

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 I.F. BIDARI**

**DATED 8<sup>th</sup> July 2021**

<b>Complaint No.</b>	<b>CMP/190128/0001966</b>
<b>Complainant:</b>	Nirmala Devi.G #105, 8 <sup>th</sup> Main Road, Pillanna Garden, 3 <sup>rd</sup> Stage, Railway Layout, Bengaluru-560045 (By:R & J Associates Advocates.)
<b>Respondent:</b>	Veracious Builders and Developers (P) Ltd. #302, Oxford Chambers, Rustambagh, Behind Manipal Hospital, Old Airport Road, Bengaluru - 560017

**J U D G M E N T**

Smt. Nirmala Devi.G (here-in-after referred as complainant) has filed this complaint bearing No. CMP/190128/0001966, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent Veracious Builders and Developers (P) Ltd. (here-in-after referred as respondent) seeking relief under sections 10,19(4),31,59,61,63,64,69 of the RERA Act stating that respondent is liable under sections 3,7,9,11(4),12,14,16 and 18 of the RERA Act.



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

The M/s Veracious Builders and Developers Pvt.Ltd. has developed a Real Estate Project "Veracious Zarita"(here-in-after referred as project) in a converted land totally measuring 1 acre 9 guntas, comprised in Re-survey Nos.147/1, 147/3, 147/4, 147/5, 147/6, 147/7, 147/8, 147/9, 147/10, 147/11, and 147/12, situated at Hagaduru Village, of K R Puram Hobli, Bengaluru South Taluk, presently Bengaluru East Taulk, described in the agreement of sale cum construction dated:09.06.2015 (here-in-after referred as agreement of sale) as schedule "I" Property. The complainant had entered into an agreement of sale with the land owners and the respondent to purchase a flat No.A-503, being constructed, on 5<sup>th</sup> floor in block 'A', measuring 1,330 sq.ft. of super built up area together with 512 sq.ft of undivided share in the aforesaid converted land for consideration mentioned in the agreement of sale, subject to the terms and conditions enumerated there-in. The complainant alleged in the complaint that she did pay 10% of the agreed sale amount of Rs.65,00,000/- as advance. The balance amount was periodically settled through the loan granted for the purchase of the flat. The respondent persuaded the complainant to register the property on the pretext of financial constraints, to finish the project and that the total amount received would help them to expedite the project completion. The respondent told to the complainant that he has filed application in RERA for registration of the project and same is under

process. The respondent has deviated from the original sanctioned plan while constructing. The respondent fail to provide the amenities as guaranteed. The respondent has used substandard electrical fittings and other fixtures. The complainant because of persuasion of respondent furnished the interiors. The respondent handed over the keys of the flat to the complainant on the false pretexts of items being stolen from the office. The respondent dodged handing over occupancy certificate more than a year. The complainant entered into sale deed dated:05.12.2016 because of persuasion of the respondent as aforesaid, thereby denied rightful occupancy of the flat in not issuing occupancy certificate immediately. The complainant forced to pay EMI and interest on the loan amount from the date of sale deed. The respondent illegally granted permission for formation of residence association which has been repeatedly demanding money from the complainant, subjecting her to mental torture and defaming her as defaulter. Therefore the complainant has filed this complaint for the relief sought.

3. There-after receipt of the complaint from the complainant, notices were issued to the parties. The complainant has engaged Advocates on her behalf. The complainant subsequently has executed SPA in favour of her daughter Shruthi. The respondent remained absent in-spite of service of the notice.
4. The written argument has been filed on behalf of the complainant. I have heard the SPA holder of the

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complainant, through skype. The respondent argument taken as nil. Perused the records, materials and also the written argument.

5. The points that would arise for consideration are:

- (1) Whether the complainant is entitled for the relief sought? If so, to what extent?
- (2) What order?

6. My findings on the above points are 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 though sought the relief under different sections as discussed above in the body of the judgment but SPA holder of the complainant has filed memo dated:08.10.2020 stating that complainant restricts her relief only to the extent of delayed compensation in this complaint and the SPA holder of the complainant submitted the same during argument. The records discloses that the complainant had entered into an agreement of sale with the land owners and the respondent to purchase a flat No.A-503, being constructed, on 5<sup>th</sup> floor in block 'A', measuring 1,330 sq.ft., of super built up area together with 512 sq.ft., of undivided share in the converted land mentioned in



agreement of sale for consideration, subject to the terms and conditions enumerated there-in. As per the terms of the agreement of sale the flat was to be handed over to the complainant in June 2016 with 3 months grace period. Under the circumstances the respondent ought to have been handed over the flat to the complainant with occupancy certificate (here-in after referred as OC) on or before September 2016 including 3 months grace period. The sale deed has been entered between the parties and the land owners on 05.12.2016 but OC was not provided or handed over to the complainant on the said date. The complainant along with written argument has produced the copy of occupancy certificate dated:12.09.2019 issued by the BBMP, Bengaluru in respect of the project building. The complainant in many words stated in the written argument also in the complaint that OC has been issued on 12.09.2019 thereby denied the rightful occupancy of the flat in question by the complainant. Therefore it is evident that on 05.12.2016 project including flat of the complainant was not ready and fit for occupation as on that date the OC was not obtained by the respondent and handed over to the complainant. This fact evidences that the flat of the complainant was not fit to reside and occupy the same as per the provisions contemplated in Bengaluru Mahanagara Palike Building bye-laws 2003. In this context it is worth to quote the relevant observations of their lordships, in the ruling reported in ILR 2014 KAR 2863 in the case



