003013
   Pankaj Kumar Baranwal
   H2, Rank Residency
   Bengaluru-560093.

6. CMP/190506/000 2816
   Rupesh Karun
   Venus Apt, Flat No:3A, 14th Cross
   GM Palya, Byrasandra
   Bengaluru-560075.

7. CMP/190513/0002994
   Vishakha Priyadarshini
   E3, Rank residency, 6th G Cross, Balaji
   Layout, Kaggadasapura
   Bengaluru-560093.

8. CMP/190509/0002959
   Subhasis Nayak
   Flat109, Vidya Heritage Plaza, 29/3
   30, Doddanekundi Main Road,
   Off Outer Ring Road,
   Bengaluru-560037.

9. CMP/190507/0002834
   Piush Agnihotri
   Flat 601, Tower 7, Sunworld Vanalika
   Sector 107, Noida
   Gautam Buddha Nagar-201301

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10. CMP/190514/0002987
Debadis Mishra
Om Sai Arcade, House No-205,
Block-B, Kalarahang, Naer Patia
Railway Station, Bhubaneswar, Odisha
Khordha-751024.

11. CMP/190419/0002688
Rishi Bhargava & Ayushi Singh
F1002, Shriram Signiaa Apt.,
Neeladri Road,
Electronic City Phase-1
Bengaluru-560100.

12. CMP/190408/0002610
Nishant Kumar
M709, 7TH Floor, Brindavan Palms
Naganathapura
Bengaluru-560100.

13. CMP/190424/0002670
Rajanikanth Lakkoju & Asha Lakkoju
B-4 Saveria Winston Kadubeesanahalli
Bengaluru-560103.

14. CMP/190512/0002995
Shashank Tripathi
842, 5th A Cross,
Vijaya Bank Layout
Bengaluru-560076.

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All the complainants are represented by:
Shri. Nishanth, Advocate.

AND

Respondent : Parkway Homes LLP
No.10, 5A Block, 17th B main
Koramangala
Bengaluru -560095
Represented by: Shri. Samarath, Advocate.

JUDGEMENT

1. The complainant in Complaint No.CMP/190515/0002951 has filed his complaint under Section 31 of RERA Act against the project "Park way Homes" developed by PARKWAY HOMES LLP., seeking the relief of Delay compensation from the developer.

2. At this stage I would like to say that there are 15 similar cases filed against the same builder and all of them have been taken for common disposal. The learned counsel for the complainant has given a list stating that the complaints bearing Complaint No. 2951, 2717, 2985, 2622, 3013, 2816, 2994, 2959, 2834, 2987, 2688, 2610, 2670, 2995 and 2906, are having the completion date as 31/03/2016 where as complaints bearing complaint no. 2610, 2670 and 2995 are having the completion date as 30/06/2016. Even though the complaints have filed their respective complaints but the common relief sought by them is for delay compensation as main relief. Therefore all the complaints have been taken together as per the submission made by both the parties and passing common judgment.

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3. Sri Nishantha Advocate has appeared on behalf of all the complainants. Sri Samarth Advocate has appeared on behalf of the developer.

4. After issuing notice to the developer, the parties have appeared. At the first instance the developer has filed an I.A. under S.8 of Arbitration Act which was later dismissed. The developer took time to file objection statement and finally the developer has filed objection statement. Further the advocate for complainants has filed the rejoinder.

5. I have heard the arguments on behalf of the complainants. The developer submitted his arguments on merits and also filed his written arguments. The complainant also has filed his written arguments.

6. In view of the same, I have heard and posted the matter for judgement.

7. The point that arise for my consideration is

   a. Whether the complainants prove that they are entitled for delay compensation and other reliefs?

   b. If so, what is the order?

8. My answer is affirmative in part for the following

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REASONS

9. All the complainants have filed their respective complaints seeking the relief of delay compensation. It is the case of the complainants that the developer is liable to pay delay compensation as per the agreement since the developer had to complete the project on or before 31st March 2016 with 6 months grace period means the completion date for the project was September 2016 to some of the complainants and the due date was 31/12/2016 to some of the complainants.

