

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 SFI I.F. BIDARI
DATED 2ND SEPTEMBER 2021

Complainant in complaint No. CMP/200325/0005804

Mr. Jagathipriya,
702 BCCHS Layout, Vajarahalli,
Bengaluru-560 062.

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

Versus

Respondents in the complaint

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 Reallty
No.9/1, 1st Floor, Classic Court Richmond Road
Bangalore-560 025.
3. Indiabulls Housing Finance Limited
Plot No.87/6, Richmond Road, Richmond Town,
Bangalore-560 025

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

(R-2 Absent)

(R3-By. Ms. P.B and Associates Advocates)

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J U D G M E N T

The Complainant Mr. Jagathipriya in complaint No. CMP/200325/0005804 has filed the complaint 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 Technology Constellations Pvt. Ltd., (here-in-after referred as respondent), respondent No. 2 Manyata Realty and 3. Indiabulls Housing Finance Limited (here-in-after referred as Indiabulls) for the reliefs sought in the complaint.

2. The brief facts of the complaint 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. Jagathipriya, has entered into agreement of sale of undivided share of land and agreement of constructions dated: 21.12.2017, (here-in-after referred as agreement of sale and construction agreement respectively) with the respondents No.1 & 2, to purchase undivided share described as Annexure -A1, in the agreement of sale out of schedule A property and to get construct apartment (here-in-referred as flat). The complainant agreed to get construct flat bearing No. J-506, being constructed in schedule A property, on 5th floor, in Block/Wing/Tower - J in the

project, described as Annexure – B1, in construction agreement dated 21.12.2017 for consideration amount mentioned in the agreement, subject to the terms and conditions enumerated therein.

3. The complainant, alleged in the complaint that he has booked aforesaid flat for total consideration amount of Rs. 1,07,30,766/ out of which they have paid Rs.75.40laks (Rs.69.90laks out of loan borrowed from Idiabulls and Rs. 5.50laks self contribution). The respondent obtained loan from Idiabulls to the tune of 69.90 lakhs as per the instruction of the respondent No.1, out of which Rs.59,18,655/- has been disbursed to the respondent No. 1 and Rs.10,71,345/- has been retained towards pre EMI instalments up-to December 2019. The respondent No.1 had agreed to pay pre EMI of loan amount to the Respondent No.3 till delivery of possession of the flat. The respondent No.1 had to issue credit note for sum of Rs.10,71,345/- since price of the flat was higher due to subvention scheme. As per terms of the agreements respondent was to handover possession of the flat to the complainant on or before 31.12.2019. The respondent No.1 failed to pay the pre-EMI instalments as agreed, so, he has paid Rs.1,61,646/- towards the pre EMI instalments because of the default of the respondent No.1 which he is entitle for reimbursement of the same. The complainant allege that agreements executed on dotted line format, unilaterally drafted by the respondent giving no scope for alteration etc. The complainant was prompt in making payment on time. The complainant further alleges that the respondent has failed to complete the project and to deliver possession of the flat in time. The complainant is entitled interest at 12% per annum for

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delayed period on all their money paid to the respondent. The respondents 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 of the complainant is to grant the reliefs, 1). Direct the Respondent to complete the construction of the apartment and hand over the possession along with Occupancy certificate; 2). Direct the Respondents to pay PRE-EMI installment until handing over the possession or alternative direct the Respondent Bank to collect the Pre-Emi instalment from Respondents. 3). Direct the Respondents to pay delayed compensation from 31.12.2019 on Rs. 5,50,000/- paid as self contribution until completion of project and handing over the possession along with Occupancy Certificate and entire amenities alternative if relief No.2 cannot be granted direct the Respondents to pay delayed compensation from 31.12.2019 on entire sum of Rs.75,40,000/-; 4).Direct the Respondents to reimburse the arrears of PRE-EMI installment of Rs.1,61,646/- as on March 2020 along with interest of the arrears until repayment of arrears delayed interest. 5).Direct the Respondents to set off the compensation awarded from any money legally payable by the Complainant to Respondent. 6). Direct the Respondents builder to provide account of Service Tax, VAT and GST and return the excess receipts of the Service Tax, VAT and GST along with interest. 7). Compensation for the Mental Agony and pain and Damages to an extent of Rs.5,00,000/-. 8). Compensation for unfair Trade practice to an Extent of Rs.5,00,000/-. 9). Cost of litigation and expense to an Extent of Rs.50,000/-.



4. There-after receipt of the complaint from the complainant, notices were issued to the respondents. The respondent Nos.1 & 3 have appeared through their Advocates. The respondent No.2 remained absent. The respondent No.1 has filed statement objections admitting the fact that complainant has entered into agreements. The construction of flat in the project, including the flat in this case 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 statement. The complaint is premature. The complainant has levelled false allegations against the respondent. The complainant is not entitled for the compensation as claimed. 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.
5. The respondent No.3 has filed statement objections mainly contending that the complainant is not maintainable as there is no cause of action for the complainant against respondent No.3. The prayer Nos.2 & 4 are in direct violation of terms of loan agreement and tripartite agreement the pray Nos. 3, 5 to 7 are not maintainable against respondent No.3. The complaint allegations are against respondent Nos. 1 & 2. The relief sought against respondent No.3 is outside the jurisdiction of this authority. The primary liability to re-pay the loan with interest to the respondent No.3 is on the complainant. These main grounds

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among others contended in the statement objections, prayer to dismiss the complaint against the respondent No.3.

