

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

1

BEFORE ADJUDICATING OFFICER

PRESIDED BY SRI I.F. BIDARI

DATED 25th AUGUST 2021

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| Complaint No. | CMP/200314/0005633 |
| Complainant: | Mrs. Meenakumari Palangat Othayoth Balrema, Cherukkunnu P.O, Kannur District, Kerala – 670301. (By. Sri. M. Mohan Kumar and Associates Advocates) |
| Respondent: | Mantri Developers Pvt. Ltd., Mantri House, #41, Vittal Mallya Road, Bengaluru – 560001. (By. Iyengar & Pai Advocates) |

J U D G M E N T

Mrs. Meenakumari Palangat Othayoth (here-in-after referred as complainant) has filed this complaint bearing No. CMP/200314/0005633, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent Mantri Developers Pvt. Ltd., (here-in-after referred as respondent), for the reliefs 1). Direct the respondent to complete the construction at the earliest and handover the flat along with O.C. 2). Direct the respondent to pay the delayed compensation interest at the rate of 12% per annum on their sale consideration paid that is Rs.54,48,672.47/- till handover of the apartment with from



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2

promised date of possession i.e., 31.03.2017 until realisation and giving Occupancy Certificate. 3). Direct the respondent to pay a sum of Rs. 25,000/- per month from the promised date of possession, i.e.31.03.2017, towards of loss of income by rent. 4).Compensation for the mental agony and pain and damage to an extent of Rs. 5,00,000/-. 5). Compensation for unfair trade practice to an extent of Rs. 50,000/.

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

The respondent Mantri Developers Pvt. Ltd., is developing a Real Estate Project Mantri Webcity, in converted immovable property, bearing Sy. Nos. 1, 2, 3, 4, 5, 6, 15/4, 19/1, 19/1, 19/4, 19/5, 19/6, 19/7, 19/8, 19/9, 19/10, 19/11, 19/12, 19/13, 19/14, 19/16 and 20/2 situated at Nagareshwara Nagenahalli (measuring 18 acres 8 guntas) and Kotanuru Village (measuring 26 acres 16.5 guntas) including an extent of 5 acres 22 guntas of Bengaluru South Taluk, relinquished, in favour of Bengaluru Development Authority (here-in-after referred as BDA), described as schedule A property, in the agreement of sale dated 10.04.2014. The complainant Meenakumari along with her son Mr. Rahul Rajendran, has entered into an agreement of sale and construction agreement both the dated: 10.04.2014 (here-in-after referred as agreement of sale and construction agreement respectively) with the respondent to purchase undivided share measuring about 115.24sq.mtrs., described as Annexure -A1, in the agreement of sale out of schedule A property and to get construct an apartment (here-in-referred as flat) bearing No. F-307, being constructed in schedule A property, on 3rd floor, in Block/Wing - F in the project Mantri Webcity-2A (here-in-after referred as project), of super built-up area measuring 1250sq.ft.,

with a parking area, described as Annexure – B1, in construction agreement dated 10.04.2014 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant alleged in the complaint that they have booked aforesaid flat for total consideration amount of Rs. 74,45,440.50/-, out of which they have paid Rs.54,48,672.47/-. As per terms of the agreement respondent was to handover possession of the flat on 31.03.2017. The respondent has failed to complete the project and to deliver possession of the flat in time. The complainant losing money by way of paying rent. The complainant have taken hand loan and arranged for funds to pay towards advance amounts. The complainant is losing income as they are unable to rent out flat as possession not delivered. Therefore complainant is entailed interest at 12% per annum for delayed period on all their money paid to the respondent. The respondent caused mental pain and agony. The respondent has indulged in unfair tread practise. The savings and earnings on their savings completely wiped off. The respondent is liable to make good for the said losses. These main grounds among others urged in the complaint, prayer to grant the relief as prayed for.

3. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent has appeared through it's authorised signatory. The respondent has filed the statement objections admitting the fact that complainant along with her son has entered into an agreements. The construction of flats in the project, including the flat in this case delayed because of demonetization, introduction of GST, higher tax rate, higher interest rate for home loans, reduction of demand in real



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Karnataka Real Estate Regulatory Authority Bangalore

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4

estate sector, Covid-19 pandemic, lock down, much less, for reasons beyond the control of the respondent mentioned in the objection statement. The respondent though under such supervening force majeure events, has constructed the project work up to 95% and only remaining 5% minor finishing work is balance. The complainant for entitlement of compensation ought to prove alleged grounds of complaint with cogent evidence. The complainant has levelled false allegations against the respondent. The complainant is not entitled for the compensation as claimed. The son of the complainant has not joined as a party in this complaint. The skeletal structure was put up in 2017 which is evidenced from photograph dated 01.07.2017, same is uploaded by the respondent in the website of authority. The respondent would complete project at the earliest and handover flat to the complainant. The delay in handing over possession of the flat is not deliberate but for reasons beyond the control of the respondent. These main grounds among others contended in the statement objections, prayer to dismiss the complaint.