10. At this stage I would like to say that the developer has filed objection statement denying all the allegations. However when I perused the papers I found that the developer has taken different kinds of defence. But I would say that those defences are no good grounds to hold that the developer has been prevented from completing the project. The events are not having any direct bearing on the completion of the project. It was agreed in Clause 6.1 of the Construction Agreement that the Respondent would hand over the apartment by **March 2016** with 6 months grace period for the first 11 cases and June 2016 with 6 months grace period to other cases.

11. The Respondent has said that as the Section 18 of the Act is prospective in nature the Complainants are not entitled for compensation as claimed, but the same was strongly opposed by the complainants and submitted that Section 18 of the Act clearly provides that it is applicable to all on-going projects under the ambit of the Act. Judicial decisions have also held that the calculation of compensation for delay must be in accordance with Section 18, *i.e.* from the date of possession as promised in the agreement. No distinction can be drawn on the application of Section 18 between on-going and freshly commenced projects since the wording of the statute is devoid of such a distinction. Therefore,

untenable and holds no water. Respondent has contended that the Act came into force after the parties have entered into Agreement and therefore, the provisions of the Act are not applicable to the previous transaction. It has also been argued that Section 18 is a penal provision that cannot be applied retrospectively. These arguments are without any merit in the light of express provisions of the Act that applied to on-going projects. Further this authority already has held in so many cases that the present act is applicable to all on-going projects. Further it is not a penal provision since it is meant to compensate the aggrieved person.

12. Section 18 of the Act provides that in the event the promoter fails to complete or is unable to handover possession of an apartment, plot, or building as the case may be in accordance with terms of the agreement entered into between the parties, the allottee is given the right to claim either delay compensation or to withdraw from the project by demanding refund of the amount. As evident from the object and wordings of the Section, the very purpose of Section 18 is to compensate the Complainants for any delay caused in handing over the possession of the flat, plot or building as the case may be.

13. As against the case made out by the complainants it is the case of the developer that the Respondent has launched a construction project in 2014 called Parkway homes developed by SJR Prime Corp Project, situated at Doddanagamangala Village, Begur Hobli, Bengaluru South Taluk, Bengaluru (**"Project"**) for construction of residential apartments. The project was divided into 2 phases. It is submitted that both phases of the project of the respondent is registered with this authority and the authority has approved the date of delivery for two phases is 18/03/2019 and 18/06/2019 respectively. It is relevant to note that the project as on 29/10/2018 (Phase-1) and 04/01/2019 (Phase-2) itself was fully completed and ready for occupation. The Occupancy certificate has also been issued by the B.D.A on 29/10/2018 and 04/01/2019 evincing the fact that the project is completed and ready for Occupation. It is the argument of the respondent that he has

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received the occupancy certificate even earlier to the date as mentioned to the registration authority and as such there is no force in the claim of the complainants for delay compensation. From this kind of defence one thing is clear that now the developer has completed the project and it is his submission that the complainants cannot seek any kind of compensation in view of receipt of CC.

14. In this regard the developer has taken defence by reading clause 6.1 and 6.4 of the construction agreement which clearly states as follows:

> *" 6. COMPLETION & DELIVERY OF POSSESSION:*
>
> *6.1 The possession of the Schedule `C' Apartment in Schedule `A' Property will be delivered by the First Party to the Second Party by March 2016 from this day, with six months grace period. Though every effort will be made to obtain electrical, water and sewerage connections within the stipulated time, no responsibility will be accepted by the First Party for delays in obtaining such connections, Clearances, Occupancy and other Certificates from the statutory authorities and Second Party shall not be entitled to claim any damage/ losses/ interest against the First Party on the ground such delay. The Second Party shall however pay the consumption charges as per bills raised.*
>
> *"6.4 In case of any proven willful delay in delivery of the apartment for reasons other than what is stated above, the First Party are entitled to a grace period of six months and if delay persists, the First Party shall pay the Second Party, as damages a sum equal to Rs. 3/- (Rupees Three Only) per Sq.Ft. per month of the super built-up area of the Schedule 'C' Apartment at the time of possession subject to conditions that:*
>
> *a) Such delay shall not be attributable to reason/s mentioned in clause 6.2. and 6.3 above;*

b) The Second Party has/have paid all amounts payable as per this agreement and within the stipulated period and has not violated any of the terms of this Agreement and Agreement to Sell;

d) The delay is proved to be willful delay on the part of the First Party. However, if the delay is on account of Second Party seeking modifications in Schedule 'C' Property there is no liability on the First Party to pay any damages as aforesaid."

