

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

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K PALAKSHAPPA

Adjudicating Officer

Date: 21st SEPTEMBER 2020

Complaint No.	CMP/190212/0003898
Complainant	Suman Kumar S T4-R, 1602, GM Infinite Silver Spring Field, 83/1, 83/2, Hesaraghatta Main Road, Jodi Mallasandra, Bengaluru-560057 Rep. by Sri Mohan Kumara Advocate
Opponent	1. M/s GM Infinite Dwelling (India) Private Limited No. 6, GM pearls, 1 st Stage, BTM Layout Bengaluru-560068. 2. Gulam Mustafa Director- 3. Jawid Hussain Director M/ S G.M. Infinite Dwelling (India) Pvt. Ltd., Havng its Corporate office at # No-105-47, Dickenson Road, Yellappa Garden, F.M. Cariappa Colony, Sivanchetti Gardens, Bangalore-560001 Rep. by: Kumari Lubna Fairoze, Advocate

Denue
21/9/2020

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"J U D G E M E N T"

1. Suman Kumar S complaint has filed this complaint no. CMP/190912/0003898 under Section 31 of RERA Act against the project "GM Infinite Silver Spring Field" developed by 'M/s GM infinite Dwelling (India) Private Limited' seeking for the relief of delay compensation from the developer as he is failed to complete the project as agreed.
2. After registering the case, notice has been issued to the parties, the complainant has appeared through his advocate Sri Monan Kumar whereas the respondent has appeared through his advocate Kumari Lubna Fairoze Advocate. On behalf of the developer objection statement in detail has been filed. At this stage I would like to say one thing is that there are 38 cases against the same developer against the same project by the different buyers. In view of the same the developer has filed common arguments and common documents along with independent objection statement.
3. The case was to be called on 18/03/2020 but on account of Covid-19 the hearing of cases in open court was stopped. In the meanwhile the Government has declared the Lock Down commencing from 24/03/2020 till 17/05/2020 and further as per office note the hearing has been commenced by virtual hearing with the help of Skype. Accordingly the parties have been called though Skype and finally heard the arguments.
4. In fact this case has been transmitted to the Authority on the ground that the reliefs sought by the complainant though with respect to compensation but includes some other kind of reliefs which are beyond the jurisdiction of Adjudicating Officer. However

the authority has re-transmitted the same to answer to the claim of delay compensation and refund. Hence, I have heard the arguments on the said point on the said limited points.

5. The point that arisen for my consideration is
 - a. Whether the complainant proves that he is entitled for the relief of delay compensation as prayed in his complaint?
 - b. If so, what is the order?
6. My answer is affirmative in part for the following

REASONS

7. This complaint has been filed by the complainant seeking for the relief of delay compensation from the developer, seeking amenities and also for refund of amount paid by him towards BWSSB and towards car parking.
8. At the first instance I would like to say that the agreement of sale was entered into with the developer by the complainant and his wife. Further the complainant and his wife jointly have purchased the flat bearing No. T-4-1602 in 16th floor in tower-4 on 15/09/2018. However the present complaint has been filed by the complainant alone.
9. Admittedly the developer has not obtained the OC as on the date of sale deed and even now also. At the time of argument it was submitted that he has applied for grant of OC but it was not given. The counsel for the developer submits that as per S.310 of the KMC Act, when his application sought for OC is not rejected then it is to be treated as grant of deemed OC. But it is not correct to say so

Per
21/09/2018

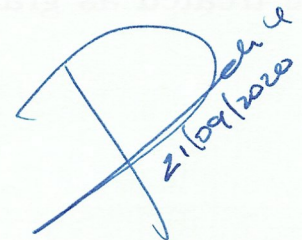
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because the project is facing number of litigations and as such the grant of OC in nearer date is impossible. In this regard the developer has said in his objection statement as that the Respondents completed the construction of the 'Project' and applied for the Occupancy Certificate on 09.06.2017. In view of the legal hurdles which are well within the Complainant's knowledge, there was a delay in getting the Occupancy Certificate of the Apartment Units in the 'Project' and hence the Apartments could not be delivered on time to the customers which is beyond the control of the respondents. It is pertinent to submit that the OC has not been issued even though the application for OC is pending and the provisions of Deemed Occupancy Certificate under the Municipal Corporations Act become applicable in the present scenario.