4. Heard Sri. M.M.K learned Advocate for the complainant and heard Sri. S.S.P learned Advocate for the respondent, through Skype. The written arguments are filed both on behalf of complainant and the respondent. Perused the records, materials and the written arguments.

5. The points that would arise for consideration are:

- (1) Whether the complainant is entitled for compensation as sought for? 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 Nos.1: The records disclose that complainant Mrs. Meenakumari Palangat Othayoth along with her son Mr. Rahul Rajendran, has entered into construction agreement dated 10.04.2014 and Agreement of sale dated. 10.04.2014 respectively with the respondent to purchase undivided share in the "Schedule A" immovable property described in the agreement of sale at Annexure-A1, and to get construct aforesaid flat bearing No. F-307 in the project, on 3rd floor, in Block-F for consideration amount of Rs. 74,45,440.50/- subject to terms and conditions of the agreements. The fact of parties entering into these agreements is admitted one. As per the terms of the construction agreement the flat was to be handed over to the purchaser on or before 31.03.2017. Admittedly the agreements are executed on 10.04.2014, much prior to coming in to force of the RERA Act. Therefore it is just to consider as to whether the provisions of RERA Act 2016 and K-RERA Rules 2017, are applicable in the present case or not. Admittedly project has been registered with Karnataka RERA as the project in question in this case as an ongoing project as per the provisions of RERA Act and K-RERA Rules. The Hon'ble Haryana Real Estate Appellate Tribunal in appeal Nos. 52 & 64 of 2018 decided on 03.11.2020, in appeal No 52/2018, in the case of Emaar MGF Land Limited Vs. Ms. Simmi Sikka and another and in appeal



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

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6

No. 64/2018 in the case of Ms. Simmi Sikka Vs. M/s. Emaar MGF land Limited, among others observed that provisions of the Act shall become applicable even to an unregistered project or projects which do not require registration with respect of the fulfillment of the obligations as per the provisions of the Act, Rules & Regulations framed there-under. Therefore, it is made clear that in the instant case the project in question is ongoing project, required to be registered, accordingly same is registered with K-RERA, as such, the provisions of the RERA Act and K-RERA Rules are made applicable to the present case though the agreements were entered between the parties on 10.04.2014, before coming to the force of RERA Act.

8. Sri. S.S.P learned counsel for the respondent submits that except the relief claimed with regard to delay compensation, rest of the reliefs sought in the complaint are not covered under Sec.72 of RERA Act. The learned counsel further submits that the rate of interest claimed on delay compensation is exorbitant and complainant is not entitle for the reliefs claimed and the delay is due to force majeure reasons and not due to fault of the respondent. These facts are mentioned in detail in written argument. Per contra Sri. M.M.K learned counsel for the complainant submits that the relief sought by the complainant in relief No.2 is covered within the scope of Sections 12, 14, 18 and 19, relief No.1 is covered under Section 19(3) and 19(10) of RERA Act and reliefs No. 3 to 6 sought in the complaint covered U/Sec. 71 and 72 of RERA Act. The respondent in objection statement, in written argument, as well, Sri. S.S.P learned counsel for the respondent during oral arguments in many words submits that 95% of construction of project has been

completed and only 5% finishing work is balance. The respondent has produced photo copy of the project building at R-5 with the statement of objection, exhibiting the photo of the project building as on 01.07.2017. Therefore admitted fact is that till this day construction of project building has not been completed and it was not completed as on 31.03.2017 and till this day flat has not been handed over to the possession of the complainant with OC. The learned counsel for the respondent submits that delay in handing over of possession of flat is due to force majeure reasons and not deliberate, so the complainant is not entitled for even for delay compensation as per clause 6.4 and clause 6.1 of the construction agreement. The respondent in support of this contention of force majeure is stating that demonetization, introduction of GST, higher Tax rates, higher interest rates for home loans, market, volatility in the real estate, reduction of demand in real estate sector and overall global slowdown and COVID – 19 pandemic but except lockdown period during COVID -19 pandemic remaining these reasons are not the force majeure reasons for delay in handing over possession of the flat. The respondent has produced the copy of circular dated 19.05.2020 issued by the RERA Authority Karnataka extending completion dates mentioned in the registration certificates mentioned there-in up to 15.09.2020 because of COVID -19 pandemic invoking force majeure clause. This circular will also not help the respondent, to hold that because of COVID-19 pandemic the delay has been caused in handing over possession of the flat, as the date of delivery of the possession of the flat was on or before 31.03.2017, which is much prior to the COVID -19 pandemic, as the said pandemic has started only in the year 2020 onwards. Therefore as rightly



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Karnataka Real Estate Regulatory Authority Bangalore

