BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K.PALAKSHAPPA
Adjudicating Officer
Dated: 21st DECEMBER 2020

Complaint No. :	**CMP/191130/0004836**
Complainant :	Usha S No. 19/3 Jenugudu, 3rd Cross, Meese Rangadhamaiah Road, Vidya Nagar, T Dasarahalli, Bengaluru-560057 Rep.by: E. Suhail Ahamed and Kumari Jasleen Kaur Advocate.
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, Bangalore-560068 Also having Having its Corporate office at # No-105-47, Dickenson Road, Yellappa Garden, F.M. Cariappa Colony, Sivanchetti Gardens Bengaluru-560001

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	2. Gulam Mustafa 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 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.

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 – F604 in the project "G M Infinite Silver Spring Field". Sale Agreement and Construction Agreement were entered into between the Respondents and Mr K.V.S. Prakash and Mrs. Sneha Anil Kumar on 29.01.2011, who later executed an Assignment Agreement dated 05.05.2017 along with the Respondents in favour of the Complainant. The Complainant has paid Rs.57,04,905?/- 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 30.06.2018 after having obtained the Occupancy Certificate. The Respondent had also collected a sum of Rs.2,50,000 each towards BWSSB water connection and car parking space, all of which the Respondent failed to do and only pressurized the Complainant get the 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 + return of amounts paid towards BWSSB and Car Parking Space + Costs of Litigation.

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 other 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 complaint; arguments were heard on 28.07.2020 and again on 30.07.2020. Thereafter, the Complainant has 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 Complainant, 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 their 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 she is entitled for delay compensation and other reliefs as sought in her complaint?
   b) If so, what is the order?

5. My answer is affirmative in part for the following

REASONS

6. The original buyer had entered in to agreement with the developer on 29.01.2011 in respect of flat bearing No. T3 - F - 604. The present complainant has entered into assignment agreement on 05.05.2017 with the buyer with the consent of the developer. As per the agreement the developer has agreed to complete the project on or before 30.06.2018 The

developer has failed to complete the same but executed the sale deed on 24.06.2017

7. Even though the sale deed was executed earlier to the due date 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.

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

9. It is submitted that the Respondent was shocked and surprised to note that the Complainant is seeking for delay compensation. It is pertinent to state that the Complainant and the Respondent has deliberated on the delay in handing over the Complainant unit 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.

10. 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 her intention is 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.

11. 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.

12. 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 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 her 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 she was happy and convinced with her unit and the same was constructed and completed as per her Construction Agreement and she was 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 her complaint.

13. 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 her Sale Deed and has taken possession of her flat out of her 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.

14. It is submitted that the Complainant has no right to seek for delay compensation after having taken the possession of her flat and after having enjoying the same for over 3 years.

15. 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 have 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.

16. 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 his case that the project has not officially completed since there is no OC and factually not completed by not providing all the amenities.

17. 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.

18. In this regard the developer has said in his objection statement as that the Respondents completed the construction of the 'Project' and applied for the Occupancy Certificate on 30.06.2018. 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 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.

19. The developer has agreed to complete the project on or before 31.12.2017. The stand taken by the developer itself goes to show that the BBMP has not given the OC because of pending of 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.

20. In the present case though the developer has executed the sale deed even before the due date but even then the present complaint is filed for compensation. 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

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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*

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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 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.

21. 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.

22. 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 &

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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, 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

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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 Complainant 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

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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'

23. This is the history of litigation faced by the developer on different forum for different kind of litigation. 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.

24. It is submitted on behalf of the Complainant that even after the sale deed having been executed by the respondent in favour of the Complaint, various common amenities have been promised while marketing the project as per the project brochure stand 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.

25. Further the complainant has made several allegations regarding the litigations and also about the amenities.

26. However the complainant has sought for refund of the amount paid towards BWSSB water connection and also towards car parking. Now coming to the refund of the amount paid towards BWSSB water and car parking. In this regard the developer has contended that one covered car parking has been provided to each Flat owner in accordance with the sale deed. The Complainant has sought for refund of amount paid towards car parking by making false and frivolous allegations in her complaint against the Respondent. It is submitted that the Complainant want to enjoy the benefit of the covered car parking space but they do not intend to give consideration to the amounts expended by the Respondent to make arrangements for covered car parking to each Flat Owner. In view of the above, the relief of refund of amounts pertaining to the car parking space may not be granted.

27. Of course I did not find any good reason in the claim of the complaint with respect to refund of amount regarding car

parking since he has already taken the sale deed with car parking.

28. Further the claim for refund of the amount paid towards BWSSB is concerned it is the reply of the developer that the Respondent has incurred expenditure towards obtaining approvals and NOCs from BESCOM, BWSSB, installation of the STP, Pollution Control Board and other appropriate authorities. It is pertinent to submit that a sum of Rs. 50 Lakhs has been expended towards approvals from BWSSB by the Respondent which forms part of the record before this Authority. It is submitted that residents of the Flats have been provided with bore well facility for water and there has been no scarcity of water. Hence, in light of the above, the Complainant is disentitled from seeking relief of refund of amounts paid towards BWSSB.

