

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI I.F. BIDARI
DATED 31st AUGUST 2021

Complaint Nos. CMP/200408/0005821,
CMP/200407/0005820, CMP/200407/0005799,
CMP/200329/0005805 and CMP/200325/0005796

Complainant in complaint No. CMP/200408/0005821

Mr. Sudharshan S,
202 RK Apts, 15th BLK Hoysalanagar,
Ramamurthy Nagar,
Bengaluru Urban - 560016.

Complainant in complaint No. CMP/200407/0005820

Mr. Datla Hema Sekara Raghava Raju,
12-203, Mantri Residency, Bannerghatta Road,
Near Meenakshi Temple,
Bengaluru Urban – 560076.

Complainant in complaint No. CMP/200407/0005799

Mr. Pankaj Jain,
Villa 34, The Gran Carmen, Sarjapur Road
Mullur Village,
Bengaluru Urban – 560035.

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ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನೈಟೆಡ್ ವಿಲ್ಪಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್
ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

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Complainant in complaint No. CMP/200329/0005805

Mr. Ajay Jayashankar,
1/1 Shanti Nilaya, 1st 3rd Block,
Kumara Park (West),
Behined Mahalakshmi Temple,
Bengaluru Urban – 560020.

Complainant in complaint No. CMP/200325/0005796

Mr. Naveen Varma Datla,
No. 201, Building 13, Mantri Residency,
Bannerghatta Road, Near Meenakshi Temple,
Bengaluru Urban – 560076.

(By Sri. M. Mohan Kumar and Associates Advocates)

Versus

Common respondent in all the complaints

1. Mantri Technology Constellations Pvt. Ltd.,
Presently known as Buoyant Technology Constellations Pvt.
Ltd. Mantri House, #41, Vittal Mallya Road,
Bengaluru Urban – 560001.
2. Manyata Realty
No.9/1, 1st Floor, Classic Court Richmond Road
Bangalore-560 025

(R1-By. Sri. Sunil P. Prasad and Associates Advocates)

(R-2 Absent)

COMMON - J U D G M E N T

The Complainant Mr. Sudharshan S in complaint No. CMP/200408/0005821, complainant Mr. Datla Hema Sekara Raghava Raju in complaint No. CMP/200407/0005820, Complainant Mr. Pankaj Jain in complaint No. CMP/200407/0005799, Mr. Ajay Jayashankar in complaint No. CMP/200329/0005805 and complainant Mr. Mr. Naveen Varma Datla in complaint No. CMP/200325/0005796, respectively have filed their separate complaints under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent No.1 Mantri Developers Pvt. Ltd., (here-in-after referred as respondent) and respondent No. 2 Manyata Realty for the reliefs sought in their respective complaints under the RERA Act. The respondents in all these complaints are same and relief sought in the complaints is also almost similar, as such, the complaint Nos. CMP/200407/0005820 (here-in-after referred as complaint No. 5820), CMP/200407/0005799 (here-in-after referred as complaint No. 5799), CMP/200329/0005805 (here-in-after referred as complaint No. 5805) and CMP/200325/0005796 (here-in-after referred as complaint No. 5796) are clubbed in complaint No. CMP/200408/0005821 (here-in-after referred as complaint No. 5821) for disposal of all these complaints by common judgment, hence these complaints are taken together for disposal by common judgment.

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2. The brief facts of the complaints relating to complaint Nos. 5821, 5820, 5799, 5805 and 5796 are as under:

The respondent No.1 Mantri Technology Constellations Pvt. Ltd., is developing a Real Estate Project Mantri Manyatha Energia, in converted immovable property, bearing Sy. Nos. 2/1, 2/2, 2/3 and 80 situated at Rachenhalli Village, K.R.Puram Hobli, Bengaluru East Taluk in all measuring 11 acres 23.34 guntas reduced by 4613.97sq.mtrs., relinquished, in favour of Bengaluru Development Authority (here-in-after referred as BDA), described as schedule A property, in the agreements of sale of undivided share of land. The complainant Mr. Sudharshan S along with his wife Mrs. Divya, in complaint No. 5821, complainant Mr. Datla Hema Sekara Raghava Raju along with his wife Mrs. Saraswathi Kanumuri in complaint No. 5820, complainant Mr. Pankaj Jain along with his wife Mrs. Priyanka complaint No. 5799, complainant Mr. Ajay Jayashankar along with his wife Mrs. Nandini Ajay in complaint No. 5805 and complainant Mr. Naveen Varma Datla along with his wife Mrs. Saujanya in complaint No. 5796 respectively, have entered into their respective agreement of sale of undivided share of land and agreements of constructions dated: 22.04.2016, 13.05.2016, 26.02.2016, 29.12.2015 and 24.05.2016 respectively (here-in-after referred as agreements of sale and construction agreements respectively) with the respondents to purchase undivided share described as Annexure -A1, in the agreements of sale out of schedule A property and to get construct apartments (here-in-referred as flats). The complainant Mr. Sudharshan S in complaint No.5821 agreed to get construct flat bearing No. B-304, being constructed in schedule A property, on 3rd floor, in Block/Wing - B in the project, described as Annexure – B1, in