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8

submitted by the learned counsel for the complainant the complainant has raised this complainant. Sri. S.S.P learned counsel for the respondent submits that the parties have entered in to agreements accordingly the provisions of the agreements are binding on the parties, including force majeure clause and this Authority cannot re-write or interpret the terms of the agreements in different ways. Per contra Sri. M.M.K learned counsel for the complainant submits that the agreements entered between parties are one sided agreements much favorable to the respondent than complainant and terms of the said agreements cannot take away the statutory right of the complainant accrued under the RERA Act. The learned counsel in support of the argument placed reliance on the judgments passed by the Hon'ble Supreme Court of India (1) in Civil Appeal No. 12283 of 2018 in the case Pioneer Urban Land & Infrastructure Ltd. vs Govinda Ragavan with Civil Appeal No. 1677 of 2019 in the case Pioneer Urban Land & Infrastructure Ltd. vs Geetu Gidwani Verma and Anr. (2) in Civil Appeal No. 5785 of 2019 in the case of Ireo Grace Real Tech Pvt. Ltd. Vs Abhishek Khanna & Others with Civil Appeal No. 7615 if 2019, Civil Appeal No. 7975 if 2019, Civil Appeal No. 8454 if 2019, Civil Appeal No. 8480 if 2019, Civil Appeal No. 8482 if 2019, Civil Appeal No. 8785-94 if 2019, Civil Appeal No. 9139 if 2019, Civil Appeal No. 9216 if 2019, Civil Appeal No. 9638 if 2019, Civil Appeal No. 3064 if 2020, also placed reliance on the order passed by the Hon'ble National Consumer Dispute Redressal Commission New Delhi in the case of Ritu Hasija & Anr. Vs Ireo Grace Real Tech Pvt. Ltd. The perusal of contents of agreements discloses that terms of the said agreements are more favorable to the respondent than the complainant and appears to be one

sided. Therefore in view of the ratio and the principals let down by their lordships the terms of said agreements shall not take away the statutory right accrued to the complainant under the provisions of RERA Act, particularly under Section 18(1) of RERA Act. The materials on record proves that the respondent has contravened the provisions of Sec.18(1) of RERA Act in as much as causing delay in hand over possession of the flat before 31.03.2017, as such, complainant is entitled for delay compensation by way of interest at 9% per annum on respective amounts from the dates of receipt of respective amounts from 01.04.2017 till 30.04.2017 and from 01.05.2017 @ 2% above the MCLR of SBI till the handing over of the possession of the flat with Occupancy Certificate.

2. No cogent and corroborative materials are produced to prove the entitlement of the complainant for the compensation with regard to mental pain and agony, loss of income due to delay in handing over of possession of the flat, much less, as claimed by the complainant. The materials on record are not enough to award compensation to the complainant in that regard. As per the provisions contemplated U/Sec. 71 of RERA Act, the Adjudicating Officer has jurisdiction to adjudicate compensation only U/Secs. 12, 14, 18 and 19 of the RERA Act, taking in-to consideration the factors covered U/Secs. 72 of RERA Act, as such, the one of the relief claimed by the complainant to direct the respondent to complete the construction at the earliest and handover the flat along with OC, much less, as sought by the complainant is not coming within the jurisdiction of the Adjudicating Officer as the same is not partaking the character of compensation U/Sec. 12, 14, 18 and 19 of the RERA Act. At



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Karnataka Real Estate Regulatory Authority Bangalore

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10

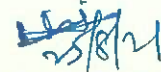
the best the Hon'ble K-RERA Authority has jurisdiction to decide about the said relief. Therefore the said relief of the respondent is not liable to be considered in this case, before the Adjudicating Officer.

10. As per the provisions contemplated U/Sec.31 of the RERA Act, complainant who is an allottee of flat in question being aggrieved by the act of the respondent for delay in handing over of the possession of the flat has filed instant complaint same is not bad for non inclusion of her son Rahul in the complaint as a complainant. Therefore there is no substance in the contention of the respondent that present complaint is bad for non inclusion of Rahul as a party in the complainant much less, as contended by the respondent. Thus I hold point No.1 accordingly for consideration.
11. 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 14.03.2020, 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.
12. Point No.2: In view of my findings on point Nos. 1, I proceed to pass the following:-

✍

ORDER

- (i) The complaint filed by the complainant bearing No.: CMP/200314/0005633 is partly allowed.
- (ii) The respondent is hereby directed to pay delay compensation to the complainant from 01.04.2017 by way of interest @ 2% per annum on 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 the handing over of the possession of the flat with Occupancy Certificate.
- (iii) The complainant is at liberty to approach the Hon'ble K-RERA Authority for the relief seeking direction to the respondent to complete the construction at the earliest and handover the flat along with OC, much less, as claimed in relief No.1.
- (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 25.08.2021)



I.F. BIDARI

Adjudicating Officer-1

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