BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI K.PALAKSHAPPA
Dated: 23rd NOVEMBER 2020

Complaint No.	**CMP/191210/0004947**
Complainants:	Mr. B. Shambulinganagowda Flat No-704-701 GM Infinite Silver Spring Field Daffodils Opp. KPTCL Power Station Hesaraghatta Main Road, Mallasandra Ward, Bengaluru-560 058 Rep.by: E. Suhail Ahamed and Kumari Jasleen Kaur Advocates.
Opponent:	M/s.GM Infinite Dwelling (India) Private Limited A company registered under the provisions of Companies Act, 1956 Having its Corporate office at # No-6, GM Pearl, 1st Stage BTM Layout, Bengaluru -560068 Also having Having its Corporate office at # No-105-47, Dickenson road, Yellappa Garden, F.M. Cariappa colony, Sivanchetti Gardens Bengaluru-560001 2. Gulam Mustafa Director- 3. Jawid Hussain Director M/S G.M. Infinite Dwelling (India) Pvt. Ltd., # No-105-47, Dickenson Road, Yellappa Garden, F.M. Cariappa Colony, Sivanchetti Gardens, Bengaluru-560001 Kumari Lubna Fairoze advocate for R.1 R2 and R3 remained absent.

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JUDGMENT

1. This complaint is filed by the complainant under Section 31 of RERA Act against the project "GM Infinite Silver Spring Field" developed by M/s GM Infinite Dwelling (India) Private Limited. The gist of the complaint is as under:

> *The Complainants are Allottees of an apartment bearing No. T4 – G 701 in the project 'G M Infinite Silver Spring Field'. Sale Agreement and Construction Agreement were entered into between the Respondents and Complainants on 15.04.2015 along with the Respondents in favour of the Complainant. The Complainant had paid Rs. 54,17,083/- as full settlement towards the total sale consideration. As per the agreements, the Respondent ought to have delivered the Apartment to the Complainant latest by 31.05.2016 after having obtained the Occupancy Certificate. The Respondent Pressurized the Complainant get the Sale Deed executed without OC. The Complainants later found out that there are numerous litigations on the project land and the there has been a deviation of the plan sanction. The detailed complaint will be filed at the time of hearing.*
> *Relief Sought from RERA : Refund amount paid as per Section 18*

2. In pursuance of the summons issued by this authority Sri E. Suhail Ahmed and Jasleen Kaur Advocates have appeared on behalf of the complainant. Kumari Lubna Fairoze Advocate has appeared on behalf of the first respondent where as 2nd and 3rd respondents remained absent.

3. The matter was posted for objections on 18/03/2020 but due to lock down the case was not called on that day. After lock down was lifted the hearing date was fixed on 22/06/2020 and finally the case was called on 28/07/2020 through Skype and reserved for judgment. I would like to say that there are 38 cases as a batch and in the aforesaid complaints, arguments were heard on 28.07.2020 and again on 30.07.2020. Thereafter, the Complainants have filed a synopsis along with additional documents on 05.08.2020 after the

Respondents replied to the Arguments addressed by the Complainant. This authority posted the matter on 18.08.2020 seeking for certain clarifications, which were addressed orally by the Complainants, however in reply to the same, the Respondents not only raised new issues which were beyond the pleadings in the statement of objections and the documents submitted by it but also in the nature of questioning the jurisdiction of this authority to entertain the aforesaid complaints on the ground that the Sale deeds have already been executed and by virtue of the recitals made in the said Sale Deeds, the Complainant lost his right to agitate by filing the above complaint and seeking the relief as sought for. In view of the new contentions raised by the Respondent the complainant has filed additional written arguments on 07/09/2020 and finally it is reserved for judgment.

4. The point that arise for my consideration are:
   a) Whether the complainant proves that he is entitled for refund of the amount paid towards purchase of flat and other reliefs as sought in her complaint?
   b) If so, what is the order?

5. My answer is affirmative so for as delay compensation is concerned and negative and so far as refund of amount for the following

REASONS

6. The original complaint was filed by B. Shambulinganagowda a through online and later his advocate has filed the typed copy of the complaint. The complainant has entered in to agreement with the developer on 15.04.2015 in respect of flat bearing No. T4-G-701.

7. As per the agreement the developer has agreed to complete the project on or before 31.05.2016. The developer has failed to complete the same but executed the sale deed on 24.03.2018.

