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/190921/0004231**
Complainants :	1. Smt. Richa Upadhyaya 2. Rakesh Ranjan Upadhyaya Flat No. 203, Samhita Amrit Shirdi Sai Layout, Munnekolala, Marathahalli 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, 4th Cross road, 8th 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, 4th Cross road, 8th Main road, RMV extension, Sadashivanagar, Bengaluru-560080.

	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. **R-5** Krishna Veeraraghavan Director, Shrivision towers Pvt., Ltd,. No. 40/43, 4th Cross road, 8th Main road, RMV extension, Sadashivanagar, Bengaluru-560080. **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. **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. R-3to R-7 remained absent

JUDGMENT

1. This complainant has been filed by two complainants 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:

FACTS OF THE CASE & GROUNDS OF COMPLAINT: 5. 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. 6. 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 and their persuasion, the complainant agreed to book the apartment and finally Agreement for sale and construction agreement dated 1st August 2015 was executed between the Complainant and the Respondent wherein the complainant booked an apartment bearing flat no. A- 1705, 17th floor, Tower A of Building 1 and measuring 86.86 sq. mts/935 Sq. ft. of a super built up area, one covered a car parking space in the lower basement level/Upper basement Level/Ground Level and the complainant agreed to Pay a consideration amount of Rs. 32,85,451/- (Rupees Thirty Two Lakhs Eighty Five Thousand Four Hundred and Fifty One Only) towards the land along with proportionate undivided share of land, construction cost and other miscellaneous expenditure.

That on the persuasion of the respondent the complainant initially paid a sum of Rs 2,00,000/- (Rupees Two Lakhs only) on 26.06.2014 and Rs. 4,65,204/- (Rupees Four Lakhs Sixty Five Thousand Two Hundred & Four only) on 30.03.2015 and followed by which the Sale cum construction agreement dated 1st August 2015 was signed between the Complainant and the Respondents. A copy of payments made to the Respondents are reflected in the consolidated receipt dated 26th August 2019 annexed along with this complaint .

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. 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 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 Complainant already paid 95% of the sale and construction consideration to the Respondents till date and still suffering in the hands of the Respondents having unable to live in his purchased flat due to failure on the part of the respondents to complete the construction, arrange OC, CC, amenities and ensuring registration of the flat. 12. That the respondents have used their dominant position to put unilateral clauses without any scope of negotiation in both the sale agreement and the construction agreement and whereas the liability of the purchaser in case of default under the agreement is substantial but the respondents have decided their liability in case of default which best suits their purpose. 13. That even at the end of the stipulated period and after a delay of more than one and a half year the respondents still did not complete construction and hand over possession of the schedule apartment to the complainant as per sale agreement or the construction agreement. The fall out of the delay is that, hundreds of apartment allottees including the complainant had to bear huge financial losses, their hard earned money are now blocked with the 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. Thus all such payments though cleared by the complainant but made without prejudice and without waiving any of his legal rights. 14. That the respondent promised and agreed to deliver the Scheduled C flat/apartment as per the Sale and Construction agreement dated 1st Aug. 2015 before December 2017 extendable for 6 months to complete the common area and other amenities 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. 15. 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. 16. That after the lapse of almost 12 months from the scheduled date of taking possession as per agreement, 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 contended family life and also under pressure to pay the EMIs and also paying rent for staying at other places. 17. 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.

18. The series of email from 2015 to 2019 annexed herewith and marked as Annexure P3 to P20 further evidences the negligence, unfair trade practices of the Respondents and proves the contention advanced by the complainant herein through this complaint. 19. That moreover time to time when various flat owners visited the project site it was found that Towers which they claim to have been completed still have seepage issues and other structural issues which shows the poor quality of the construction work done by the Respondents and resulting in permanent defects and damages to the flats due to negligence, unfair trade practices of the