construction agreement dated 22.04.2016 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant Mr. Datla Hema Sekara Raghava Raju in complaint No.5820 agreed to get construct flat bearing No. A-1505, being constructed in schedule-A property, on 15th floor, in Block/Wing - A in the project, described as Annexure – B1, in construction agreement dated 13.05.2016 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant Mr. Pankaj Jain in complaint No.5799 agreed to get construct flat bearing No. C-605, being constructed in schedule-A property, on 6th floor, in Block/Wing - C in the project, described as Annexure – B1, in construction agreement dated 26.02.2016 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant Mr. Ajay Jayashankar in complaint No.5805 agreed to get construct flat bearing No. C-305, being constructed in schedule-A property, on 3rd floor, in Block/Wing - C in the project, described as Annexure – B1, in construction agreement dated 29.12.2015 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant Mr. Naveen Varma Datla in complaint No.5796 agreed to get construct flat bearing No. J-1205, being constructed in schedule-A property, on 12th floor, in Block/Wing - J in the project, described as Annexure – B1, in construction agreement dated 24.05.2016 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

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3. The complainant Mr. Sudharshan S, in complaint No. 5821 alleged in the complaint that he has booked aforesaid flat for total consideration amount of Rs. 91,52,846/-, out of which they have paid Rs.80,42,168/- (Rs.34,39,028/- obtaining SBI bank loan and Rs. 46,08,140/- self contribution). The complainant Mr. Datla Hema Sekara Raghava Raju, in complaint No. 5820 alleged in the complaint that he has booked aforesaid flat for total consideration amount of Rs. 97,13,095/-, out of which they have paid Rs.84,95,904/- (Rs.50,28,419/- obtaining HDFC bank loan and Rs. 34,67,414/- self contribution). The complainant Mr. Pankaj Jain, in complaint No. 5799 alleged in the complaint that he has booked aforesaid flat for total consideration amount of Rs. 93,82,782/-, out of which they have paid Rs. 70,17,327/-. The complainant Mr. Ajay Jayashankar in complaint No. 5805 alleged in the complaint that he has booked aforesaid flat for total consideration amount of Rs. 92,51,796/-, out of which they have paid Rs.75,30,897/- (Rs.57,55,811/- obtaining SBI bank loan and Rs. 17,75,086/- self contribution). The complainant Mr. Naveen Varma Datla in complaint No. 5796 alleged in the complaint that he has booked aforesaid flat for total consideration amount of Rs. 96,53,479/-, out of which they have paid Rs.82,85,791/- (Rs.48,05,560/- obtaining SBI bank loan and Rs. 33,97,813/- self contribution). As per terms of the agreements respondent was to handover possession of the flats to the complainants on or before 31.12.2018.
4. The complainants allege that all agreements executed on dotted line format, unilaterally drafted by the respondent giving no scope for alteration etc., the complainants were prompt in making payment on time. The complainants further allege that

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the respondent has failed to complete the project and to deliver possession of the flats in time. The complainant in complaint No. 5820 alleges that the respondent had offered to give discount up to 2% on cost of flat by way of credit note but so-far not complied said condition. The respondent required to issue credit note for a sum of Rs. 1,52,859/- and prayed to direct the respondent to reduce the cost of the flat to that extent. The complainant in complaint No. 5799 alleged that he had booked the flat during free-lunch in August 2015 under scheme known as 69+ modular kitchens +1% credit note and respondent has offered to pay interest on loan over and above 6.99% for a period of 69 months commencing from 2016. Since he had not opted for bank loan hence respondent had offered to pay 3% discount on the basic cost of the flat which comes around Rs.2,30,005/-. The respondent offered to settle the discount by way of credit note at the time of registration but failed to issue credit note, hence prayed to reduce cost of the flat by Rs. 3,06,674/- providing overall 4% discount as per scheme. The complainant in complaint No. 5805 alleged that he had booked the flat in August 2015 under scheme known as 69+ modular kitchens +1% credit note and respondent has offered to pay interest on loan over and above 6.99% for a period of 69 months commencing from September 2016. The respondent failed to pay the interest from April 2019 as agreed and liable to pay interest Rs.1,24,089/- in that regard as on date of filing the complaint. The complainant in the complaint No. 5796 alleged that respondent had offered him 2% discount on cost of flat by way of credit note which comes to Rs.1,51,353/- but not complied the same, hence prayed to reduce the cost of the flat to that extent. The complainants are entitled interest at 12% per annum for delayed period on all their