8. Even though the sale deed was executed but he failed to get the completion certificate to the project for which the complainant has paid all amount payable to the developer. At the time of argument it was submitted that the developer has executed the sale deed even though the project was not officially completed. Hence, the complainant has filed this complaint seeking the refund of his amount paid to the developer. The main and important grounds for demanding the refund despite the execution of sale deed are as under:

> *It is submitted that the Respondent has collected a sum of Rs. 3,00,000/- (Rupees three Lakhs Only) from the Complainant towards BWSSB, KPTCL deposits, Services Tax and VAT charges as part of the total sale consideration towards the complaint C Residential Apartment and has also promised regular Cauvery Water supply to the apartment in the project including that of the Complainant. However, the Respondent has neither been able to provide Cauvery water to the project nor a sewage.*
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> *The complainant submits that due to the caused by the Respondent in completing the project, they suffered from huge financial loss and burden. The complainant was always in the belief that in the month of November 2015, the completed apartment would be handed over to her along with the Occupancy Certificate. However, the Respondent not only failed to do so but also falsely represented in various meetings with the Complainant and the Allottees that the Occupancy Certificate will be obtained soon as the same is under Process. The respondent also threatened the complainant and other Allottees that it would levy penal interest if they abstain to make final payments and register the Sale Deed. In view of the false assurances, mental stress created by the Respondent's threat and the fact that Complainant was financially burdened, she came forward to*

make final payment and execute the sale deed under duress, on 28/3/2019.

It is further submitted that for the inordinate delay as stated above, the Respondent washed its hands from the responsibilities and deducted a meagre sum of RS. 1,10,000/- from the balance sale consideration /last installement that was paid by the Complainant and the Complainant having paid more than 95% of the money towards total sale consideration had no other option but was only pressurized to execute the sale deed based on false assurances given by the Respondent and its representatives that the Occupancy Certificate would be obtained in a short span of time from the date of execution of the Sale Deed.

9. It is submitted that the Complainant has now learnt that the building plan sanction that had been obtained by the Respondent stood cancelled by the order of the Bruhat Banagluru Mahanagara Palike on 5/8/2015 based on the reasoning that the Respondent has abstained from disclosing various material facts of pending/ongoing litigations in respect of the Schedule "A" property being suits in O.S.No.1429/2008 and O.S.No.2295/2010 relating to the project land i.e., the Schedule "A" property herein. Therefore, it appears that the Respondent has challenged the order of the BBMP before the Hon'ble High Court of Karnataka in W.P.No. 40936 to 40948 of 2015 and obtained a stay on the order of the BBMP vides a stay order dated 29/9/2015.

10. However, the Respondent has failed to obtain the OC till date. It is submitted that after the Sale Deed was executed, the Complainant further learnt that there is an order of injunction passed by the Principal City Civil and Sessions Judge in O.S.NO.8163/2016 operating against the owners of Schedule – A property on which the project "G M Infinite Silver Spring Field" is being developed by the Respondent. It is pertinent to state that Defendants Nos. 4 to 15 in

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O.S. No. 8163 /2016 are the landowners of Schedule-A property and Defendant No.16 is the 1st respondent herein. In spite of an existing order of injunction in operation restraining the Defendants, their agents, henchmen, followers and anybody claiming through them from aliening the Schedule Properties and thereby creating any kind of encumbrance thereon during the pendency of the suit in O.S. No.8163/2016, the 1st Respondent along with the landowners has gone ahead to execute Sale Deed in favour of the Complainant is adversely affected.

11. Thus, the respondent has engaged in concealment of material facts regarding the project at the time of marketing the project, entering into Agreements and at the time of executing sale deed in respect of the Complainant's project, which fats if otherwise known to the Complainant would have, definitely led him away from purchasing the flat in the Respondent's project.

12. It is further submitted that the building plan sanction authorized the Respondent to construct only 1 BHK flats in Tower 4 of the project wherein the Complainant is allotted an apartment. However, the Respondent has constructed 2 BHK flats in Tower 4 thereby substantially deviating the actual sanction plan. Thereafter, as has been stated above, the building sanction plan was cancelled by an order of the BBMP on which the Respondent has obtained a temporary stay. However, the Respondent never made any efforts to apply for a modified sanction plan to BBMP. Hence, it is clear that the project proposed by the respondent in accordance with the sanctioned plans and specifications as approved by the competent authorities.

13. Of course the complainant has given so many reasons for demanding refund of his amount but I have taken some of the important grounds as narrated above. In this connection the developer has narrated his defence in his written arguments.

