

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 26th AUGUST 2021

Complaint No.	CMP/200312/0005693
Complainant:	Mr. Ghanshyam Gehlot Flat G12 Gitanjali Pride 2, 3 rd Main Road Malleshpalya, Kaggadasapura Bengaluru Urban - 560075. (By. Sri. M. Mohan Kumar and Associates Advocates)
Respondent:	Mantri Developers Pvt. Ltd., Mantri House, #41, Vittal Mallya Road, Bengaluru - 560001. (By. Sri. Sunil P. Prasad and Associates Advocates)

J U D G M E N T

Mr. Ghanshyam Gehlot (here-in-after referred as complainant) has filed this complaint bearing No. CMP/200312/0005693, 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 Respondents to complete the construction at the earliest and handover the flat along with Occupancy Certificate. 2. Direct the Respondents to pay the delayed compensation interest at the rate of 12% per



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annum on our Sale Consideration paid that is Rs. 45,35,187/- till handing over of the Apartment along with Occupancy Certificate; 3. Direct the Respondents to pay the PRE-EMI for future installment until completion of the Apartment and handing over the same with Occupancy Certificate. 4. Reimburse the PRE-EMI Arrear of Rs. 19,30,915/- as on March 2020, along with interest at the rate of 12% per annum until realization. 5. Compensation for the Mental Agony and pain and Damages to an extent of Rs.5,00,000/- 6. Compensation for unfair Trade practice to an Extent of Rs.3,00,000/- 7. Cost of litigation and expense 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 of undivided share of land dated 02.12.2015. The complainant Mr. Ghanshyam Gehlot along with his wife Mrs. Preethi, has entered into an agreement of sale of undivided share of land and agreement of construction both the dated: 02.12.2015 (here-in-after referred as agreement of sale and construction agreement respectively) with the respondent to purchase undivided share measuring about 161.71sq.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. T-701, being constructed in schedule A property, on 7th floor, in Block/Wing - T in the project Mantri Webcity-3C (here-in-after referred as project), of super built-up area measuring 1740sq.ft., with a parking area, described as Annexure – B1, in construction agreement dated 02.12.2015 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. 1,16,65,174/-, out of which they have paid Rs.81,35,187/- as on 29.03.2016 (Rs.36,00,000/- through HDFC bank loan and Rs. 45,35,187/- from personal end). As per terms of the agreement respondent was to handover possession of the flat on 30.04.2018. The respondent has failed to complete the project and to deliver possession of the flat in time. The respondent's has offered to pay Pre-EMI scheme as per which respondent had to pay Pre-EMI instalments of bank loan until possession. The respondent failed to pay the Pre-EMI instalments as agreed. The 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 trade 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 Advocates. The respondent has filed the statement

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objections admitting the fact that complainant along with his wife 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, heavy rain fall in Bengaluru city, hard rock encountered during excavating the land, time consume to meet out legal issues, obtaining licence to blast the rock, shortage of sand supply, shortage of skilled labour, Covid-19 pandemic, lock down, etc., much less, for reasons beyond the control of the respondent mentioned in the objection statement. The completion date of the project in the registration certificate was 30.06.2020 and again extended till 30.03.2021 because of COVID -19 and application of respondent before the authority for further extension of period till 30.03.2022 is pending consideration. Thus the instant complaint is premature and not maintainable under law. The respondent without prejudice to the contentions raised in the objection, as a good gesture to maintain healthy relationship with its customer is ready to pay delay compensation at the rate of Rs.3 per sq.ft as per clause 14.5 of construction agreement. The complainant has levelled false allegations against the respondent. The complainant is not entitled for the compensation as claimed. The wife of the complainant has not joined as a party in this complaint. The complaint is bad for non-joinder of necessary party. The delay in handing over possession of the flat is due to force majeure reasons and 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.

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

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 Mr. Ghanshyam Gehlot along with his wife Mrs. Preethi, has entered into construction agreement dated.02.12.2015 and Agreement of sale dated. 02.12.2015 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. T-701 in the project, on 7th floor, in Block-T for consideration amount of Rs.1,16,65,174/- 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 30.04.2018. Admittedly the agreements are executed on



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02.12.2015, 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 Honb'le 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 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 fulfilment 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 so, 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 02.12.2015, before coming to the force of RERA Act.

2. Sri. S.P.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 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. Per contra Sri. M.M.K learned counsel for the



respondent. 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 7 sought in the complaint covered U/Sec. 71 and 72 of RERA Act. The respondent in objection statement, as well, Sri. S.P.P learned counsel for the respondent during oral argument in many words submits that due to COVID-19 pandemic has extended completion date of the project till 30.06.2020 and application of the respondent for further extension of the period till 30.03.2022 is pending before the authority, as such, this complaint is premature one. Therefore admitted fact is that till this day construction of project building has not been completed and it was not completed as on 30.04.2018 and till this day flat has not been handed over to the possession of the complainant with OC. The completion date mentioned in agreements is the foundation to arrive at date of handover of the flat to the purchaser and not the completion date mentioned in the registration certificate. 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 entitle for even for delay compensation as per clause 6.4 of the construction agreement. The respondent in support of this contention of force majeure is stating that demonetization, introduction of GST, higher tax rate, heavy rain fall in Bengaluru city, hard rock encountered during excavating the land, time consume to meet out legal issues, obtaining licence to blast the rock, shortage of sand supply, shortage of skilled labour, Covid-19 pandemic, lock down, etc., but except lockdown period during COVID-19

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pandemic remaining these reasons are not the force majeure reasons for delay in handing over possession of the flat. Therefore as rightly submitted by the learned counsel for the complainant the complainant has raised this complainant and this complaint is not premature one. Sri. S.P.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 favourable 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



discloses that terms of the said agreements are more favourable to the respondent than the complainant and appears to be one sided. Therefore in view of the ratio and the principals laid 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 30.04.2018, as such, complainant is entitled for delay compensation from 01.05.2018 by way of interest @ 2% above the MCLR of SBI, on respective amounts from the dates of receipt of respective amounts till the handing over of the possession of the flat with Occupancy Certificate.

8. 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. No materials produced to show that respondent had agreed to pay Pre-EMI instalments of bank loan till handing over possession of flat, much less, as contended 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, the one of the relief claimed by the complainant, to direct the respondent to complete the construction at the earliest and



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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 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.

9. 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 Mrs. Preethi in the complaint as a complainant but her name is mentioned in the complaint. Therefore there is no substance in the contention of the respondent that present complaint is bad for non-joinder of necessary parties, much less, as contended by the respondent. Thus I hold point No.1 accordingly 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 12.03.2020, 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.



11. 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/200312/0005693 is partly allowed.
- (ii) The respondent is hereby directed to pay delay compensation to the complainant from 01.05.2018 by way of interest @ 2% above the MCLR of SBI, on respective amounts from the dates of receipt of respective amounts 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 26.08.2021)



I.F. BIDARI

Adjudicating Officer-1