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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 complaints, prayer of the complainants is to grant the reliefs, to direct the respondents to complete the construction at the earliest and handover the flat along with Occupancy Certificate, direct the respondents to pay the delayed compensation, interest at the rate of 12% per annum on their sale consideration paid amounts, till handing over of the flats along with Occupancy Certificate. The complainants prays for compensation for the mental agony and pain and damages to an extent of Rs.5,00,000/-, compensation for unfair trade practice to an extent of Rs.5,00,000/- and cost of litigation and expense to an extent of Rs.50,000/-.

5. There-after receipt of the complaints from the complainants, notices were issued to the respondents. The respondent No.1 has appeared through it's Advocates in all these complaints. The respondent No.2 remained absent. The respondent No.1 has filed separate statement objections in all the complaints admitting the fact that complainants have entered into an agreements. The construction of flats in the project, including the flats in these cases delayed because of demonetization, introduction of GST, heavy rain fall in Bengaluru city, hard rock encountered during excavating the land, shortage of sand supply, Covid-19 pandemic, lock down, etc., much less, for reasons beyond the control of the respondent mentioned in the objection statements. The complaints are premature. The complainants have levelled

false allegations against the respondent. The complainants are not entitled for the compensation as claimed. The complaints are bad for non-joinder of parties i.e., co-purchaser with the complainants have not joined as parties. The delay in handing over possession of the flats 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 complaints.

6. Heard Sri. M.M.K learned Advocate for the complainants and heard Sri. S.P.P learned Advocate for the respondent-1, through Skype. The written argument is filed on behalf of complainants. Perused the records, materials and the written argument.

7. The points that would arise for consideration, relating to complaint Nos. 5821, 5820, 5799, 5805 and 5796 are:

- (1) Whether the complainants in complaint Nos. 5821, 5820, 5799, 5805 and 5796 are entitled for compensation as sought for? If so, to what extent?
- (2) What order?

8. My findings on the above points in complaint Nos. 5821, 5820, 5799, 5805 and 5796 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

9. Point No. 1 in all complaint Nos. 5821, 5820, 5799, 5805 and 5796: The fact of complainants in complaint Nos. 5821, 5820, 5799, 5805 and 5796, entering into agreements, to purchase

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undivided share of lands and flats bearing Nos. B-304, A-1505, C-605, C-305 and J-1205 agreements of sale and construction agreements dated 22.04.2016, 13.05.2016, 26.02.2016, 29.12.2015 and 24.05.2016 respectively with the respondent for consideration amount as discussed above, in the body of the judgment is not in dispute. Sri. S.P.P learned counsel for the respondent submits that these complaints are premature as the completion period of the project has been got extended till 30.12.2020. The application of the respondent praying to extend project completion date due to COVID-19 till December 2021, is pending before the K-RERA Authority. Therefore the complaints are not maintainable. The learned counsel further submits that the terms of the agreements are binding on the parties and this authority cannot construe the agreements otherwise than the terms of the agreements. The learned counsel submits that complainants are not entitle for the reliefs claimed, hence prayed to dismiss the complaints. Sri. S.P.P Learned counsel also submits that delay if any is due to force majeure reasons, beyond the control of respondent and delay is not due to the fault of the respondent. Per contra Sri. M.M.K learned counsel for the complainants submits that agreements are one sided, unfair, unreasonable and unilaterally drafted by the respondent without giving scope for alterations, same are not binding on the complainants. The learned counsel further submits that no force majeure reasons for delay and the complainants who have paid huge amounts even taking loan from bank and financial institutions are suffering for want of delivery of flats, hence prayed to grant the reliefs as prayed in the complaints. The learned counsel in support of the argument placed reliance on the judgments passed by the Hon'ble Supreme Court of India (1)

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in Civil Appeal No. 12283 of 2013 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 agreements are more favourable to respondent than complainants and appears to be one sided. Under the circumstances in view of the ratio and principles laid down by their lordships in the aforesaid judgments, the terms of said agreements shall not take away the statutory rights accrued to the complainants under the provisions of RERA Act, particularly U/Sec. 18(1) of RERA Act. The admitted fact is that till this day construction of project building has not been completed and it was not completed as on 31.12.2018 and till this day flats have not been handed over to the possession of the complainants 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 entitle for even for delay compensation as per clause 6.4 and clause 6.1 of the construction agreement. The respondent in support of this

