

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

Dated: 3rd August 2020

Complaint No.	CMP/191010/0004308
Complainants :	1. Sarvesh Tiwary 2. Janapriya Sai Darshan, Flat No. 4247, Opposite to Shell Petrol pump, Segahalli, Bengaluru-560037. 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 No. 40/43, 4 th Cross road, 8 th Main road, RMV extension, Sadashivanagar, Bengaluru-560080.

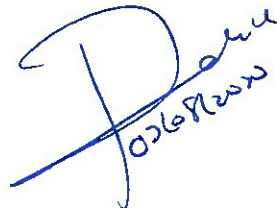
Devi
03/08/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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	<p>R-4 Rajesh Yashwant Shirwatkar Director Sri Vision towers Private Limited And Director, Shri Prop Homes Pvt., Ltd., 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., 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, Sadashivanagar, Bengaluru-560080.</p> <p>R-3 to R-7 remained absent</p>
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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. Their complaint reads as under:

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 23th April 2015 was executed between the Complainant and the Respondent wherein the complainant booked an apartment bearing flat no. F-807 in 8th Floor, Tower F of Building 1 area measuring 113.80 sq. meters / 1225 sq. ft. of super built up area and right to use 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. 52,13,407/- (Rupees Fifty Two Lakhs Thirteen Thousand Four Hundred & Seven Only) (inclusive of Taxes and other charges but except stamp duty and registration fees) as per the sale agreement dated 23th April. 2015 and as per the latest statement of account dated 23rd Sept., 2019 towards the flat and land along with proportionate undivided share of land, construction cost and other miscellaneous expenditure.

The First party shall obtain commencement certificate, complete construction and deliver the possession of Schedule C Apartment in the Schedule property A in accordance with the specifications to the second party on or before December 2017 with an additional 6 (six) months grace period. Clause 6.4 of the construction agreement states: In case of any proven wilful delay of the first party in completion of construction and delivery of possession of the schedule C Apartments for reasons other than what is stated in clause 6.1 and 6.3, the first party are entitled to a grace period of 6(six) months and if the delay persists beyond such grace period of 6 (Six) months.

the first party shall pay the second party, as damage a sum equal to Rs.4/- (Rupees four Only) per Sq Ft per month on the super build up area of the Schedule C apartment subject to the condition that : 1. Such delay not being attributable to the reasons mentioned in clause 6.2 and 6.3 above. 2. The second party has/have paid all the amounts payable as per this agreement and within the stipulated period and has/have not violated

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any of the terms of this Agreement and Agreement to sell. 3. The delay is proved to be wilful delay on the part of the First party. However, the delay on account of second party seeking modifications in Schedule C Apartment there is no liability on the First Party to pay any damages as aforesaid. 11. That the clause 6 of the construction agreement dated 23th April 2015 states about completion and delivery of the apartment and the Respondents very carefully avoided having any substantial liability on them 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 delivery to the complainant of the complete constructed flat not later than December 2017 and considering also that the Respondents raised demand notes one after another in immediate succession and collected more than 80% of the flat cost amount by March 2017 (Payment receipts is attached as Annexure P2 herewith which substantiates the fact that more than 85% consideration was already collected by March 2017) and recently again issued a demand note dated 8th Aug. 2019 for Rs. 4,86,360/- though commensurate actual work for the flat has not been completed. The complainant raised protest through email but to ensure faster completion of the flat transferred Rs. 4,86,360/- (Rupees Four Lakhs Eighty Six Thousand Three Hundred and Sixty only) on 30th Aug., 2019 under protest to the Respondents and 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. The complainant paid a total of Rs. 47,12,327 to the Respondents as on the date of filing this complaint. Copy of the email dated 8th Aug., 2019 received from the respondents a/w the recent demand note dated 8th Aug. 2019 is annexed herewith

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. 17. That after the lapse of almost 20 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. 18. 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.



