

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 SNU.F. BIDARI

DATED 24TH SEPTEMBER 2021

Complaint No.	CMP/200904/0006513
Complainant:	Sandeep Agarwal, Aspen B 1001, Godrej Apartment, Bellary Road, Bengaluru Urban – 560024. (In Person).
Respondent:	Ozone Urbana Infra Developers Pvt. Ltd., No.38, Ulsoor Road , Bengaluru Urban – 560042. (By: Deepak Bhaskar & Associate Advocates).

J U D G M E N T

Sri. Sandeep Agarwal (here-in-after referred as complainant) has filed this complaint bearing No. CMP/200904/0006513, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent Ozone Urbana Infra Developers Pvt. Ltd., (here-in-after referred as respondent) seeking relief of refund of amount and compensation.

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

The respondent Ozone Urbana Infra Developers Pvt. Ltd., is developing a residential apartments in Real Estate Project as “Urbana Belvedere” forming part of integrated township “Ozone Urbana” (here-in-after referred as project) in a converted immovable

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lands, in Sy. Nos. 87/2, measuring 22.5 guntas, and 88/2 (P) measuring 1 acres 28.35 guntas, together measuring 2 acres 10.85 guntas, which include 07.38 guntas relinquished for formation of road, situated at Kannamangala Village, Devenahalli Taluk, Bengaluru district, described as Schedule 'A', and Schedule 'B' property in agreement for sale dated: 20.01.2016. The complainant, has entered into an agreement for sale and construction agreement both dated 20.01.2016 (here-in-after referred as agreement of sale and construction agreement respectively) with the respondent to purchase 3 bhk apartment bearing No.A-301, in Block No.-A, measuring 2195 sq.ft super built up area being constructed, on 3rd floor, with 2 car parking area and undivided share in proportionate to the area in which apartment is to be built in aforesaid converted land described as Schedule 'C' and Schedule 'D' property for consideration amounts mentioned in the agreements, subject to the terms and conditions enumerated there-in. The complainant alleged in the complaint that initially he did book the apartment No. C-302 in the project Urbana Alcove of the respondent in August 2014 and had paid Rs. 22,62,478/- between August and October 2014. The builder/respondent in December 2014 approached the complainant and told that authorities not approved the building plans of Urbana Alcove, hence requested to relook at their Belvedere project. The complainant in January 2016 entered into agreement of sale and construction agreement afresh in January 2016 and booked the aforesaid apartment A-301 in the Belvedere project. Thereafter complainant has paid another Rs. 29,40,000/- to the respondent between January and April 2016. The apartment was booked under the subvention scheme. The complainant is bearing interest component of loan availed and disbursed by HDFC bank. The respondent turned down request of the complainant to pay the

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interest on loan amount till the property is ready for occupancy and possession. The apartment is not ready with valid Occupancy Certificate (here-in-after referred as OC) to take possession and registration. The respondent was to handover possession of apartment on or before December 2017, as per Annexure-3 of construction agreement. The respondent misguided the complainant. The respondent started construction in the project prior to obtaining permission from competent authority. Prior to June 2016, complainant has paid Rs.51,03,911/- to the respondent which includes self contribution and disbursed loan amount from HDFC bank. The respondent in January 2020, approached the complainant and invited for registration and told that OC will be provided after registration in future. The amenities in the project are not as per the details given in the advertisement. The respondent is doing unfair trade practices such as, deficiency in services, delay in construction, one sided terms and conditions. The complainant wants to exit from the project and prayed for refund of full paid amount with interest at 20% per annum from September 2014. 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 appeared through its Advocate. The respondent has filed the statement of objections admitting the complainant entering into agreement of sale and construction agreement with the respondent to purchase undivided share in converted immovable property Schedule A & B and to get construct apartment described in Schedule -D, in the project. No date for possession/completion has been mentioned in the agreement of sale. The payment of interest or compensation to the



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homebuyer arises only if promoter fails to complete or is unable to give possession of an apartment in terms of agreement of sale. The completion date of the project, provided to the RERA authority is 31.12.2022 and RERA authority has further extended completion period of the project till 30.06.2023 in view of the COVID-19 pandemic. The completion date of the apartment stated in the complaint as December 2017 is false. There is no delay in handing over possession of the apartment as time to deliver possession is till 31.12.2022. Under the circumstance if complainant intends to withdraw from the project, then respondent is entitled to forfeit 20% out of the paid amount as per terms of agreements. These main grounds among others, contented in the statement objection, prayer to dismiss the complaint.

4. Heard the complainant and heard Sri. S.A. & Smt. S.G Advocates for the respondent, through Skype. Perused the records and the materials.

5. The points that would arise for consideration are:

- (1) Whether the complainant is entitled for return of amount with compensation? 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 No. 1: The complainant and the learned counsel for the respondent drawn the attention of the Adjudicating Officer to the agreement of sale and construction agreement, entered between the parties and the documents produced on behalf of both parties. The copy of agreement of sale and construction agreement both dated 20.01.2016 discloses that the complainant, has entered into said agreements with the respondent to purchase 3 bhk apartment bearing No. A - 301 in Block No. A, measuring 2195 sq.ft super built up area being constructed, on 3rd floor, with 2 car parking area and undivided share in proportionate to the area in which apartment is to be built in aforesaid converted land described as Schedule 'C' & 'D' property in the agreements for consideration amount mentioned in the agreements, subject to the terms and conditions enumerated there-in. Admittedly the agreements are executed on 20.01.2016, 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

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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 20.01.2016, before coming to the force of RERA Act.