29. Per contra the complainant has said that the respondent has claimed that the water connection could be made available only if the concerned authority provides the same, however this does not preclude the Respondent from applying for the same. As per information obtained under RTI by the Complainant, the Respondent is yet to apply for not only the water connection but also the sewage connection for the Project.

30. Further it is submitted that the Respondent has failed to repeat the same by producing any documents to establish the fact that it has made an application for water and sanitary connections with BWSSB and has only produced a no objection certificate obtained at the time of commencement of the development work

of the project, which clearly goes to prove that the Respondent has not made any application and that the sanitary connection is illegal and that the Complainant would be the ultimate sufferers if the BWSSB decides to take action. The Respondent having collected money on account of BWSSB deposits has not substantiated as to what is the exact amount that is paid and has not submitted accounts as regards the amount collected from the allottees towards the same. Section 11 (4) requires that the Respondent incurs all such costs out of the money that he has collected from the allottees. It would also become necessary for the respondent to render accounts for the money that is collected in order to substantiate the fact that all the money collected from the Complainant has been utilized for the very same purpose.

31. I would say that the by looking into the argument and reply submitted by the parties there are some of the important stages. The developer has sold the flats to the complainant without obtaining OC. The complainant has filed the present complaint for the relief of delay compensation, to provide amenities and also for refund of the amount which has not been utilized towards permanent water supply clubbed with dispute regarding car parking.

32. 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.

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33. The other complainants who has filed the complaint for relief of delay compensation have been awarded delay compensation from the due date as mention in the agreement but in the present case I am awarding the interest only from the date of sale deed since he/she didn't suffer regarding the delay. In this regard I would like to refer to the observation made by Hon'ble Appex Court. In the decision

In the Supreme Court of India
Civil Appellate Jurisdiction

Civil Appeal No. 6239 of 2019

Wg. Car. Arifur Rahman Khan ....Appellants

And Aleya Sultana and Ors.

Versus

DLF Southern Homes Pvt. Ltd
(Now known as BEGUR OMR Homes Pvt. Ltd.) and Ors.

With

Civil Appeal No. 6303 of 2019

Similarly, the three appellants who have transferred their title, right and interest in the apartments would not be entitled to the benefit of the present order since they have sold their interest in the apartments to third parties. The written submission which have been filed before this Court indicate that "the two buyers stepped into the shoes of the first buyers" as a result of the assignment of rights and liabilities by the first buyer in favour of the second buyer. In HUDA v. RAJE RAM, this Court while holding that a claim of compensation for delayed possession by subsequent transferees is unsustainable observed that:

> *"7. Respondents in the three appeals are not the original allottees. They are re-allottees to whom re-allotment was made by the appellant in the years 1994, 1997 and 1996 respectively. They were aware, when the plots were re-allotted to them, that there was delay (either in forming the of encroachment etc). In spite of it, they took re-allotment. Their cases cannot be compared to cases of original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment. They were aware that time for performance was not stipulated as the essence of the contract and the original allottees accepted the delay."*
>
> *Even if the three appellants who has transferred their interest in the apartments had continued to agitate on the issue of delay of possession, we are not inclined to accept the submission that the subsequent transferees can step into the shoes of the original buyer for the purpose of benefiting from this order. The subsequent transferees in spite of being aware of the delay in delivery of possession the flats, had purchased the interest in the apartments from the original buyers. Further, it cannot be said that the subsequent transferees suffered any agony and harassment comparable to that of the first buyers, as a result of the delay in the delivery of possession in order to be entitled to compensation.*

34. In view of the above observation it is not fare on my part to grant the delay compensation from the due date. However the complainant is entitled for the same either from the date of sale deed or from the due whichever is later till the date of receipt of the Occupancy Certificate. Hence, I allow this complaint in part.

35. The complainant has made serious allegation about the amenities. The developer has defended himself by saying that

the complainant has 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.

36. As per Section 71(2) of the Act the complaint shall be disposed of within 60 days. This complaint was filed on 30/11/2019 where the parties have appeared on 24/01/2020. And the case was posted to 18/03/2020. In the meanwhile on account of natural calamity COVID-19 lock down was declared completely from 24/0/2020 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/191130/0004836 is here by allowed in part.

b) The developer is hereby directed to pay delay compensation on the principal amount paid by the complainant in the sale deed towards purchase of flat @ 2% above the MCLR of SBI commencing from the July 2018 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 developer is also directed to pay Rs. 5,000/-as cost of this case.

e) The complainants 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.

f) Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 21/12/2020).

(K.PALAKSHAPPA)
Adjudicating Officer

21/12/2020