15. It is submitted that complainants have defaulted in making timely payment to the respondent for which the respondent is entitled for interest as well as also entitled to cancel the agreement in terms of the agreement. Due to default on the part of the complainants in making timely payment to the respondent, the respondent herein have suffered huge loss, which is completely attributable to the complainants. Instead of making the payments, the complainants have filed the present complaints only to avoid making payments which is lawfully due to the respondent. Per contra the learned counsel for Complainants submits that compensation must be given to the Complainants under the provisions of Section 18 of the Act and submits as under:

a. The Act mandates that compensation must be given if there is any delay in handing over of possession by the Respondent. The Complainant submit that the delay in possession by the Respondents clearly fall within the scope of Section 18 of the Act. Section 18(1)(a) clearly specifies that compensation should be "in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein" if the Respondent is unable to give possession. The wording of the section is unambiguous as to its scope. Any calculation of compensation for delay must be from date of Agreement to date of handover of possession.

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16. Based upon the same it was the submission on behalf of the complainants that they are entitled for the relief of compensation as a statutory right. But the advocate for Respondent has extensively argued that Section 18 can apply only after the default found to the date given by the Respondent while registering the project with RERA. 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)**. Further this authority has already said in so many judgments holding that the date given in the agreement of sale is the date of completion and as such the date given by the developer to RERA for registration of his project cannot be considered since the date given while registering the project is relevant for the limited purpose of the regulatory role of the RERA and for the purposes of imposing penalties in terms of Chapter VIII of the Act. Significantly, it does not allow the Respondent to override the provisions of the agreement. This position is settled by the decision of the Bombay High Court in ***Neelkamal Realtors v. Union of India*** **WP 2737/2017 (para 256)**. The relevant portion of the judgment reads:

> *"Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(l)(C) enables the promoter to give fresh timeline 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.... If the allottee does not intend to withdraw from the project, he shall be paid by the*

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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."

17. In the present case, the Construction Agreement, in Clause 6.1 states that the date of possession is March, 2016 with 6 months grace period. The Respondent has not given possession to the Complainants as agreed in the agreement 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.

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

*A similar decision has been made in **Subodh Adikary v. Reliance Enterprises (COMPLAINT NO: CC006000000055349)** delivered by the MahaRERA.*

18. It is the case of the complainants that in the event the Respondent had performed his obligations and delivered the possession as per the stipulated date mentioned in the Agreement, the Complainant could have rented out the flats and could have earned rent. The learned counsel for the developer has opposed this position and submits that the Act is not only meant to hear the grievance of the consumer but also the authority has to look into the difficulties faced by the developer. There will be no intention to cause delay to

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the consumer but some of the events causes obstruction to the developer to go ahead with the progress of the work. He has narrated so many such events and submitted that the delay has been caused because of those reasons and there was no any wilful delay in completing the project. Now I would like to go through the same which is narrated by the developer in his written arguments.

19. It is submitted that in terms of the construction agreement, respondent is entitled for extension of time in handing over of the possession on happening of two events:

a) *Any event under Clause 6.2 of the Construction Agreement;*

"6.2 The First Party shall not be liable if they are unable to complete the construction of the Building and/or the Schedule "C" Apartment and deliver possession by the aforesaid date by reason of non-availability of cement, steel, sand, bricks and other construction materials, civil commotion, or by any Act of God or if ***the delay is a result of any Rule, Notification of the Government, Municipal Authority, plan sanctioning authorities, any Court and/or any other public or Competent Authority prohibiting development and/or construction activities or for reasons beyond the control of the First Party*** *and in any of the aforesaid events, the First party shall be entitled to extension of time for delivery and possession of the completed apartment and the onies till then paid by the Second Party under this Agreement shall not be refunded or be entitled to any interest."*

b) *Force Majeure;*

The Purchaser/s agrees that in case the Vendors/Builder are unable to deliver the said Flat to the Purchaser/s for his/her/ its occupation and use due to (a) any legislation, order or rule or regulation made or issued by the Government or any other authority; or (b) if any competent

authority(ies) refuses, delays, withholds, denies the grant of necessary approvals for any reason whatsoever, or (c) if any matters, issues relating to such approvals, permissions, notices, notifications by the competent authority(ies) become subject of any suit/ writ before a competent court, or (d) due to flood, other natural disasters, war, insurrection, epidemic, revolution, riot, terrorist attack, governmental restrictions or so forth which are beyond the reasonable control of the Vendors/ Builder, or (e) ***any other circumstances beyond the control of the Vendors/Builder or its officials, then the Seller may cancel the allotment of the said Apartment/ Flat in which case the Vendors/Builder shall only be obliged to refund the amounts received from the Purchaser/s without any interest."***

20. In addition to it, the developer also given some of the circumstances preventing him from completing the project on time line as scheduled.