8. The complainant claims that he has borrowed a Housing Loan to purchase apartment, from HDFC bank. The complainant claims that prior to June 2016, he has paid Rs.51,03,911/- to the respondent towards part consideration. The materials on record proves that the complainant from his own contribution as also borrowing loan from the HDFC bank, under the subvention scheme has paid said part consideration amount to the respondent on various dates. Sri. S.A learned counsel for the respondent referring to the common order dated 31.05.2015 passed by the Hon'ble Rajasthan Real Estate Regulatory Authority in the cases (1) Complaint No. RAJ-RERA-C-2017-2030 by Ravi Kant Gupta vs GRJ Distributers and Developers Pvt. Ltd., and in connected cases mentioned therein, among others observed therein that date of completion mentioned in the agreement of sale to be considered and not to the date of completion revised by the non-complainant unilaterally while registering the project. The learned counsel submits that date of completion of project mentioned in the registration certificate issued by the RERA-K is valid up-to 31.12.2022 and further extended for a period of 6 months in view of COVID-19 pandemic and no date of completion and possession is mentioned in the agreement of sale, as such, the date of possession mentioned in the complaint as December 2017 is false and time to give possession of the apartment is till 31.12.2022, hence the

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complainant is not entitled for the relief claimed. The copy of the registration certificate issued by the RERA authority Karnataka in respect of project of the respondent is shown as valid from 30.07.2017 and ending with 31.12.2022 and project completion date is further extended till 30.06.23 in view of COVID-19 pandemic. The copy of the construction agreement produced discloses that respondent shall deliver possession of the apartment to the complainant on or before December 2017 with grace period of 6 months. Therefore as per terms of construction agreement the respondent ought to have been handed over possession of the apartment to the complainant on or before 01.07.2018 including 6 month grace period. No doubt in copy of the agreement of sale produced in this case date of possession is not mentioned, however due date of possession is mentioned as December 2017 with 6 month grace period in the construction agreement. In the aforesaid order dated 31.05.2015 passed by the Hon'ble Rajasthan Real Estate Regulatory Authority it has been clearly observed that date of completion revised by the non-complainant unilaterally while registering the project shall not be considered as date of completion of the project. The only agreement of sale was produced before the said Hon'ble authority and never the Hon'ble authority, observed, that the date of completion of the project mentioned in the construction agreement shall not be taken into account. This-apart the Hon'ble Supreme Court in the ruling reported in AIR 2021 Supreme Court 70 in Civil Appeal No. 3581-3590 of 2020(Arising out of Civil Appeal Diary No. 9796/2019) and Civil Appeal No. 3591 of 2020 (Arising out of Civil Appeal Dairy No. 9793/2019), in the case of M/s. Imperia Structures Ltd. Vs Anil Patni and Anr, among others observed that merely because registration is valid up to certain date, entitlement of allottees to maintain action does not

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stand deferred and period has to be reckoned in terms of builder buyer agreement and not registration. The relevant portion in the said ruling reads as under:

“(B) Consumer protection Act(68 of 1986), S.2(d)(r), S.23-Real Estate (Regulation And Developer) Act (16 of 2016), S. 79, S.18- Registration of project under RERA-Effect of-period in which construction should have been completed has expired before registration of project- Merely because registration is valid up-to certain date, entitlement of allottee to maintain action does not stand deferred –Period has to be reckoned in terms of Builder Buyer agreement and not registration.”

9. Therefore in view of the ratio laid down by their lordships in the aforesaid ruling the date of completion of the project mentioned in registration certificate as 31.12.2022, shall not be taken into account to consider delay and the date of delivery of possession of the apartment mentioned in construction agreement i.e., on or before December 2017 with 6 months grace period shall have to be looked into to consider the delay of possession. Under the circumstances the contention of the respondent and submission of the learned counsel for the respondent that date of completion mention in the registration certificate and only period of possession mentioned in agreement of sale shall be looked in to consider delay and date mentioned in the construction agreement shall not be consider, will not holds good. Admittedly till this day construction of project building including apartment in question has not been completed and OC has not been obtained by the respondent. Admittedly till this day the apartment has not been handed over to the complainant with OC. The payment of the purchase price by the complainant from his self contribution also obtaining housing loan

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from HDFC bank, to the respondent, towards part consideration, is not in dispute. The materials on records prove that there is long delay in handing over possession of the apartment to the complainant more than 3 years, as due date for handing over possession of the apartment was on or before December 2017 with grace period of 6 months. The respondent nowhere stated as to what extent/stage of the project and the apartment in question are being built and how many months or years required completing the construction and to handover apartment to the complainant. Therefore considering the facts and circumstances of the case it is just to direct the respondent, to refund the amount paid/deposited along with interest @ 2% per annum, above the MCLR of SBI, from 01.07.2018 on respective amounts from the dates of receipt of respective amounts till realisation of the entire amount. 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 04.09.2020, 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, but in-spite of that respondent remained absent, as such; the judgment is being passed on merits, with some delay.

11. 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/200904/0006513 is partly allowed against the respondent.
- (ii) The respondent is hereby direct to refund the amount paid/deposited along with interest @ 2% per annum, above the MCLR of SBI, from 01.07.2018, on respective amounts from the dates of receipt of respective amounts, till realization of the entire amount.
- (iii) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (iv) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with the same to enforce the order.
- (v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced by me on 24.09.2021)


I.F. BIDARI

Adjudicating Officer-1