

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 2nd SEPTEMBER 2021

Complaint No.	CMF/200327/0005810
Complainant:	Mr. Shameel Hassan No. 39, Harris road, Flat No. 102, Rida Residency, Benson Town, Bengaluru Urban -560046. (By. Sri. M. Mohan Kumar and Associates Advocates).
Respondents:	1. Mantri Technology Constellations Pvt. Ltd., Presently known as Buoyant Technology Constellations Pvt. Ltd. Mantri House, #41, Vittal Mallya Road, Bengaluru - 560001. 2. Manyata Reallty No.9/1, 1st Floor, Classic Court Richmond Road, Bangalore-560 025. (R-1 By. Sri. S. Sushant Venkatesh Pai, Iyengar & Pai Advocates). (R-2 Absent).

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J U D G M E N T

The Complainant Mr. Shameel Hassan in complaint No. CMP/200327/0005810, has filed this 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) and respondent No. 2 Manyata Realty for the reliefs sought in the complaint under the RERA Act.

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. Shameel Hassan along with his wife Mrs. Asiya Asma, has entered into an agreement of sale of undivided share of land and agreements of constructions dated: 04.07.2017 (here-in-after referred as agreement of sale and construction agreement 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 apartment (here-in-referred as flat) bearing No. H-1601, being constructed in schedule A property, on 16th floor, in Block/Wing/Tower – H, in the project, described as Annexure – B1, in construction agreement dated 04.07.2017 for consideration amounts mentioned in the agreements also

subject to the terms and conditions enumerated therein. The complainant alleged in the complaint that he has booked aforesaid flat for total consideration amount of Rs. 86,52,825/-, out of which they have paid Rs.47,70,049/-. As per terms of the agreements respondent was to handover possession of the flat to the complainant on or before 31.12.2018. 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 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 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 respondent to pay delay compensation from 31.12.2018 on entire sale consideration of Rs. 47,70,049/-until completion of the project and occupancy certificate. 3). Direct the respondent to set off compensation awarded from any money legally payable by complainant to respondent. 4). Direct the respondent builder to provide account of services Tax, VAT and GST and return the execs receipts of services Tax, VAT and GST along with interest.

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5). Compensation for mental agony, pain and damages to an extent of 5,00,000/-. 6). Compensation for unfair tread practices to an extent of Rs. Rs. 5,00,000/-. 7)/ Cost of litigation and expenses to an extent of Rs. 50,000/-.

3. There-after receipt of the complaint from the complainant, notices were issued to the respondents. The respondent No.1 has appeared through it's Advocates. The respondent No.2 remained absent. The respondent has filed the statement 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, higher interest rate for home loans, reduction of demand in real 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 also constructing project building and work is in full swing. 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 wife 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 completion date for the project was 30.06.2020. The Hon'ble Karnataka Real Estate Regulatory Authority (here-in-after referred as K-RERA) through circular date 19.05.2020 has extended completion date of the project till 15.09.2020

because of COVID-19 pandemic and further extended completion of the project till 30.12.2020 due to COVID -19. 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-1, through Skype. Perused the records and materials.

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. Shameel Hassan along with his wife Mrs. Asiya Asma, has entered into construction agreement dated.04.07.2017 and Agreement of sale dated 04.07.2017 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. H-1601 in the project, on

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16th floor, in Block/Tower-H for consideration amount of Rs.86,52,825/- 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 31.12.2018 with grace period of 12 months.

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. 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 rest of the reliefs sought in the complaint covered U/Sec. 71 and 72 of RERA Act. The respondent in the statement of objections as also Sri. S.S.P. learned counsel for the respondent in argument submits that construction of project building is in full swing and near to completion. 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 31.12.2018 and even after 12 months grace period i.e., 31.12.2019 and till this day flat has not been handed over to the possession of the complainant with

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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 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 therein 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 31.12.2019 inclusive of 12 months grace period, which was much prior to the COVID -19 pandemic, as the said pandemic has started only in the year 2020 onwards. Therefore as rightly 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

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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 Grace Real Tech Pvt. Ltd. The perusal of contents of agreements 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 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

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31.12.2019 inclusive of 12 months grace period, as such, complainant is entitled for delay compensation by way of interest @ 2% above the MCLR of SBI, per annum on respective amounts from the dates of receipt of respective amounts from 01.01.2020, till the handing over of the possession of the flat with Occupancy Certificate.

9. 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 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.

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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 his wife 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 Mrs. Asiya Asma, as a party in the complaint, 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 27.03.2020, 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 No. 1, I proceed to pass the following:-



ORDER

- (i) The complaint filed by the complainant bearing No.: CMP/200327/0005810 is partly allowed against respondents.
- (ii) The respondents are hereby directed to pay delay compensation to the complainant from 01.01.2020 by way of interest @ 2% above the MCLR of SBI, per annum, on respective amounts from the dates of receipt of respective amounts till handing over of the possession of the flat with Occupancy Certificate.
- (iii) The complainant is at liberty to approach the Hon'ble K-REERA 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 are 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 respondents 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

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