14. It is his case that the Complainant has taken possession of his apartment and since 2018 enjoying the same without any hurdles, interruptions and disturbances. That the Complainant is either residing in his apartment or let the same to the tenants and earning decent rental income since 2018.

15. It is submitted that the Respondent was shocked and surprised to note that the Complainant is seeking for refund of the amount. It is pertinent to state that the Complainant and the Respondent has deliberated on the delay in handing over the Complainant's unit and apartment in the Project and reached a mutual and amicable settlement, wherein the Respondent had agreed to pay delay compensation in terms of settlement reached. In appreciation of the amicable settlement reached between the Complainant and the Respondent, the Respondent had made payment of agreed delay compensation to the Complainant and the Complainant had received the said delay compensation wholeheartedly.

16. Thus being the case, the Complainant with highhandedness, malicious thoughts and malafide intention for having unlawful and wrongful gain filed this frivolous Complaint. The Respondent submits that the Complainant after receiving delay compensation, has filed the present Complaint before this Hon'ble Authority claiming refund is an arm-twisting tactic in order to make unlawful monetary gains at the cost of the Respondent. This clearly shows the malafide intention of the Complainant and his intention to make illegal monetary gains by blackmailing and arm twisting the Respondent and the same is clear case of abuse of this Hon'ble Court Process.

17. In view of the above, it is humbly submitted that no claim survives in the light of the Complainant having received the amount towards compensation and the Complaint is liable to be dismissed on this

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ground alone. It is submitted that the Complainant upon receipt of the delay compensation as per the amicable settlement reached proceeded for execution and registration of the Sale Deed in respect of her apartment out of his own will and volition. The Complainant was provided with a draft Sale Deed. After reading and fully understanding the contents of the Sale Deed, the Complainant came forward for execution and registration of the Sale Deed before the jurisdictional Sub-Registrar's Office. The Complainant clearly stated to the Respondent that he is happy and convinced with his unit and the same was constructed and completed as per his Construction Agreement and he is fully satisfied with the quality of construction as well as common amenities and facilities provided in the Project and he has no claims of whatsoever against the Respondent. The same is clearly recorded in the Sale Deed.

18. Thus there is no duress as alleged by the Complainant for execution of the Sale Deed or at anytime. The Complainant has come forward to register the Sale Deed and had taken possession. There was no protest by the Complainant against the respondent at the time of execution of the Sale Deed. Hence the Complainant cannot now come before this Authority to make illegal monetary gains without making out a prima facie case while making allegations of duress.

19. Further the buyer has taken the sale deed and accepted the possession after satisfying with the amenities. By going through the sale deed executed by the developer it says that the buyer has agreed with regard to measurement and amenities. The complainant has submitted his case that the project has not officially completed since there is no OC and factually not completed by not providing all the amenities.

20. Admittedly the developer has not obtained the OC as on the date of sale deed and even now also. At the time of argument it was submitted that he has applied for grant of OC but it was not given. The counsel for the developer submits that as per S.310 of the KMC Act, when his application sought for OC is not rejected then it is to be treated as grant of deemed OC, but it is not correct to say so because the project is facing number of litigations and as such the grant of OC in nearer date is impossible.

21. In this regard the developer has said in his objection statement as that the Respondent has completed the construction of the 'Project' and applied for the Occupancy Certificate on 09.06.2017. In view of the legal hurdles which are well within the Complainant's knowledge, there was a delay in getting the Occupancy Certificate of the Apartment Units in the 'Project' and hence the Apartment could not be delivered in time to the Customers which is beyond the control of the Respondents. It is pertinent to submit that the OC has not been issued even though the application for OC is pending and the provisions of Deemed Occupancy Certificate under the Municipal Corporations Act become applicable in the present scenario. All the cases pending will be cleared off after which the OC will be surely issued by the appropriate authorities.

22. The developer has agreed to complete the project on or before 31.05.2016. The stand taken by the developer itself goes to show that the BBMP has not given the OC because of pending of litigations and he is sure that BBMP will give the OC after clearance of litigation. It means as on the date of sale deed and as on the date of this complaint there is no OC in favour of the developer.

