

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

DATE: 13th July 2021

Complaint No.	CMP/200923/0006651
Complainant:	Sri. Mallikarjuna.M.N 191/A, 14B Cross, 9 th Main, Sector 6, HSR Layout Bengaluru – 560 102 (In Person)
Respondent:	LGCL Properties Pvt.Ltd. No.12/1, Rest House Road Bengaluru - 560001

J U D G M E N T

Sri. Mallikarjuna M.N. (here-in-after referred as complainant) has filed this complaint bearing No. CMP/200923/0006651, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent LGCL Properties Pvt.Ltd., (here-in-after referred as respondent) seeking relief of refund of amount with interest.

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

The respondent LGCL Properties Pvt.Ltd., is developing a Real Estate Project “LGCL Luxuriate” (here-in-after referred as project) in a converted immovable land, bearing

No.141/A, BBMP PID No.66-258-141/A (carved out of land bearing survey No.8/1) measuring 1822.90 sq.meters, situated at HSR layout, 5th sector, Venkoji Rao Khane Village of Bengaluru South Taluk and District, described in the agreement of sale dated:22.04.2016 as schedule "A" property. The complainant along with his wife Mrs.Priyanka J.Pallagatti, has entered into aforesaid agreement of sale (here-in-after referred as agreement of sale) with the respondent to purchase 558.9 sq.ft of undivided share in the aforesaid converted land for consideration amount of Rs.65,76,000/- to get construct a apartment of 3 BHK bearing No A-801, being constructed, on 9th floor, measuring 2,192 sq.ft., super built up area mentioned in the agreement of sale, subject to the terms and conditions enumerated there-in. The complainant along-with his wife also has entered into construction agreement dated:22.04.2016 (here-in-after referred as construction agreement) with the respondent to get construct the aforesaid apartment costing Rs.91,87,878/- in the converted land covered under agreement of sale from the respondent. The complainant alleged in the complaint that the project is totally not progressing. He has invested in 2016 but no signs of delivery even as on date of filing of the complaint. The construction is not happening on the site. Therefore the complainant has filed this complaint for the relief sought.

3. There-after receipt of the complaint from the complainant, notices issued to the parties. The respondent has appeared through its authorized signatory. The respondent through its authorized signatory has filed the statement of

objections admitting the fact that the complainant along with his wife has entered into an agreement of sale and construction agreement. The K-RERA Act 2016 and the Karnataka Real Estate (Regulation & Development) Rules 2017(here-in after referred as K-RERA Rules) have come into force subsequent to execution of agreement of sale and construction agreement. The respondent has got registered the project with K-RERA where-in project completion date was 31.05.2020. The respondent has applied for renewal on 07.03.2020. The complaint is liable to be dismissed for want of jurisdiction and cause of action. The complainant has filed false complaint without proper basis and same is denied by the respondent. The complainant has availed home loan from the State Bank of India (here-in after referred as SBI) executing Tripartite Agreement dated:22.04.2016 for which also respondent is a party along with SBI and the complainant, where-by co-operated complainant to avail home loan. The complainant has paid Rs.17,00,000/- and through SBI has made payment of Rs.45,00,000/- on various dates and in all paid Rs.62,00,000/-. The complainant has committed default in making payments. The complainant was liable to pay Rs.2,19,34,867/- towards balance payment with interest on delayed payments. This apart the BBMP having accorded permission on 16.06.2014 for construction subsequently obstructed construction on the ground of Hon'ble NGT order also alleging that respondent violating NGT order and KMC Act provisions constructing the project. The respondent furnished proper explanations to the BBMP in this regard mentioned in the statement of objections and ultimately the



BBMP through letter dated:19.12.2020 stated that NGT order not applicable to the project and there is no Raja Kaluve, thus continuing the construction work. It is contended that the construction of apartments in the project, including the apartment in this case delayed because of demonetization, shortage of sand, etc., mentioned in the statement of objections and for the reasons beyond the control of the respondent. Thus respondent is contending that because of force majeure or acts beyond the control of the respondent, the construction of apartment in the project delayed and not for any reasons. The delay in completion of project is not deliberate or intentional but for aforesaid reasons. These main grounds among others urged in the statement objections, prayer to dismiss the complaint.

4. I have heard the complainant who appeared in person also heard Sri.Kirankumar authorized signatory of the respondent, through skype. Perused the records and the materials placed on record.
5. The points that would arise for consideration are:
 - (1) Whether the complainant is entitled for refund of amount with interest ?
 - (2) What order?
6. My findings on the above points are as under:

Point No.1: Partly in the affirmative.

