

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ,
ಬೆಂಗಳೂರು-560027

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BEFORE ADJUDICATING OFFICER

PRESIDED BY SRI T.F. BIDARI

DATED 03rd APRIL 2021

Complaint No.	CMP/191226/0005072
Complainant:	Sri Amit Agrawal D-205 , Nagarjuna Apartment , HSR Layout , SEC-2 ,19th Main 27th Cross, Bengaluru – 560 102 (In Person)
Respondent:	M/s Value Design Build Private Limited No 301 & 302, VDB Sentai, R. Narayanapura Main Road, Whitefield, Bengaluru – 560 066

J U D G M E N T

Sri Amit Agrawal (here-in-after referred as complainant) has filed this complaint bearing no. CMP/191226/0005072, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as RERA Act) against the respondent Value Design Build Private Limited (here-in-after referred as respondent) praying to direct the respondent to refund amount and to pay compensation.

2. The brief facts of the case are as under:-

The respondent Value Design Build Private Limited is developing a Real Estate project VDB Azure (here-in-after

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referred as project) in converted immovable land measuring 1 acres 36 guntas, described in agreement of sale and construction agreement both dated 19-06-2014 as "Schedule-A" property of Gunjur Village, Bengaluru East Taluk. The complainant Mr. Amith Agrawal along with his wife Mrs. Veronica Agarwal have entered into an agreement of sale and construction agreement both dated: 19-06-2014 (here-in-after referred as agreement of sale and construction agreement respectively) with the respondent to purchase the apartment No. 403, on 4th floor, being constructed, measuring 1,778 sq.ft. super built up area with a parking area together with undivided interest in plinth area, measuring 771 sq.ft., for consideration mentioned in the agreements, subject to the terms and conditions enumerated in the agreements. The complainant alleged in the complaint that the respondent ought to have been handed over possession of the apartment on or before December 2015 but till date of filing complaint it was not delivered. The complainant has made down payment and also paid through the loan availed from HDFC Bank towards consideration of the apartment. The respondent initially had agreed for refund of amount but subsequently not refunded as promised. Therefore, the complainant filed this complaint seeking relief of refund of amount with compensation.

3. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent remained absent in-spite of service of the notice.

4. I have heard the complainant who appeared in person, through skype. The respondent argument taken as nil. Perused records and the materials.

5. The points that would arise for consideration are:

(1) Whether the complainant is entitled for Refund of amount and compensation? If so, to what extent?

(2) What order?

6. My finding on the above points is as under:

Point No.1: Yes, to the extent as shown in the final order.

Point No.2: As per final order, for following:-

REASONS

7. Point No. 1: The complainant during argument drawn the attention of the Adjudicating Officer to the agreements entered between the parties and the documents produced on his behalf. The respondent remained absent in spite of service of notice, as such, it is made clear that the version of the complainant and the argument advanced on his behalf remained unopposed. The agreement of sale and construction agreement both dated 19.06.2014 disclose that the complainant along with his wife Smt. Veronica Agarwal have entered into an agreement with respondent to purchase apartment No. 403, on 4th floor being

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constructed, on measuring 1,778 sq.ft. super built up area with a parking area together with undivided interest in plinth area, of 771 sq.ft., for consideration mentioned in the agreements, subject to the terms and conditions enumerated in the agreements. As per the terms of the construction agreement the apartment was to be handed over to the purchasers on or before December 2015 with a grace period of 3 months. The complainant claims that he has made down payment of Rs.16,61,865/- and bank loan disbursement by HDFC Bank is to the tune of Rs.17,34,385/- . The consideration amount for undivided interest to the extent of 771 sq.ft., in "Schedule-A" immovable property agreed to be purchased by complainant and his wife is Rs. 28,72,550/-. They have agreed to get construct aforesaid apartment from respondent described in "Schedule-C" of the agreement for consideration amount of Rs.26,67,000/- . The complainant have produced the copies receipts, letters, e-mails and communications exchanged between the parties, which evidences that there is a delay in handing over of apartment in question and completion of construction of the project. These receipts communications, e-mails, evidences that the complainant has paid considerable amount to the respondent and the respondent at one point of time agreed to refund and pay compensation to the complainant for delay but subsequently declined to do so. At the best the respondent ought to have handed over possession of the apartment with OC to the complainant on or before April 2016 including grace period of 3 months. These facts remained unchallenged. At the cost of repetition it be stated that

version of the complainant is remained unchallenged under the circumstances, I am constrained to believe the version of the complainant as same is supported by documentary evidence. The materials on records prove that there in an ordinate delay in handing over possession of the apartment to the complainant more than 3 years as due date for handing over possession of the apartment was on or before December 2015 with grace period of 3 months. The e-mails exchanged between the parties disclose that there is no certainty as to when and on which date the construction of project will be completed and when the apartment in question would be handed over to the complainant. Therefore, there is no hesitation to hold that the complainant is entitled for refund of the part consideration amount paid to the respondent and also admissible interest there-on by way of compensation because of an inordinate delay in handing over possession of the apartment. Thus I hold point No.1 accordingly for consideration.

8. As per the provisions contemplated U/sec. 71(2) RERA Act, the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 26-12-2019, thereafter notices were issued directing the parties to appear through Skype for hearing as because of COVID-19 pandemic the personal hearing before the Adjudicating Officer not yet commenced. The parties given the reasonable opportunities to contest the case, in-spite of that respondent remained absent, as such, the judgment is being passed on merits, with some delay.

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9. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

ORDER

- (i) The complaint filed by the complainant bearing No. CMP/191226/0005072 is partly allowed.
- (ii) The respondent is hereby directed to return / refund the respective amounts, from the respective dates of receipt of such amounts to the complainant and along with interest thereon by the way of compensation @ 9% per annum, till 30-04-2017 and from 01-05-2017 @ 2% above the MCLR of SBI till payment of the entire amount.
- (iii) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (iv) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with the same to enforce the order.
- (v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 03.04.2021)

I.F. BIDARI

Adjudicating Officer-1