BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K.PALAKSHAPPA
Adjudicating Officer
Dated: 30th DECEMBER 2020

Complaint No.	**CMP/200219/0005477**
Complainants :	Syed Asheer Mohamed G3, Sri Nandhi Samudri Apartments, Vijayashree Layout, Kodichikkanahalli, Bommanahalli, Bengaluru – 560 076 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 2. Gulam Mustafa Director 3. Jawid Hussain Director M/ S G.M. Infinite Dwelling (India) Pvt. Ltd., Having its Corporate office at # 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.

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 Complainant is an Allottee of an apartment bearing No. T3 K – 1004 in the project "G M Infinite Silver Spring Field". Sale Agreement and Construction Agreement were entered into between the Respondents and Mr. Syed Asheer Mohamed on 12.11.2010. The Complainant has paid Rs.39,60,398/- 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 31.03.2013 after having obtained the Occupancy Certificate. The Complainant was then pressurized to get a Sale Deed executed without OC. However, possession was not granted. The detailed complaint and reliefs are attached herewith as Document No. 1.*
>
> *Relief Sought from RERA :*
> *Delay Compensation + OC*

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

3. After registration of the complaint notice has been issued to the parties. The complainants have appeared through their advocates and filed written complaint. The developer has been called for filing objection by fixing date on 27/10/2020. On verification it is noticed that the developer has not filed the written objections. However on 11/11/2020 a joint memo

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has been filed signed by the Advocate for complainant and developer.

> *The undersigned herein submits that the complainants of complaint Nos.5252, 5298, 5306 and 5477 are allottees of the project GM Infinite Silver Spring Field. The complaints have not been posted for a single hearing however common complaints of the same project are all heard and are posted for orders. Since the matter of these complaints are the same and the Statement of Objections and arguments remain the same, we request this Hon'ble Authority to post these complaints for orders along with the all the other complaints of the project GM Infinite Silver Spring Field. Since the parties adopt the pleadings field in other similar matters.*

4. In view of the above said memo I have taken the matter for judgment on the line of the judgments which have already been pronounced. I am referring to the objections documents written arguments of the parties filed in the batch which has already been disposed off.

5. I would like to say that there were 38 cases as a batch and in the aforesaid complaints, arguments were heard and now they been disposed off.

6. The point that arise for my consideration are:

   a) Whether the complainant proves he is entitled for delay compensation and other reliefs as sought in their complaint?

   b) If so, what is the order?

7. My answer is affirmative in part for the following

REASONS

8. Originally this complaint was filed by Syed Asheer Mohamed he has entered into agreement with the developer on 12.11.2010 in respect of flat bearing No. T3-K-1004. As per the agreement the developer has agreed to complete the project on or before 30.09.2013. The developer has failed to complete the same but executed the sale deed on 19.05.2018.

9. 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. In view of the same the present complaint has been filed for the relief of delay compensation.

10. In this connection the developer has narrated his defence in his written arguments. It is his case that the Complainant has taken possession of their respective units/apartments since 2018 and has been enjoying the same without any hurdles, interruptions and disturbances. That the Complainants have been either residing in their respective units/apartments or let the same to the tenants and earning decent rental income since 2018.

11. It is submitted that the Respondent was shocked and surprised to note that the Complainant are seeking for delay compensation. It is pertinent to state that the Complainants and the Respondent has deliberated on the delay in handing over the Complainant's respective units and apartments 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 has received the said delay compensation wholeheartedly.

12. 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 have filed the present Complaint before this Hon'ble Authority claiming delay compensation and various other reliefs as 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 their 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. The Complainant is stopped from proceeding to file the present Complainant in view of the settlement being arrived at between the parties as mentioned above. The Principles of Promissory Estoppel are applicable to the present case.

13. The Respondent lays reliance on Nathani Steels Ltd Vs. Associated Constructions 1995 Supp (3) SCC 324 wherein it was laid down by the Hon'ble Supreme Court that once a dispute/difference in relation to a matter is amicably settled between the parties, no further claims can be made.

14. In view of the above, it is humbly submitted that no claim survives in the light of the Complainant has received the amount towards compensation and the Complaint is liable to

be dismissed on this 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 their respective Apartments out of their 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 they were happy and convinced with their respective units and the same were constructed and completed as per their respective Construction Agreement and they were fully satisfied with the quality of construction as well as common amenities and facilities provided in the Project and they have no claims of whatsoever against the Respondent. The same is clearly recorded in the Sale Deed which has been produced by the Complainant in their complaint.

15. 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 their Sale Deeds and have taken possession of their respective Flats out of their own free will and volition. There was no protest by any of the Complainant against the respondent at the time of execution of the Sale Deeds. 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.

16. It is submitted that the Complainant has no right to seek for delay compensation after having taken the possession of their respective Flats and after having enjoying the same for over 3 years.