23. The execution of sale deed happened in violation of some other sections. In this regard I would say that the developer has not obtained the OC but executed the sale deed which is in violation of

S.17 and delivered the possession which is also in violation of S.19(10) of the Act. The execution of sale deed and putting the possession of the flat without obtaining the OC is illegal. I would like to say that grounds urged by the developer has no meaning because as per Sec.17 r/w Sec.19(10) of the Act, the developer can call upon the complainant to take sale deed and to take physical possession of the flat only after he obtains occupancy certificate. It is not the case of the developer that he has obtained occupancy certificate at the time of execution of sale deed in favour of the complainant. He could not call the complainant to take the sale deed in the absence of occupancy certificate. As per observations made by the Hon'ble High Court of Karnataka in Writ petition No.11522/2012 clubbed with 739/2013. Wherein it is observed that:

> *The construction of buildings is governed by the Bengaluru Mahanagara Palike Building Bye-Laws 2003. Bye-law 5.6 is with reference to grant of an occupancy certificate, which reads as follows:*
> *"5.6. Occupancy certificate-5.6.1(a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of the erection of a building shall send intimation to the Commissioner in writing of such completion accompanied by a certificate in Scheme VIII certified by a Registered Architect/Engineer/Supervisor and shall apply for permission to occupy the building. The authority shall decide after due physical inspection of the building (including whether the owner had obtained commencement certificate as per section 300 of the Karnataka Municipal Corporations Act, 1976 and compliance regarding production of all required documents including clearance from the Fire Service Department in the case of high-rise buildings at the time of submitting application) and intimate the applicant within*

thirty days of receipt of the intimation whether the application for occupancy certificate is accepted or rejected. In case, the application is accepted, the occupancy certificate shall be issued in the form given in Schedule IX provided the building is in accordance with the sanctioned plan.

(b) Physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and requirement of building bye-laws, and includes inspections by the Fire Service Department wherever necessary.

(c) If the construction or reconstruction of a building is not completed within five years from the date of issue of licence for such a construction, the owner shall intimate the Authority, the stage of work at the expiry of five years. The work shall not be continued after the expiry of five years without obtaining prior permission from the Authority. Such continuation shall be permitted, if the construction or reconstruction is carried out according to the licensed plan an if the Authority is satisfied that at least 75% of the permitted floor area of the building is completed before the expiry of five years. If not, the work shall be continued according to a fresh licence to be obtained from the Authority.

5.6.2. For all high-rise building, the work shall also be subject to inspection by the officers of the Karnataka State Fire Service Department and the occupancy certificate shall be issued only after obtaining a clearance certificate from the Director of Fire Services."

11. Bye-law 5.7 postulates various requirements. The first is that no person shall occupy or let-in any other person to the building or part thereof, until an occupancy certificate to such a building or part thereof has been granted. Therefore, until and unless an occupancy certificate is granted, no building or part of it, can be occupied. Secondly, the grant of occupancy certificate shall be only after the opinion of the officer is to the effect that in every respect, the building or part thereof is

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complete, according to the plan sanction and that it is fit for use for which it was erected.

12(a). The first part of Bye-law 5.7 clearly narrates that no person can occupy the building or part thereof without an occupancy certificate. Admittedly persons have been induced prior to grant of POC. It is contrary to law. The occupation of the building or part thereof is opposed to law. No person can be inducted in any manner whatsoever, without an occupancy certificate by the corporation. Therefore, all such persons who have been inducted prior to the grant of POC, are in illegal occupation.

24. It is observed that the developer cannot put the allottee into possession of the flat in the absence of occupancy certificate. In view of the same and also as per observation made by the Hon'ble High Court the stand taken by the developer regarding the grant of OC has no validity since the High Court never discussed about the deemed OC. Further as per the observation the developer shall put the buyer into possession only after obtaining the OC which is absent here and as such it is to be held that the developer has not taken the OC as on the date of sale deed. Therefore the completion of project officially is not yet happened.

25. Further it is also said that the project was involved with so many litigations. It is not denied by the developer and per contra he has given his explanation as to the nature of litigations.

One Venkatesh, S/o.Late Bylappa, residing at Shettihalli Village, Janata Colony, Jalahalli West, Bangalore-560086, herein whose old Sy.No was 83 and subsequently assigned with new Sy.No.80/1 & 80/3, who is not in any way connected with the lands in question, have put forth some claims on the lands in question and accordingly who had instituted proceedings in respect of Sy.No.83 of Mallasandra Village, Yeshwanthpur Hobli to delete the name of owners

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from the Record of Rights moved an Application before the Special Tahsildar, Bangalore North Taluk and against the entries effected by the Tahsildar in proceedings Nos. IHC.12/74-75, MR.1/74-75, MR.5/05-06 and MR.9/03-04. The Special Tahsildar, after going through the documents of title and papers conducted an enquiry and dismissed the claim of the said Venkatesh on the ground that he is not having any rights over the property vide his order dated 8.12.2006 in his proceedings under RRT(D)47/2004-05 and when the matter was Appealed before the Assistant Commissioner, Bangalore
North Division against the order of the Tahsildar and the Assistant
Commissioner in his order dated 07.06.2008 also dismissed the claim of the said Venkatesh as he is not having rights of any kind over the said property in Sy.No.83/1 and 83/2 of Mallasandra Village.