21. Firstly, delay in obtaining Government and statutory approvals will have to be said to be the main reasons for delay. Delay in obtaining Occupancy Certificate from B.D.A due to new rules or regulations enacted by the Government have been one of the major reasons for delay. The Respondent has applied for O.C in the month of July 2017 and due to delay in processing by the said authority the O.C came to be issued only on 29/10/2018 and 04/01/2019, the same has to be said to be completely out of the control of the Respondent.

22. External Modifications: It is submitted that the Customers jointly sought for several external modifications in the Project. These included modification to the painting of the building, tiling (internal and external), and height of all parapet walls from 3 meters to 8 meters, various electrical switch points costing for each individual

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customers about 1-1.5 lakh. For this to be executed there is an internal process that must be followed for the modification to be approved. Thereafter, adequate material needs to be procured and then labourers must be mobilized accordingly. When modification is sought for, it is to be communicated by the customer to the Customer Relations Management (CRM) Team, the CRM team thereafter forwards the modification sought to the Project Manager/Site Engineer who has to analyze whether the modification is feasible in terms of structure. If the Project Manager believes that the modification requires a design change or approval, it is forwarded to the internal architect. Once the Project Manager approves the same, it must be forwarded to the Quantity Survey team who conducts rate analysis, which is determining the cost of the modification. This is thereafter forwarded back to the CRM team to share with the Customer. The customer then must agree to the cost analysis arrived at, if not the customer will negotiate better price and the process is repeated. When modifications are sought for at the initial stages of construction, it is easier to incorporate the changes as it is only a basic structure. However, once block work begins, any modification requires a considerable amount of time, no matter how small or big the modification is. All the modifications have been sought belatedly by the Complainants. The complainants knowing full well that modifications would increase time for construction have done so at such a belated stage.

23. Thirdly introduction of new demonetisation policy had severely hit the real estate industry. The effect of demonetisation also had a severe impact in the delays caused to the Complainants. The ordered restrictions highly affected fund flows and cash transactions since the transactions were cash based with multiple vendors for the supply of goods, numerous vendors refused to sell goods during the time that there was severe cash crunch in the

economy and refused to accept money through cheques or other electronic means. As a result, the Respondent was severely affected and could not adequately source necessary materials. Crucially, the situation also adversely affected on-site labour since they worked on wages being given in cash and the severe cash crunch also affected the Respondents to continue the mode of payment. As a result, the labourers being mostly illiterate took several days in an attempt to open bank accounts to enable the respondent to make timely payments to them. The effect of demonetisation almost completely halted the construction of the Project for a long time as a result

24. Further, due to the Cauvery water dispute and unrest, the respondent had to stop the construction work for a considerable period of time. Bangalore also experienced several strikes and roadblocks, among numerous other inconveniences, on account of the dispute over Cauvery water between Karnataka and Tamil Nadu. The declarations of holidays and strikes resulted in hindrances against the smooth supply of essential construction materials such as steel, cement, and sand.

25. Fifthly, though Goods and Service Tax, while this did not affect construction per se, it affected the procurement of raw materials due to the changes that several vendors had to undertake in their businesses. This affected supplies by various vendors and delayed the projects over a number of months.

26. Sixthly, there was shortage of sand, due to the order passed by the NGT restriction extraction of river sand. The entire construction was completely halted for about 2 months owing to the non-availability of river sand which is an inevitable material for the construction. The non-availability of river sand was due to the

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orders of Hon'ble National Green Tribunal, Chennai, which altogether halted using river sand for construction activities. River Sand being an inevitable material for the construction, the non-availability of the same, brought a standstill in the progress of construction. It is submitted that other builders have also faced similar issues to the Respondent owing to the non-availability of sand which ultimately resulted in prolonging the deadline to hand over the apartment to its customers. The same has also been informed to the complainant during the incident and the Complainants are herein estopped from claiming that they did not have knowledge of the same.