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CAUSE OF ACTION: The cause of action for the present complaint arose on December 2017 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. 25. NO SIMILAR COMPLAINT: That no similar complaint/petition/application is pending before any tribunals or court, and the cause of action occurred within the jurisdiction of this Adjudicating Officer and Authority. 26. PARTICULAR OF FEES PAID AS PER SUB-RULE (1) OF RULE 36: The complainant paid the fees, an amount of Rs. 1000/- as per the rules through online payment. 27. LIST OF DOCUMENTS ENCLOSED: (i) ANNEXURE P1 & P2: Sale agreement & Construction agreement dated 23rd April 2015 executed between the Complainant and the Respondents; (ii) ANNEXURE P3 ?colly?: Copy of Payment receipts towards the payments made by the complainant; (iii) ANNEXURE P4: List of amenities promised in the ?Greenfield? residential project by the Respondents; (iv) ANNEXURE P5: Copy of the email dated 3rd March 2018 received from the Respondents; (v) ANNEXURE P6 ?colly?: Copy of loan account details and loan amount details of the complainant from 2015 to recent date 2019; (vi) ANNEXURE P7: Copy of the email dt. 8th Aug., 2019 received from the Respondents along with the Demand Note dt. 8th Aug., 2019 and reply emails; (vii) ANNEXURE P8: Copy of the recent demand note dated 8th Aug. 2019; (viii) ANNEXURE P9: Copy of latest statement of accounts received from the Respondents dt. 23.09.2019; (ix) Annexure P10: Photo Id proof of Complainant; (x) Annexure P11: Vakalatnama by the Complainant 28. 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 quality inspection / Third part 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 1.1.2018 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 complaint 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. 15,00,000/- (Rupees Fifteen Lakhs only) as compensation for harassing, creating mental agony, unfair trade practices, negligence, (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

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in the facts and circumstances of the case. AND For this act of kindness your humble complainant as in duty bound shall ever pray.

The complainant above named most respectfully states: 1. That the respondents advertised about their project ?Shriram Greenfield project? which is a residential project and is situated at Schedule A property as per the attached Sale agreement and which was converted from agricultural purpose to non-agricultural residential purpose by the Special Deputy Commissioner, Bangalore District, Bangalore, situated at Bommenahalli Village, Bidarahalli Hobli, earlier Hoskote Taluk, presently Bangalore East Taluk. 2. 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 23th April. 2015 was executed between the Complainant and the Respondent wherein the complainant booked an apartment bearing flat no.F-807 in 8th Floor, Tower F of Building 1 area measuring 113.80 sq. meters / 1225 sq. ft. and super built up area right to use 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. 52,13,407/- (Rupees Fifty Two Lakhs Thirteen Thousand Four Hundred & Seven Only) (inclusive of Taxes and other charges but except stamp duty and registration fees) as per the sale agreement dated 23th April. 2015 and as per the latest statement of account dated 23.09.2019 towards the flat and land along with proportionate undivided share of land, construction cost and other miscellaneous expenditure. The complainant paid a total of Rs. 47,12,327.00 (Rupees Forty-Seven Lakhs Twelve Thousand Three Hundred and Twenty-Seven Only) to the Respondents as on the date of filing this complaint. 3. That the clause 6.1 of the construction agreement dated 1st Aug. 15 states that: The First party shall obtain commencement certificate, complete construction and deliver the possession of Schedule C Apartment in the Schedule property A in accordance with the specifications to the second party on or before December 2017 with an additional 6(six) months grace period. 4. That the Respondents failed to deliver the flats as agreed within timeline and also in many cases during surprise visits to the project site and where pictures were also taken, it was found that the seepage, construction quality issues exists in the flat / apartment and thus the Complainant prays before the Hon?ble Authority to allow Complainant to carry Third Party expert inspection and necessary direction and orders may be passed to the Respondents which will ensure that any snags and quality issues can be addressed by the respondents before handover.

Peru
03/09/2019

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5. PRAYER Wherefore, for the reason stated above, the complainant most humbly prays that this Hon^{ble} Authority 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;

b) Any other interim relief which the Authority deem fit and proper in the facts and circumstances of the case; AND For this act of kindness your humble complainant as in duty bound shall ever pray.

Relief Sought from RERA Delay interest, compensation, inspection & Ors.

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 Developer 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 and as such other respondents treated as absent.
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.