Further, the said Venkatesh has filed an appeal before the Special Deputy
Commissioner, Bangalore District in Revn.Petn.46/2008-09 against the order of the Special Tahsildar, Bangalore North Taluk and the Special Deputy Commissioner after enquiry has passed an order dated 02.09.2010 and he has upheld the order of the order of the Special Tahsildar, Bangalore North Taluk vide order dated 8.12.2006 in his proceedings under RRT(D)47/2004-05 and dismissed the claim of the said Venkatesh as he is not having any rights of any kind over the property in sy.Nos.83/1 and 83/2 of Mallasandra Village.

(ii) Proceedings Before Civil Court:
Since the said Venkatesh was constantly disturbing the possession of the
Landlords, the Landlords have filed an Injunction suit before the Principal City Civil & Sessions Judge, Bangalore in O.S.No.1429/2008 and in the said suit an order of Status Quo

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dated 21.02.2008 was passed against the said Venkatesh to maintain the status Quo of the suit property in respect of the possession of the Plaintiffs over the suit property.

Subsequently, the said Venkatesh, by misrepresenting facts and suppressing the new Sy.No.80/1 & 80/3 from the old Sy.No.83 and trying to confuse the revenue authorities and the courts has instituted a fictitious and frivolous suit against the land owners herein in O.S.No.2295/2010 on the file of the learned I Addl. City Civil & Sessions Judge, Bangalore City.
The I Addl. City Civil & Sessions Judge, Bangalore City after full fledged
Trial of both the said suits in O.S.No.1429/2008 and O.S.No.2295/2010 have been decreed wherein, the Injunction suit in O.S.No.1429/2008 was decreed in favour of the land owners and the declaration suit in O.S.No.2295/2010 was dismissed in favour of the land owners and held the said properties are the absolute properties of the present land owners and the Injunction restraining the said Venkatesh and his counterparts has been made absolute.It is submitted that as against the Common Order passed in OS No. 1429/2008 and OS No. 2295/2010 which are suits filed by certain disgruntled persons, an Appeal in RFA No. 602/2016 was preferred. It is pertinent to submit that the Interim Order dated 19.06.2018 passed in said Appeal has not affected the title of the Respondent in any manner as wrongfully portrayed by the Complainants in the present Complaint. It is a well settled principle of law of Lis Pendens that has been reiterated by the Hon'ble High Court in the said order which does not affect a person's title unless specifically held otherwise by the Hon'ble Court. It is pertinent to submit that mere pendency of the suit in respect of the Schedule Property does not lead to a conclusion that the Respondent does not have right, title and interest over the Schedule Property. Since the said suits O.S.No.1429/2008 and O.S.No.2295/2010 have been decreed favourably holding that the said properties are the

absolute properties of the present land owners and the Injunction restraining the said Venkatesh and his counterparts has been made absolute, the counterpart of the said Venkatesh namely Srinivasamurthy again filed a false and frivolous suit against the present land owners in O.S.No.8163/2017 claiming same rights which has already been declared by the Revenue offices and the Civil Court in nO.S.No.1429/2008 and O.S.No.2295/2010 with an ulterior motive for the purpose of harassing the Respondent in every possible manner. It is further submitted that the Respondent has already filed a detailed Written Statement before the said Court stating that the present suit filed by the said Srinivasamurthy in O.S.No.8163/2017 is not having any bearing and liable to be dismissed and the matter is pending disposal before the Court. It is submitted that on a perusal of the facts pleaded above, it clearly reveals that the said Venkatesh and some of his companion persons including Srinivasamurthy are making consistent efforts to extract money by one proceeding or another with a dishonest intention to harass the Respondent and to extort money in all possible ways.