27. The strike called by the Federation of Karnataka State Lorry Owners' and Agents Association, related to sand extraction - one of the essential materials that drives the Respondent's business. On account of the strike, there were several impositions cast on the amount of sand that could be transported and its cost. The vast gap between demand and supply of sand posed as a severe hurdle to speedy construction. The strike went on for over two months, however, the aftermath of it continued for several months after the strike was called off.

28. According to the developer the aforementioned events were beyond his control and as such the delay in completing the project if any, cannot be attributable to him. Further he says that it is the burden on the complainant to prove that Delay if any should be proved to be "willful". There is nothing on record to show that the delay was willful, even assuming that there is any delay? The willful nature of the delay is a significant fact. It must be deliberate and with malicious intent. It is the endeavour of the respondent to complete the project within time as no benefit will be accrued to respondent by delaying the project. 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 It is submitted that if any of the above events occur, it will not be construed as delay in construction and respondent will not be liable to pay any compensation, refund or interest on the same.

29. Further it is submitted that in view of the foregoing, the provisions of the RERA cannot be applied to this Project. The claim for compensation is without merit and requires to be rejected. Furthermore, there has been no delay in whatsoever and therefore the complainant is not entitled to any compensation claimed.

30. After hearing the above arguments submitted on behalf of the developer it is the reply of the complainant that the developer has obtained the OC on 29/10/2018 but till today the developer has not given the compensation to the complainant and as such he has filed this complaint. Admittedly the agreement was entered into on 17/06/2013 where the developer has agreed to complete the project on or before 30/09/2016 including the grace period. According to the developer he has given the date of completion to RERA as 31/03/2019 and 30/06/2019 to his phase 1 and phase 2 respectively. It means he wanted to say that even before the completion date mentioned in the RERA he has taken the occupancy certificate and as such there is no delay. But his argument is not correct to some extent since the date given in the agreement is the date for considering for compensation but not the date as given to RERA. In view of the same the argument canvassed on behalf of the developer is not correct to that extent since there is delay in completing the project from the date of agreement.

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31. Section 18 of the Act provides that in the event the promoter fails to complete or is unable to handover the possession of an apartment, plot, or building as the case may be in accordance with the terms of the agreement, the allottee is given the right either to withdraw from the project, without prejudice to any other remedies available, be entitled to the amount paid by him/her for the said project, along with interest as applicable or he/she shall be paid interest for every month of delay in case of continue with the project till the handing over of possession, at such rates as may be prescribed. As evident from the object and wordings used in Section, the very purpose of Section 18 is to compensate the Complainant for any delay caused while completing the project and handing over of possession of the unit. It is also pertinent to note that the legislature has prescribed the rate of interest by referring to prevailing market rates, to compensate for the interest rate loss suffered by innocent homebuyers either in repaying the interest on the home loans, or on account of losing interest on their savings they have invested.

32. Even though the complainant has sought for the above reliefs but the main argument canvassed with respect to delay compensation. Therefore the developer has filed additional written arguments with some annexure in support of the contentions taken in the objection statements. For which the Learned Counsel for the complainant has filed his re-joinder on 16/12/2019.

33. I would like to say that the effect of demonetization, GST are not having any direct effect on the project, because both Acts came to be implemented subsequent to the due date given by the developer. Further as rightly pointed out by the complainant that the developer has failed to prove the relationship of these effects on his project.

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34. The Respondent contends that the RERA is not applicable to the present case as there is no 'Agreements for Sale. The Respondent has urged that the RERA does not envisage application to a situation where sale has been affected by a combination of an 'Agreement to Sell' and a 'Construction Agreement' and applies only to those agreements strictly titled as 'Agreement for Sale' contained in a single document. It is submitted that the Respondent's argument is against the basic principles of contract law and against the basic rules on interpretation of statutes. The RERA itself does not require an agreement of sale (as defined in the Act) to be contained in a single document. It is settled contract law principle that an agreement only needs to have *consensus ad idem*, and such consensus can be evident from a written contract, an exchange of correspondence, an oral understanding or even actions of the parties. The RERA does not manifest any intent to deviate from this settled contract law principles. Therefore, any agreement which classifies as an agreement for the purposes of contract should suffice, irrespective of whether they are contained in a single document or otherwise. It is for this reason that in the definition of an 'Agreement for Sale' in sub-section (c) of Section 2, the RERA defines 'Agreement for Sale' as "*an agreement entered into between the promoter and the allottee*". This includes within its definition any agreement that results in sale of an apartment for consideration, including one effected by means of two documents *i.e.* Agreement for Sale and Construction Agreement – where the two composite parts are part of a single indivisible transaction.