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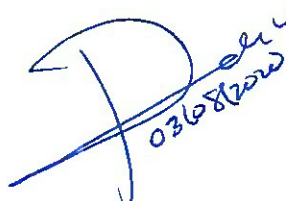
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5. After filing the objections to the main matter by the opponent the matter stood for arguments. However the learned counsel for the complainant has got summons to PDO of Mandoor Village panchayath to speak on the Occupancy Certificate dated 01/08/2019 issued by Mandoor Gram Panachayath. However 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 their 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 23/04/2015 in respect of flat bearing No. F-807, 8th floor, Tower F of building 1. As per the agreement the developer has agreed to complete the project on or before 31st December 2017


03/08/2020

but the developer has failed to complete the same and as such this complaint has been filed seeking for delay compensation. It is their further case that the developer has given the possession of the same on 30th January 2020 but amenities are still not provided with some snags. According to complainants there is delay of 2 years 30 days in putting them in possession of the same and as such they are entitled for delay compensation for the said period.

10. In the present case some important admissions are there. The complainant is the consumer is not in dispute. The agreement of sale was executed on 23/04/2015 is also admitted. The complainant has taken the possession of the unit on 30th January 2020 is also admitted. At the time of argument it was submitted on behalf of the developer to the affect the he is ready to pay delay compensation @ Rs.4/- per Sq. Ft., as per the due date as mentioned in the agreement of Sale 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. According to complainant the dead line given by the developer was 31/12/2017 but the developer says that there is a six month grace period. 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 June 2018. It is an admitted fact that the possession was given on 30th January 2020 means it is not in accordance with the terms of agreement of sale since it was to be completed on or before June 2018. According to developer he has given the date of completion to the authority as 31/03/2019 and therefore he is liable to pay the delay compensation from April 2019 at the rate of Rs.4/-per square

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03/04/2020

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feet which they have agreed in the agreement of sale. This kind of argument holds no water since it is already established that the date mentioned in the agreement of sale shall be the date of completion and the delay compensation shall be paid as per rule 16 and nothing more. Therefore I would say that the argument canvassed by Sri Prakash Hegde on this point cannot be accepted. In support of my finding I would like to refer to some decision of Haryana Appellate tribunal in case

Haryana RERA Gurugam in complaint No.7/18

(M/s Simmi Sikka v/s M/s Emaar MGF Land limited
Sikandarpur)

Ld counsel for the appellant that the respondent/allottee shall be entitled to claim possession as per the date declared by the appellant/promoter in the declaration under section 4(2)(l)(c) of the Act at the time of getting the project registered. This declaration is given unilaterally by the promoter/developer to the Authority at the time of getting real estate project registered. The allottee had no opportunity to raise any objection at that stage, so this unilateral Act of mentioning the date of completion of project by the builder will not abrogate the rights of the allottee under the agreement for sale entered into by the parties.

*The **Hon'ble Bombay High Court in Neelkamal's** case has laid down as under :-*

*"Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. **The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale.** Section 4(2)(l)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down*

Done
03/07/2020

under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(I)(C) he is not absolved of the liability under the agreement for sale."

The Hon'ble Bombay High Court by taking note of the provisions of Section 4(2)(I)(c) of the Act has categorically laid down that the provisions of the Act will not re-write the clause of completion or handing over of the possession mentioned in the agreement for sale. The fresh time line independent of the time stipulated in the agreement is given in order to save the developer from the penal consequences but he is not absolved of the liability under the agreement for sale. Thus, the appellant/builder was required to offer the possession of the unit to the respondent/allottee as per the terms and conditions of the agreements, failing which the respondent/allottee will be entitled to claim the remedies as provided under section 18 of the Act.

32. We also do not find any substance in the plea raised by Ld counsel for the appellant that the respondent/allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5 per square feet per month in view of clause 10.4 of the buyer's agreement. The function of the authority establish under the Act is to safeguard the interest of the aggrieved person may be allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take any undue advantage of his dominant position and to exploit the needs of the home buyer. This Tribunal is duty bound to take into consideration the legislative intent i.e. to protect the interest of consumers/allottee in real estate sector. As per clause 10.4 of the agreement in case of failure of the developer to give the possession within the stipulated period the respondent/allottee was only entitled to receive the compensation at the rate of Rs.5/- per square feet of the super area per month for the period of delay.