(iii) Proceedings before BBMP:

The said Venkatesh having lost his chances in the Revenue and Civil Courts, has been trying to grab the properties in the new Sy.No.83 belonging to the owners who are the respondents herein knowingly, deliberately with ulterior and fraudulent mentality with the help of local goons and rowdy elements with an dishonest intention, made an application before the Additional Director, Town Planning, BBMP, alleging that the owners and Builders herein have obtained the sanction of plan and license by suppressing of facts and the Commissioner, BBMP passed an impugned order dated 24.07.2014 Bangalore against the Respondent being the owners and the Company by cancelling the sanctioned Plan and License and aggrieved by the said order, the Respondent have filed a Writ petition vide W.P.42485-42497/2014 to

quash the impugned order of the Commissioner, BBMP and the High Court in its order dated 19.09.2014, directed the Respondent and the Builder to approach the BBMP Appeal Committee for the relief under section 443(4) R/w Section 444 (1)(e) of the Karnataka Municipal Corporations Act,1976. Accordingly the Landlords and the Builders moved an Appeal against the impugned order of the Commissioner, BBMP before the BBMP Appeal Committee and the said Appeal Committee after examining the title Deeds and papers of the Landlords and the Venkatesh have passed an order dated 17.03.2015 thereby setting aside the impugned order dated 14.07.2014 of the Commissioner, BBMP as illegal and unsustainable and restored the Building sanctioned Plan and the License with immediate effect and held that the said Venkatesh has no right, title and interest over the propertied bearing sy.Nos.83/1 and 2 of Mallasandra Village, Yashwanthpur Hobli, Bangalore North Taluk, Bangalore District. Respondent completes construction despite Legal Hurdles. It is submitted that the Respondents completed the construction of the 'Project' and applied for the Occupancy Certificate on 09.06.2017. In view of the legal hurdles which are well within the Complainant's knowledge, there was a delay in getting the Occupancy Certificate of the Apartment Units in the 'Project'

26. This is the history of litigation faced by the developer on different forums for different kind of litigations. Despite of it the developer is telling that he has completed the project. Is it true? My answer is no., because the developer has not been able to get the occupancy certificate for the reasons of those litigations. Even then he has executed the sale deed in favour of the complainant.

27. Further it is submitted that the developer has failed to maintain the project in a habitable and clean condition. The residents including the complainant had addressed a mail letter dated 10/09/2019

alleging the issues regarding the deficiencies for which the developer has not responded. For all these reasons the complainant is seeking the refund of the amount.

28. In this regard I would say that the prayer for refund is not possible since the complainant has already taken the sale deed in respect of her flat. If there are any deficiencies then the same has to be addressed in the manner known to law. The demand for refund means it is nothing but cancellation of sale deed. It is not possible since the complainant never questioned the contents of the sale deed. He has given consent to some of facilities. When that being the case the sale deed cannot be cancelled only for want of amenities. Of course the complainant has referred about the litigations which incidentally touching the title of the developer. But there is no finality of the litigation as on the date of sale deed and as on the date of complaint and even now also. The complainant has not made any strong evidence of fraud or misrepresentation shown to him. As per the complainant so many other residents also filed his complaint seeking for delay compensation but the present complaint is filed for refund of the amount. In order to meet his request this authority has to cancel the sale deed which is beyond the jurisdiction of the Adjudicating Officer and hence, I would say that the complainant is entitled for the delay compensation like other inmates and hence, I allow this complaint in part. When there is no scope for cancellation of sale deed only the way for grant of relief is only to grant delay compensation.

29. As per Section 71(2) of the Act the complaint shall be disposed of within 60 days. This complaint was filed on 10.12.2019 where the parties have appeared on 11/02/2020 and the case was posted to 31/03/2020. In the meanwhile on account of natural calamity COVID-19 state government has declared 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/191210/0004947 is hereby allowed in part.
b) The developer is hereby directed to pay delay compensation on the amount paid by him as on May 2016 @ 9% per annum from June 2016 till 30.04.2017 and @ 2% above the MCLR of SBI from May 2017 till the sale deed. Further the developer is to pay simple interest @ 2% above the MCLR of SBI on the principal amount paid on the sale deed from the date of sale deed till the date of receipt of occupancy certificate.
c) In case any delay compensation has been paid by the developer under the sale deed or before execution of sale deed the same may be deducted in the delay compensation as ordered.
d) The Complainant may file memo of calculation as per this order after 60 days in case the developer has failed to comply with the same to enforce the order. Intimate the parties regarding this order.
e) The developer is also directed to pay Rs. 5,000/-as cost of this case.
f) Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 23/11/2020).

(K.PALAKSHAPPA)
Adjudicating Officer.