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Respondents. 20. That on 13th March 2019 an email was sent by the Respondents offering to pay nominal compensation @Rs. 4 per sq. ft. as per the agreement completely ignoring the RERA clauses which mandates for payment of interest as per Section 16 of the provision of the Karnataka Real Estate (Regulation and Development) Rules, 2017 and moreover they fraudulently applied/invoked force majeure clause and arriving at a figure of Rs. 22,814/- as total compensation which the complainant rejected through reply email dated 13th March 2019. A copy of the email dated 13th March 2019 for compensation received from the Respondents and reply dated 13th March 2019 sent by the Complainant is annexed herewith and marked as Annexure P? 21. That because of the action of the respondents, the complainant suffered mentally, their health broke down and is now under continuous pressure having invested in the project of the respondents and having tied their hard-earned money with the project of respondents for so long. 22. That while time has been made essence with respect to apartment allottees obligations to pay/make scheduled payment and perform all the other obligations under the agreement, the Respondents have conveniently relieved itself by not making time as essence for completion in fulfilling its obligations, more particularly handing over physical possession of apartment by completing construction within the stipulated time and obtaining OC, CC and other statutory obligations and certificates. In other words, the respondent has enriched itself by crores of rupees from the apartment allottees including the advance collected from the present complainant without handling over possession as agreed. 23. The complainant submits that the omission by the respondent in fulfilling their obligations by taking some definite steps, and wilful default on the part of the respondents in completing the project, as the complainant is entitled to recover the loss of his bargain. 24. CAUSE OF ACTION: The cause of action for the present complaint arose during 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.

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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 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;

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 complainants. 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 complainants 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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5. After filing the objections to the main matter by the opponent the matter stood for arguments. However the learned counsel for the complainants 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 complainants 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 complainants prove that they are 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 complainants have entered in to an agreement of sale with the developer on 01/08/2015 in respect of flat bearing No. A-1705, 17th floor, Tower A of building 1. As per the agreement the developer has agreed to complete the project on or before 31st December 2017

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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 19th January 2020 but amenities are still not provided with some snags. According to complainants there is delay of 2 years 20 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 complaints are the consumer is not in dispute. The agreement of sale was executed on 01/08/2015 is also admitted. The complainants have taken the possession of the unit on 19th 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 complainants 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 complainants in the agreement of sale was June 2018. It is an admitted fact that the possession was given on 19th 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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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)(I)(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)(I)(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 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)(l)(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 complainants have 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 to give agreeing to give the 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 developer. He is bound to answer to the claim of the complainants. There is a provision to file an affidavit in form B while filing the application for registration of project where he sworn to the facts that he will not discriminate between the allottees. When that being the case now the developer cannot contend that the complainants have 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 complainants have 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 complainants 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 complainants are 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 provisions of 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 for 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. Of course the complainant has referred about a suit in O.S474/18 which is in connection with title. However it is settled and a memo of settlement is also produced. Hence, his arguments cannot be accepted. Hence, his arguments cannot be accepted.

16. 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.

17. 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 complainants that their 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 complainants have applied their compliant 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 complainants 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.

18. It is the intention of the Act and therefore it shall not be defeated under the colour of technical grounds. 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 complainants are not entitled for relief. I would say that the developer has utterly failed to connect the events of demonization, tracker 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.

19. 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 complainants are eligible to get the delay compensation at the rate of Rs. 4/- per sq. ft., from April 2019.

20. 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.

21. The counsel for the complainants submit that in the event the Respondent had performed his obligations and delivered the possession within the specific date of possession, then the complainants could have enjoyed their flat. Advocate for complainants submit that evidently the developer fails to give possession as agreed means he is bound to honour his claim in accordance with the sale agreement. I would say that it is the choice of the complainant either to continue with the project or to demand for delay compensation immediately when the terms of agreement are violated. In the present case, the complainant has opted for delay compensation from the due date.

22. 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 they are 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 complainants 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 complainants are 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.*

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

23. 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 complainants have 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 complainants 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 complainants 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 complainants 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.

24. At the time of argument it was brought to my notice that the developer has issued notices to the complainants 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 alloottee 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 complainants. With this observation I allow this complaint in part.

25. 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 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.

ORDER

a) The complaint filed in CMP/190921/0004231 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).

03/08/2020

(K.PALAKSHAPPA)
Adjudicating Officer.