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12. The above appeal has been filed by the developer where the appellate tribunal has discussed the important points which have been raised by the learned counsel for the developer. I think the appellate Tribunal Haryana has given answer to the arguments canvassed by the present developer before me. I would say that the developer cannot contend that the date given to the authority for registration of his project be taken into consideration. Further what he said that he is only liable to pay Rs.4/-per square feet from April 2019 also falls on the ground in view of the observation made by the Appellate tribunal by referring to Neel Kamal's case rendered by Hon'ble Bombay High Court.
13. The learned counsel for the Developer has contended that the clauses contained in two agreements entered into between the parties, i.e., the Sale Agreement and Construction Agreement. 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 contractor to build the house in accordance with the plan. The landowner who has received the amount agreeing to give land is also 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 this kind 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

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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 the fact that he will not discriminate between the allottees. When that being the case now the developer cannot contend that the complainant has not entered into agreement with the developer in respect of land. 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 the 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).

14. 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. It is his 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. In view of the same it was his submission to that effect. I have already said that the definition of the word PROMOTER as per S.2(zk) he cannot raise such kind of defence.

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15. 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 amounts 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. But it is not correct to submit as said above since 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.
16. 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 applicable. But it is not correct to submit as said above since 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 provisions of Specific relief Act and as such the contention taken by the developer cannot be accepted. Hence, his arguments cannot be accepted.

Delux
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17. 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.
18. 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 proper manner. In this regard it is submitted by the counsel for the complainant that his complaint is as per the rules laid down as per the 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. In this regard I say that the contention taken by the developer is not correct since the complainant has applied his complaint through online to take action against the erred developer for the appropriate relief. By reading the complaint it is understood what kind of violation the developer 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 complainants by raising some technical grounds but

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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 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.

19. Further it is the case of the developer that the delay was caused was 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

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developer. In my view, the grounds urged by the developer are not having any direct effect on the project.

20. It is the case of the developer that the delay cannot be construed in view of the date mentioned in the RERA as 31/03/2019 and also it is said that as per clause of the agreement and said that the original date for completion was December 2017 with 6 months grace period means it comes to June 2018 which is extended till March 2019 which is the date given to the authority extends a fresh date for completion of his project. It is also his case that the complainant is are eligible to get the delay compensation at the rate of Rs. 4/- per sq. ft., from April 2019.
21. Admittedly the due date as per the agreement was December 2017 with a grace period of 6 months which comes to June 2018. 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 July 2018 till the date of possession. 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.
19. The counsel for the 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 their 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

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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.

20. At the time of argument the learned counsel for the developer said that the complainants have sought for Rs. 15,00,000/-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 of Rs. 15,00,000/-as compensation apart from S.18 of the Act. In addition to it, as per the observation made by the Hon'ble Apex court the grant of compensation under the mental agony in respect of simple agreement does not arise. The decision says 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.

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03/07/2024

In view of the same, I am of the opinion that the complainant is not entitled for this special relief.

21. 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. 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 would say that there was no need to call the PDO of Gram panchayth since this 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 which has been issued. 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 OC but here the possession was given in the month of January 2020 which is also in violation of S.19(10) and hence, the developer has to pay Delay compensation from July 2018 till the possession is delivered.

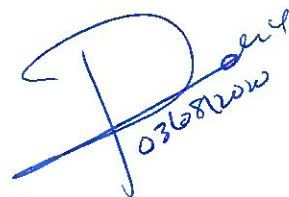
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22. At the time of argument it was brought to my notice that the developer has issued notices to the complainant by demanding to pay holding charges for late payment of instalments or amount payable to him. I would say that there is no concept like 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 the amount legally payable by the complainant. With this observation I allow this complaint in part.

23. 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 complainants 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 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 within the due time and as such it is with some delay. With this observation, I proceed to pass the following.



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ORDER

- a) The complaint filed in CMP/191010/0004308 is hereby allowed.
- b) The developer is hereby directed to pay delay compensation on the total amount by the complainant towards purchase of flat @ 2% above the MCLR of SBI commencing from July 2018 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 of this case.
- d) Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 03/08/2020).

(K.PALAKSHAPPA)
Adjudicating Officer.

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