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contention of force majeure is stating that demonetization, introduction of GST, higher Tax rates, higher interest rates for home loans 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 flats to the complainants. The COVID -19 pandemic has started only in the year 2020 onwards but the due date for handing over possession of flats was 31.12.2018 which is much prior to the COVID-19 pandemic. Therefore COVID-19 pandemic is not the reason for delay in handing over possession of flats to the complainant on 31.12.2018. The materials on record proves that the respondents have contravened the provisions of Section 18(1) of the RERA Act, in as much as causing delay in hand over the possession of the flats to the complainants on or before 31.12.2018. Under the circumstances it is held that the complainants are entitle for delay compensation by way of interest at 2% per annum above the MCLR of SBI from 01.01.2019, on respective amounts from the dates of receipt of respective amounts till handing over of the possession of the flats, with Occupancy Certificates.

10. No cogent and corroborative materials are produced to prove the entitlement of the complainants for the compensation with regard to mental pain and agony, loss of income due to delay in handing over of possession of the flats etc., much less, as claimed by the complainants. The materials on record are not enough to award compensation to the complainants 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,

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taking in-to consideration the factors covered U/Secs. 72 of RERA Act, as such, the one of the relief claimed by the complainants to direct the respondent to complete the construction at the earliest and handover the flats along with OC, much less, as sought by the complainants 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 complainants is not liable to be considered in this case, before the Adjudicating Officer.

11. As per the provisions contemplated U/Sec.31 of the RERA Act, complainants who are allottees of flats in question being aggrieved by the act of the respondent for delay in handing over of the possession of the flats have filed these complaints. The co-purchasers not joined with the complainants in filing these complaints, itself would not be considered that complaints are bad for non-joinder of necessary parties. The due date to hand over possession of the flats in these complaints was on or before 31.12.2018, hence complaints are not premature. Therefore there is no substance in the contentions of the respondent in this regard, much less, as contended by the respondent. Thus I hold point No.1 accordingly for consideration in complaint Nos. CMP/200408/0005821, CMP/200407/0005820, CMP/200407/0005799, CMP/200329/0005805 and CMP/200325/0005796

12. As per the provisions contemplated U/sec. 71(2) RERA Act the complaints shall have to be disposed off within 60 days from the date

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of receipt respective complaints. The present complaints have been filed on 08.04.2020, 07.04.2020, 07.04.2020, 29.03.2020 and 25.03.2020, respectively, 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 cases, as such, the judgment in these cases is being passed on merits, with some delay.

13. Point No.2, in all complaint Nos. CMP/200408/0005821, CMP/200407/0005820, CMP/200407/0005799, CMP/200329/0005805 and CMP/200325/0005796: In view of my findings on point Nos. 1, I proceed to pass the following:-

ORDER

- (i) The complaints filed by the complainants bearing Nos.:
CMP/200408/0005821, CMP/200407/0005820,
CMP/200407/0005799, CMP/200329/0005805 and
CMP/200325/0005796 are partly allowed against the respondents.
- (ii) The respondents are hereby directed to pay delay compensations to the complainants in complainant bearing Nos.:
CMP/200408/0005821, CMP/200407/0005820,
CMP/200407/0005799, CMP/200329/0005805 and
CMP/200325/0005796 by way of interest @ 2% per annum above the MCLR of SBI from 01.01.2019, on respective amounts from the dates of receipt of respective amounts till the handing over of the possession of the flats to the complainants with Occupancy Certificates.



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- (iii) The complainants are at liberty to approach the Hon'ble K-RERA Authority for the relief seeking direction to the respondents to complete the construction at the earliest and handover the flats along with OC, much less, as claimed in relief No.1.
- (iv) The respondents are directed to pay Rs. 5,000/- to each of the complainants in these complaints as cost of these petitions to the complainants.
- (v) The complainants may file memo of calculations as per this orders after 60 days in case respondents failed to comply with this order to enforce the order.
- (vi) The office is directed to retain this original common judgment in complaint No.: CMP/200408/0005821 and copies of this common judgment be kept in, CMP/200407/0005820, CMP/200407/0005799, CMP/200329/0005805 and CMP/200325/0005796.
- (vii) Intimate the parties regarding this order.
(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 31.08.2021)


I.F. BIDARI

Adjudicating Officer-1