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



REASONS

7. Point No.1: As rightly submitted by the complainant Mallikarjuna M.N, he himself and his wife Smt.Priyanka, together have entered into agreement of sale and construction agreement both Dated: 22.04.2016 with the respondent to purchase 558.9 sq.ft., converted land in "Schedule - A" immovable property described in the agreement of sale, for Rs.65,76,000/- and got construct an apartment bearing No. A-801 being constructed in the project, on 9th floor measuring 2192 sq.ft., on cost of Rs.91,87,878/- subject to terms and conditions mentioned in the said agreements. The parties along with SBI have entered into Tripartite Agreement dated:22.04.2016 where under the complainant and his wife together have borrowed home loan of Rs.1,25,00,000/- to purchase aforesaid apartment. The fact of parties entering into these agreements is admitted one. As per the terms of the construction agreement the apartment was to be handed over to the purchasers within a period of 22 months starting from April 2016 with a grace period of 6 months but admittedly as on today possession of apartment has not been handed over to the complainant and his wife. Therefore, there is no hesitation to hold that there is a delay in handing over possession of the apartment. The respondent in objections among others is contending that because of demonetization, shortage of sand supply, hard rock encountered during excavation, and the BBMP Authorities obstructing construction in view of the order of Hon'ble National Green Tribunal, sand lorry owners strike,

the respondent unable to complete the construction of the project, including apartment in question, since, these reasons/events are force majeure. These reasons cannot be termed as force majeure reasons for the respondent not to complete the construction of the apartment and to handover the possession of the same to the complainant on due date. As per the terms of the construction agreement the respondent ought to have been handed over possession of apartment with OC on or before July 2018 to the purchasers.

- 8 The respondent has raised one more contention that the agreements were entered between the parties on 22.04.2016 (mistakenly typed in statement objection as 24.04.2016) which is much earlier to coming into force of RERA Act and K-RERA rules. The respondent is contending that it has registered the project with K-RERA with project completion date as 31.05.2020 and application for renewal has been filed on 07.03.2020. Admittedly construction of project has not been completed and OC has not been obtained till date, as such, project has been registered with Karnataka RERA as the project in question in this case is an ongoing project as per the provisions of RERA Act and Rules. Therefore, it is made clear that in the instant case the project in question is ongoing project so, required to be registered, accordingly same is registered with K-RERA as such the provisions of the RERA Act and Rules are made applicable to the present case though the agreements were entered between the parties on 22.04.2016 before coming to the force of RERA Act.

9. The respondent in statement objections is contending that the BBMP in its letter dated:19.12.2020 made it clear that the NGT order is not applicable to the project in question and there is no Raja-Kaluve running in the project area and now construction is going on. The fact that BBMP issued many notices on the ground of alleged unauthorized construction of the project violating the NGT order and provisions of KMC Act thereby obstructed construction of the project itself discloses that since beginning the construction is slow and till date the construction has not been completed including apartment in question. Admittedly the respondent not produced any materials to show that completion certificate and occupancy certificate are obtained from concerned authorities and according to respondent construction is going on. The due date of possession of apartment mentioned in the agreement is foundation to consider as to whether there is a delay in giving possession or not. Except lockdown period due to Covid-19 the remaining reasons contended in the objections statement are not force majeure. Admittedly due date for handing over possession as per agreement of sale with 6 months grace period was July 2018, under the circumstances even the lockdown period due to Covid-19 will also not come to the help of respondent for delay in handing over possession of the apartment. The complainant has filed the instant complaint as there is delay in handing over possession of the apartment which itself evidences that there is cause of action to file the complaint. The copy of the statements produced by the respondent disclose that till 19.05.2016 the



complainant had paid Rs.62,00,000/- inclusive of Rs.45,00,000/- paid by the SBI out of the loan amount to the respondent towards apartment in question. The complainant during argument also submits that he has paid Rs.62,00,000/- to the respondent towards part consideration of the apartment. The materials on record proves that there is no progress in the construction of the project as such there is substance in the submission of the complainant that there is no hope of getting possession of the apartment in near future. The materials on record demonstrates that there is no force in the contention of the respondent that complainant is the defaulter much less as contended by the respondent. Therefore, it is just to direct the respondent to refund Rs.62,00,000/- with interest, permissible under RERA Act and K-RERA rules as delay compensation. Thus, I hold point No. 1 partly in the affirmative for consideration.

10. 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 23.09.2020, 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, as such, the judgment is being passed on merits, with some delay.

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ಬೆಂಗಳೂರು-560027

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11. 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/200923/0006651 is partly allowed.
- (ii) The respondent is hereby directed to return Rs.62,00,000/- to the complainant with interest @ 9% per annum on the respective amounts, from the dates of receipt of respective amounts till 30.04.2017 and from 01.05.2017 @ 2% above the MCLR of SBI till payment of entire amount.
- (iii) The complainant is hereby directed to execute the cancellation of the registered agreement of sale dated:22.04.2016 in favor of the respondent after realization of the entire amount as per this order.
- (iv) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (v) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with this order to enforce the order.
- (vi) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 13.07.2021)


I.F. BIDARI

Adjudicating Officer-1

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