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Bangalore Housing Development and Investment V/s.  
Bruhat Bangalore Mahanagara Palike, rep., by its  
Commissioner and Other. The relevant portion reads as  
under:

*"BANGALORE MAHANAGARA PALIKE  
BUILDING BYE- LAWS, 2003-BYE-LAW 5.6 –  
Occupancy Certificate (POC) with various terms  
and conditions and its subsequent withdrawal –  
Challenge to – Writ petitions filed by the  
landowner and the builder – Opinion of the  
Authorised Officer is mandatory before the  
grant of Occupancy Certificate – HELD, If the  
building is partly constructed, then an  
Occupancy Certificate in terms of Bye-Law 5.6  
cannot be granted. However, a POC can be  
granted to a part of the building, in terms of  
Bye-Law-5.7.- Unit the building or the part  
thereof is completed in terms of plan sanction  
and the Authorised Officer has so opined, with  
regard to the same, no Occupancy Certificate  
can be granted. (Para 10,12.(c))*

*FURTHER HELD,*

*(a) 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.*

*X*

(Para 11)

(b) 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 inducted 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. (Para12.(a))

(c) The second part of Bye-Law-5.7 is to the effect that the concerned officer has to opine, that the Occupancy Certificate sought for the building or the part thereof is complete in terms of the sanction plan. Therefore, if the building or the part thereof is not completed in terms of the plan sanction, no such Occupancy Certificate can be granted. Even otherwise, the Authorized Officer should opine that the building or part thereof is completed.

(Para 12.(b))

(d) No POC can be granted on conditions. A POC to be granted should be absolute on completion of the building or part thereof in all respects, in tune with the plan sanction. Therefore, even for the sake of arguments if it is to be accepted that the conditions imposed are formal in nature, the same is beyond the scope of Law. Bye-Law 5.7 does not make any distinction between a formal and an informal condition. It does not speak of any condition. The language used in Bye-Law 5.6 where it is clarified with regard to obtaining of such permissions would also stands

*applicable, when a POC has to be granted  
under Bye-Law 5.7.  
(Para 15.(c))*

*(e) The withdrawal of POC shows non  
fulfilment in terms of the plan sanction. Even on  
the day the POC was granted various works  
had to be done. Even after 14 months only 25%  
of it was completed. However, whatever may be  
the percentage of the completion of the work,  
the fact on record is that on the day the POC  
was granted, the building was not complete in  
every respect as per the plan sanction, which is  
a mandatory in terms of Bye-Law 5.7.  
Therefore, the withdrawal itself will also show  
that grant of POC, itself is erroneous, due to the  
building not being complete in every respect  
according to the plan sanction. – BANGALORE  
MAHANAGARA PALIKE BUILDING BYE-LAWS,  
2003 – BYE-LAW 5.7 – OCCUPANCY OR  
LETTING OF THE NREW BUILDING –  
DISCUSSED.  
(Para18)”*

8. At the cost of repetition it be stated that the due date of handing over of the flat of the complainant as per agreement of sale was September 2016 including grace period of 3 months on which date the construction of the flat of the complainant was not completed and OC was not obtained on that date. These facts remained unchallenged. Admittedly in-spite of affording reasonable time respondent has not chosen to appear and contest the complaint. 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 to the effect that there was



delay in handing over possession of the flat to the complainant, as same is supported by documentary evidence. The materials on records prove that there is a delay in handing over possession of the flat with OC, to the complainant more than 2 years as due date for handing over possession of the flat was on or before September 2016. Therefore there is no hesitation to hold that the complainant is entitled for the permissible interest on the respective amounts from the respective dates of paying respective amounts to the respondent to purchase aforesaid undivided share in the converted immovable property and flat in question by way of compensation from October 2016 up-to 12.09.2019 because of delay in handing over possession of the flat. As already discussed above the complainant is not pressing for the relief with regard to remaining reliefs sought in this complaint and restrict the relief only to the extent of delay compensation. Thus I hold point No.1 accordingly for consideration.

9. 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 28-01-2019, thereafter notices 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, but in-spite of that

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respondent remained absent, as such, the judgment is being passed on merits, with some delay.

10. 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/190128/0001966 is partly allowed.
- (ii) The respondent is hereby directed to pay delay compensation to the complainant by way of interest @ 9% from October 2016, on the respective amounts, from the respective dates of receipt of consideration amounts in respect of the flat in question up-to April 2017 and @ 2% above the MCLR of SBI from May 2017 up-to 12.09.2019 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 by me on 08.07.2021

  
**I.F. BIDARI**

Adjudicating Officer-1