6. Heard Sri. M.M.K learned Advocate for the complainant and heard Sri. S.P.P learned Advocate for the respondent-1 also heard Miss. P.R. Advocate for respondent No.3, through Skype. The written arguments are filed on behalf of complainant and the respondent No.3. Perused the records, materials and the written arguments.

7. The points that would arise for consideration are:

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

8. 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

9. Point No. 1 : The fact of complainant, entering into agreement of sale to purchase of undivided share of land in schedule A property and construction agreement dated 21.12.2017, to get construct Flat No. J-506 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 the complaint is premature as the completion period of the project has been got extended till 31.12.2020. Therefore the complaint is 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 complainant is not entitle for the reliefs claimed, hence prayed to dismiss the complaint. 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. Miss. P.B. learned Advocate for respondent No.3 submits similar grounds urged in the objection statement and same, are re-produced in the written argument. Per contra Sri. M.M.K learned counsel for the complainant 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 complainant. The learned counsel further submits that no force majeure reasons for delay and the complainant who has paid huge amounts even taking loan from Indiabulls is suffering for want of delivery of flat, hence prayed to grant the reliefs as prayed in the complaint. 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



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2019, Civil Appeal No. 3064 of 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 complainant under the provisions of RERA Act, particularly U/Sec. 18(1) of RERA Act. The due date of delivery of possession of the flat was 31.12.2019 with grace period of 12 months. The admitted fact is that till this day construction of project building has not been completed and it was not completed as on 31.12.2020 inclusive of 12 month grace period and till this day flat has not been handed over to the possession of the complainant with OC. The registration certificate bearing No. PRM/KA/RERA/1251/309/PR/171014/000439 of the project issued by the Hon'ble Real Estate Regulatory Authority Karnataka (herein-after-referred as RERA Authority), U/Sec 5 of RERA Act, in the name of the respondent discloses that registration was valid from 31.07.2017 to 30.06.2020. This fact evidences that the complainant, when had entered into agreements with the respondents No. 1 & 2 on 21.12.2017, the validity period of registration was only up-to 30.06.2020 and not up-to 31.12.2020, as such, respondents No. 1 & 2 when entered into agreements with the complainant on the aforesaid date at the best would have been incorporated the grace period up-to 6 months from 31.12.2019 and not more than said period or 12

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months from 31.12.2019. The Hon'ble K-RERA authority through registration certificate PRM/KA/RERA/1251/309/PR/17.1014/000439 U/Sec.6 of the RERA Act has extended project completion date by period of 6 months i.e., 30.12.2020. Therefore incorporating of 12 months grace period in aforesaid construction agreement of the complainant from 31.12.2019 is unjust as the registration of the project of the respondent was not valid up-to 31.12.2020 when the construction agreement executed. It is not the case of the respondent that the validity of registration was got extended up-to 31.12.2020 as on date of construction agreement entered by the respondent with the complainant. 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 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 flat to the complainant. The COVID -19 pandemic has started only in the year 2020 onwards but the due date for handing over possession of flat was 31.12.2019 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 31.12.2019. The materials on record proves that the respondents No. 1 & 2 have contravened the provisions of Section 18(1) of the RERA Act, in as much as, causing delay in

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hand over the possession of the flats to the complainant on or before 31.12.2019. Under the circumstances it is held that the complainant is entitle for delay compensation by way of interest at 2% per annum above the MCLR of SBI from 01.01.2020, on respective amounts from the dates of receipt of respective amounts till handing over of the possession of the flat, with Occupancy Certificates.

10. The complainant cannot seek directions to the respondent No.3 under the provisions of RERA Act and K-RERA rules, particularly before the Adjudicating Officer, much less, as sought, in the complaint. Therefore there is substance in the contention of the respondent No. 3 as contended in it's objection statement.
11. 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 etc., 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 charecter

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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 complainant is not liable to be considered in this case, before the Adjudicating Officer.

12. The due date to hand over possession of the flat in this complaint was on or before 31.12.2019, hence complaint is 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.
13. 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 respective complaint. The present complaint has been filed on 25.03.2020, 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 cases, as such, the judgment is being passed on merits, with some delay.
14. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

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ORDER

- (i) The complaint filed by the complainant bearing No.: CMP/200325/0005804 is partly allowed against the respondents No.1 & 2 and dismissed against respondent No.3.
- (ii) The respondents No.1 & 2 are hereby directed to pay delay compensation to the complainant by way of interest @ 2% per annum above the MCLR of SBI from 01.01.2020, on respective amounts from the dates of receipt of respective amounts till the handing over of the possession of the flat to the complainant with Occupancy Certificates.
- (iii) The complainant is 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 flat along with OC, much less, as claimed in relief No.1.
- (iv) The respondents No.1 & 2 are directed to pay Rs. 5,000/- to complainant as cost of this petition.
- (v) The complainant may file memo of calculations as per this order after 60 days in case respondents No.1 & 2 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 02.09.2021)


I.F. BIDARI

Adjudicating Officer-1