35. In complete desperation, the Respondents has argued that Section 13(2) of the Act specifies the requirement of an Agreement for Sale, and any agreement that is bereft of these requirements is not an agreement of sale under the Act. This is an argument that is unsupported by Section 13(2) itself. The said section clearly

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mandates that its application is limited to the Agreement for Sale referred to in Section 13(1). It is submitted that Section 13(1) applies to projects that began after the RERA came into force and not ongoing projects under Section 3. In any case, a combined reading of the Construction Agreement and the Agreement of Sale in the present case would clearly show that the two documents are in facts one contract with all the elements mentioned in Section 13(2).

36. The interest rate provided in Section 18(1)(a) is to compensate the Complainant for the loss of interest suffered on account of the delays in the Project. Specifically, it is meant to compensate a home buyer for either (a) the interest being paid by the Home Buyer to financial institutions for home loans availed; or (b) the interest lost on account of diverting savings (which would have otherwise been capable of earning interest) into the project. This loss is assumed by the statute because it is self-evident and therefore need not specifically be proved.

37. The Act, in Section 88, clearly specifies that the scope of the Act is only "*in addition to, and not in derogation of*" the provisions of any other law in force. In light of this clear and explicit provision, the Complainant has also sought for compensation for loss in rental income as available to it under Section 73 and 74 of the Contract Act, 1872 as being a damage suffered as a result of the Respondent's breach of the Contract between the Complainant and the Respondent. These provisions entitled the victim of the breach of contract to be placed in the same position, by way of compensation, if the contract were to have been performed.

38. It is submitted on behalf of the complainants that RERA is a beneficial legislation, enacted by Parliament with an overwhelming public policy objective to protect consumers from unruly promoters

and developers who delayed handover of possession from the date stipulated in agreements entered into with allottees. The Act specifically requires application to ongoing projects, and also encapsulates any projects that have not received the certificate of completion at the time of it coming into force. A developer cannot escape liability from such a legislation by relying on a past one sided contract. Any provision in the contract which seeks to override a mandatory provision of law (here, the RERA) would be volative of public policy and therefore void to that extent. This proposition of law is now well settled and has been summarised thus by the Allahabad High Court in *Dr. K Gopal v. Sudashan Devi Bhatia* 2012 (4) AWC 4084:

> *"It is, thus, seen that the 1947 Act or the 1972 Act are not merely laws meant to confer certain benefits on a limited class of people but they are Acts based on public policy for achieving a public purpose and the object of such Acts cannot be achieved if the parties are allowed to contract out of it. The provisions contained in the said Acts do not of admit any exception by a contrary contract executed between the parties. Where the protection is for the benefit of party and public policy is not involved, such protection can be waived and but where the protection is based on public policy, the parties cannot agree to disregard it by an agreement because [it will] make the provisions of the Acts redundant. Every Act may have a "policy" behind it, but every Act may not to be based on "public policy". Public policy comprehends protection and promotion of public welfare. It is a principle of law, under which freedom to enter into a contract is restricted by law for the good of the community."*

39. Further, the purpose of the Act would be defeated if the developer is allowed to rely on past contractual provisions that are not in conformity with the wording and object of RERA. Further, it is

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pertinent to note that the Act prohibits any exception from payment of compensation for delay in handing over the possession from the date of the contract, except where permitted by the Act itself. Therefore, the Respondent cannot rely on the terms of the Contract to avoid statutory liability.

40. The arguments submitted on behalf of the developer which was perfectly met by the complainant by saying that it is a well-established proposition of law that in order to prove delay, a party must demonstrate:

(i) *that the event of delay actually occurred;*
(ii) *the event of delay impacted identifiable activities on the project;*
(iii) *the impacted activities were crucial to, or lay on the critical path of the project thereby impacting overall project completion; and*
(iv) *the overall impact on the project could not be mitigated.*

41. However, the Respondent has completely failed to discharge its burden of proof. The Respondent has failed to show how any of the listed events in its Reply are "beyond the reasonable control" of the Respondent. 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 on events not directly affected by any event of delay.

