

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: 03rd AUGUST 2020

Complaint No.	CMP/190921/0004235
Complainants :	1. Sanjay Kumar Nayak 2. Sangamitra Patra Flat No. A-005, Dhruvika Mogra Apartment, Itpl Road, Opposite To Tansi Honda, Hoodi, Bengaluru-560048 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. R-4 Rajesh Yashwant Shirwatkar

[Handwritten Signature]
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

	<p>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-3to R-7 Remained Absent</p>
--	---

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"

Devi
03/07/2020

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

developed by Shrivision Towers Private Limited. His complaint reads as under:

FACTS OF THE CASE & GROUNDS OF COMPLAINT: That the respondents advertised about their project ?Shriram Greenfields? 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. 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 respondent persuaded the complainant to book the apartment and finally Agreement for sale and construction agreement dated 27th April 2018 was executed between the Complainant and the Respondent wherein the complainant booked an apartment bearing flat no. E- 510, 5th floor, Tower E of Building 1 and having 3 bedrooms, carpet area measuring 89.22 sq. meters / 960.36 sq. ft. and super built up area of 125.41 square mts. / 1350 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 3.51 sq. mts./37.78 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. 69,57,929.00 (Rupees Sixty Nine Lakhs Fifty Seven Thousand Nine Hundred and Twenty Nine Only) (except stamp duty and registration fees) as per the sale agreement dated 27th April 2018 and latest Statement of Accounts dated 24th July 2019 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 27th April 2018 states about completion and delivery of the apartment

Deena
10/2/2020

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

and the Respondents very carefully avoided mentioning the specific delivery date which should have been the material part of these clauses in 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 already collected 85% of the flat cost amount by July 2018

Clause 6.6 of the agreement states: In the event of delay/default by the purchaser/s to pay the balance sums in terms of Annexure 1 to 3 for any reasons within the timeline specified in clause 6.1, the Purchaser/s is/are liable to pay interest on delayed payments from due date till payment. If the payments are not made within 2 (two) months of notice of demand issued under clause 6.1, the sellers/builders shall be entitled, at their discretion, to terminate this agreement and thereafter freely transact with the Schedule ?B? and Schedule ?C? property in any manner with a third party. (i) In the event of breach by the Purchaser/s of any of the terms of this Agreement and the same not being cured within a period of 30 (thirty) days of occurrence of such breach, the Seller/Builder shall be entitled to terminate this agreement and on such termination the Sellers/Builders shall be entitled to the rights as provided in this agreement. 11. That the respondents have used their dominant position to put unilateral clauses without any scope of negotiation in the sale agreement - construction agreement dated 27th April 2018 and whereas the liability of the purchaser in case of default under the agreement has been made substantial i.e., 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 six months if calculated from 31.03.2019, 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

Peru
03/08/2020

are now blocked with the respondent 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 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. Thus all such payments though cleared by the complainant but made without prejudice and without waiving any of his legal rights. 13. That the respondent promised and agreed to deliver the Scheduled C flat/apartment immediately upon entering into the Sale agreement but till date did not deliver the flat raising the hardship for the complainant and his family members. The complainant is entitled to claim interest and compensation for delay in delivery and for negligence, unfair trade practices by the Respondents. 14. 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 1.5 years from the date of signing the agreement or after a period of 6 months from 31.03.2019 i.e., 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, executives 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.

PRAYER Wherefore, for the reason stated above, the complainant most humbly prays that this Hon'ble Forum may be pleased to:

[Handwritten Signature]
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

(i) Direct Respondents to allow Third Party quality inspection of the flat /apartment at option of the Complainant and any snags, defects if identified shall be rectified, repaired by the Respondents immediately with 15 days thereafter;

(ii) Direct respondents to immediately give possession of the scheduled property as agreed in Sale agreement and construction agreement along with complete construction, Occupancy certificate, Completion certificate and all amenities;

(iii) Direct the respondents to pay delay interest starting from 31.03.2019 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 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 12,00,000/- (Rupees Twelve 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;

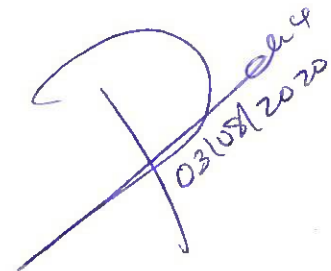
(vi) Any other relief which the Adjudicating Officer / Tribunal / Authority deems fit in the facts and circumstances of the case. AND For this act of kindness your humble complainant as in duty bound shall ever pray.

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

P. Saha
03/05/2020

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 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

 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

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 27/04/2018 in respect of flat bearing No. E-510, 5th floor, Tower E 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 5th January 2020 but amenities are still not provided with some snags. According to complainant there is delay of 9 months 5 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 27/04/2018 is also admitted. The complainant has taken the possession of the unit on 5th January 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

Devi
03/01/2020

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 27/04/2018. 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 the period has been expressly described under clause 13.1 of the sale and construction agreement dated 27/04/2018 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.

P. Prakash
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

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 is 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.
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 5th January 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

[Signature]
03/01/2020

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. 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).

[Handwritten signature]
02/07/2020

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

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.

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

Peru
03/07/2020

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

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. 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.
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

[Handwritten signature]
03/08/2022

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

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 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.

[Handwritten signature]
02/07/2022

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.
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

Peru
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

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 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.

Delivered
03/07/2020

25.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 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 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.

[Handwritten signature]
10/03/2020

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

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 21/09/2019 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.


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

ORDER

- a) The complaint filed in CMP/190921/0004235 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 03/08/2020).

(K.PALAKSHAPPA)
Adjudicating Officer.

NOT AN OFFICIAL COPY