17. Section 18 (1) of the RERA Act provides for payment of compensation/interest for every month of delay till the handing over of the possession. In the present batch matters, the Complainant has received compensation, entered into Sale Deeds and have been in possession of their respective Flats and are in enjoyment of all the amenities provided by the Respondent in accordance with the Agreement for Sale and Construction as well as the Sale Deed. Hence the question of payment of compensation for alleged delay in accordance with Section 18(1) does not arise.

18. This is the gist of the defence taken by the developer. The main grievance of the developer is that the buyer has taken the delay compensation and agreed to satisfy with the same. 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 buyers have agreed with regard to measurement and amenities. But I did not find anything with regard to compensation. The complainant has submitted that the project has not been officially completed since there is no OC and factually not completed by not providing all the amenities.

19. 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.

20. In this regard the developer has said in his objection statement as that the Respondents have 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 Apartments could not be delivered on time to the customer 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. The stand taken by the developer itself goes to show that the BBMP has not given the OC because of pending litigation 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.

21. In the present case the developer has executed the sale deed is not in dispute. 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 the 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 complete, according to the plan

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sanction and that it is fit for use for which it was erected.

12(a). The first part of Bye-law 3.7 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.

22. As per the observation made by the Hon'ble High Court of Karnataka the developer cannot put the allottee into possession of the flat in the absence of occupancy certificate. 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.

23. Further it is also said that the project was involved with so many litigations. It is not denied by the developer and 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 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,

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Bangalore in O.S.No.1429/2008 and in the said suit an order of Status Quo 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'

24. This is the history of litigation pending on different forums for different kind of reliefs. 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.

25. It is submitted on behalf of the complainant that even though the sale deed was executed and a clause has been inserted about the amenities but there are some snags to attend. In this regard the complainant has given the list of incomplete amenities as under:

i. *Bamboo Garden;*
ii. *Creche;*
iii. *Jacuzzi;*
iv. *Tennis Court;*
v. *Elders walkway and park;*
vi. *Security Kiosk in each Tower;*
vii. *Intercom System in each Apartment and common area;*
viii. *In the Club House, the Respondent has displayed a notice that it belong to it and the membership fees paid by the Complainants so far is only towards entry. For use of any facilities within the club House, extra charges have to be paid by the Complainants which will be imposed by the Respondent. Further, the Multipurpose Hall in the Club House has been blocked by the Respondent for establishing a super market, totally against the legitimate rights of the Complainants/Allottees.*

26. Of course the recital of the sale deed may be different from the factual position of the flat purchased by the complainant. Hence, it requires some more evidence.

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27. I would say that by looking into the argument and reply submitted by the parties there are some of the important stages. The developer has sold the flat to the complainant without obtaining OC. The complainant has filed the present complaint for the relief of delay compensation, to provide amenities.

28. I have said that the developer is liable to compensate the complainant since the project is not officially completed. Further he has executed the sale deed in violation of S.17 and 19(10) of the Act and thereby he is liable to pay compensation till he officially competes the project.

29. The complainant has made serious allegation about the amenities. The developer has defended himself by saying that the complainants have agreed and satisfied with the amenities and thereby conceded in the sale deed. It is the case of the complainant that the developer has put monetary pressure and mental pressure on the buyer to agree for such terms to take the sale deed under such situation. It means the complainant is alleging something against the recitals of the sale deed. The developer said that so far as allegation on the amenities is concerned the buyer had to issue notice under S.14 of the Act which is not done by him. I find some force in his submission. The buyer has mixed his relief on different counts. I would say that so far as amenities are

concerned there shall be a report of the expert. I would say that whether the STP is working to the satisfaction of the number of users or not? Whether the bore well water is sufficient to feed to all the users or not? The so called amenities provided by the developer is in accordance with the promise made by him during the time of agreement of sale or not? These questions do arise when we talk about the amenities. In this regard it is my firm opinion that a report is very much necessary from the expert to answer to these allegations. In the present case no such attempt has been made and as such I say that the buyer has to take necessary steps in this regard. Hence, by restricting the relief regarding compensation I allow this complaint in part.

30. As per Section 71(2) of the Act the complaint shall be disposed of within 60 days. This complaint was filed on 19/02/2020. The case was posted to 27/10/2020 for filing objections. However on 11/11/2020 the advocates appearing for the parties have filed a joint memo to take up the matter for judgment and as such this case has been taken up for judgment. With this observation, I proceed to pass the following.

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ORDER

a) The complaint filed in CMP/200219/0005477 is hereby allowed in part.

b) The developer is hereby directed to pay delay compensation on the amount paid by the complainant @ 9% per annum commencing from October 2013 till 30/04/2017 and @ 2% above the MCLR of SBI from May 2017 till the date of sale deed.

c) The developer is also directed 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 possession is delivered after obtaining the occupancy certificate.

d) 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.

e) The developer is also directed to pay Rs. 5,000/- as cost of this case.

f) The complainant may file memo of calculation after 60 days in case the order is not complied by the developer has to comply with the same to enforce the order.

g) Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 30/12/2020).

(K.PALAKSHAPPA)
Adjudicating Officer