42. All of this clearly indicates that the Respondent is liable for the entire period of delay on this Project. Further he has not discharged his burden of proof and miserably and maliciously attempted to place the blame of its own failures on the Complainant. In these

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circumstances, none of the wholly baseless grounds raised by the Respondent should be given any credence.

43. However the complainant has sought not only delay Compensation but also other reliefs which are as under: at this stage I would like to take first case for explanation and in rest of the cases figures may be different for each item.

1) Loss in rental income of Rs. 9,12,000/-

2) Loss in Tax Benefit of Rs. 1,00,000/-

3) Excess amounts under GST paid due to delay of Rs. 72,523/-

4) Mental agony and hardship caused by the builder of Rs. 5,00,000/-

5) Any legal costs incurred as a result of this litigation.

I would say that the developer has given his own reasons for causing delay. In order to consider the prayer for either delay compensation or refund of the amount, the authority has to look into Sec.72 of the Act. In case, there is allegation against the developer for misappropriation of the amount paid by the allottee or investment of this amount by the developer into some other project, then the developer is not entitled for any kind of concession. At the time of argument it was submitted on behalf of the developer to the effect that there was no wilful default on the part of the developer. Further it is submitted that the developer had taken Occupancy certificate very much earlier to the date given to the RERA at the time of given to the RERA. Of course, there is no wilful delay, but in Sec.18 the only point is that whether the developer has been able to give possession within the due date as mentioned in the

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agreement or not. Here, there is delay, but same delay is not attached with any allegations covered by Sec.72 of the Act. Moreover, the occupancy certificate also has been taken by the developer goes to show his bonafideness. Therefore, by looking into the circumstances of the case, I would say that the complainants are entitled for the delay compensation from the due date till 29/10/2018.

44. So far as, relief under the mental agony is considered. The Hon'ble Apex court has held 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. The Supreme Court considered the case of Lucknow Development Authority AIR1994 SC 787and held the liability for mental agony had been fixed not within the realms of contract but under principals of administrative law. In this case the awards towards mental agony was deleted on the ground that these were no pleading to the effect and no finding on that point.*

As per agreement, the completion date was September 2016 to some cases and December 2016 to some cases. Within two years, the developer has been able to get the occupancy certificate. Therefore, I would say that the complaints are partly allowed by granting the compensation by rejecting the prayer for other reliefs.

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45. As per Section 71(2) of the Act the complainant shall be disposed of within 60 days. All the above complaints have been filed on different dates. Generally the complaints will have to be disposed off from the date of appearance of the parties. In the month of June the parties have appeared. The learned counsel for the developer has filed an IA under the Arbitration Act with a prayer to refer the matter to arbitrator. After hearing the parties the same was dismissed. Afterwards the developer took much time to file objections. Further there are 14 cases which have been clubbed with this case. The parties have filed their written arguments and rejoinder and because of these reasons much time has been consumed by the parties. For the above said reasons it was not possible to complete the judgement within 60 days. Hence, I proceed to pass the following :

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ORDER

The complaints filed in CMP/190508/0002951, CMP/190420/0002717, CMP/190512/0002985, CMP/190412/0002622, CMP/190514/0003013, CMP/190506/0002816, CMP/190513/0002994, CMP/190509/0002959, CMP/190507/0002834, CMP/190514/0002987, CMP/190419/0002688,

Are allowed by directing the developer to pay the delay compensation on the amount paid as on September 2016 @9% p.a. from October 2016 till 30/04/2017 and @ 2%p.a. above the MCLR of SBI commencing from 01/05/2017 till 29/10/2018.
CMP/190408/0002610, CMP/190424/0002670, CMP/190512/0002995

Are allowed by directing the developer to pay the delay compensation on the amount paid as on December 2016 @9% p.a. from January 2017 till 30/04/2017 and @ 2%p.a. above the MCLR of SBI commencing from 01/05/2017 till 29/10/2018.

a. The developer is also directed to pay Rs. 5,000/-as cost of each case.
b. The original shall be kept in CMP/190508/0002951
c. Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 03.02.2020)

03/02/2020

K.Palakshappa
(Adjudicating Officer)