10. All the cases pending will be cleared off after which the OC will be surely issued by the appropriate authorities. The complainant has entered into agreement with the developer on 19/12/2016 in respect of flat bearing number T-4-R-1602. The developer has agreed to complete the project on or before 30/07/2017. The stand taken by the developer itself goes to show that the BBMP has not given the OC because of pending of litigation and he is sure that BBMP will give the OC after clearance of litigation. It means as on the date of sale deed and as on the date of this complaint there is no OC in favour of the developer.
11. In further the complainant has submitted that the developer has failed to obtain Occupancy Certificate but, executed the sale deed on 15/09/2018.


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12. Generally when once the sale deed is executed then the relationship with the developer so far as S.18 is concerned ceases to some extent. But in this case the complainant is entitled for delay compensation for more than one reason.
13. The developer has not obtained the OC but executed the sale deed which is in violation of S.17 and delivered the possession which is also in violation of S.19(10) of the Act. The execution of sale deed and putting the possession of the flat without obtaining the OC is illegal. I would like to say that grounds urged by the developer has no meaning just because as per Sec.17 r/w Sec.19(10) of the Act, the developer can call upon the complainant to take sale deed and to take physical possession of the building only after he obtains occupancy certificate. It is not the case of the developer that he has obtained occupancy certificate at the time of execution of sale deed in favour of the complainant. He could not call the complainant to take the sale deed in the absence of occupancy certificate. As per observations made by the Hon'ble High Court of Karnataka in Writ petition No.11522/2012 clubbed with 739/2013. Wherein it is observed that:

The construction of buildings is governed by the Bengaluru Mahanagara Palike Building Bye-Laws 2003. Bye-law 5.6 is with reference to grant of an occupancy certificate, which reads as follows:

"5.6. Occupancy certificate-5.6.1(a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of the erection of a building shall send intimation to the Commissioner in writing of such completion accompanied by a certificate in Scheme VIII certified by a Registered Architect/Engineer/Supervisor and shall apply for

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permission to occupy the building. The authority shall decide after due physical inspection of the building (including whether the owner had obtained commencement certificate as per section 300 of the Karnataka Municipal Corporations Act, 1976 and compliance regarding production of all required documents including clearance from the Fire Service Department in the case of high-rise buildings at the time of submitting application) and intimate the applicant within thirty days of receipt of the intimation whether the application for occupancy certificate is accepted or rejected. In case, the application is accepted, the occupancy certificate shall be issued in the form given in Schedule IX provided the building is in accordance with the sanctioned plan.

(b) Physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and requirement of building bye-laws, and includes inspections by the Fire Service Department wherever necessary.

(c) If the construction or reconstruction of a building is not completed within five years from the date of issue of licence for such a construction, the owner shall intimate the Authority, the stage of work at the expiry of five years. The work shall not be continued after the expiry of five years without obtaining prior permission from the Authority. Such continuation shall be permitted, if the construction or reconstruction is carried out according to the licensed plan and if the Authority is satisfied that at least 75% of the permitted floor area of the building is completed before the expiry of five years. If not, the work shall be continued according to a fresh licence to be obtained from the Authority.

5.6.2. For all high-rise building, the work shall also be subject to inspection by the officers of the Karnataka State Fire Service Department and the occupancy certificate shall be

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issued only after obtaining a clearance certificate from the Director of Fire Services."

11. Bye-law 5.7 postulates various requirements. The first is that no person shall occupy or let-in any other person to the building or part thereof, until an occupancy certificate to such a building or part thereof has been granted. Therefore, until and unless an occupancy certificate is granted, no building or part of it, can be occupied. Secondly, the grant of occupancy certificate shall be only after the opinion of the officer is to the effect that in every respect, the building or part thereof is complete, according to the plan sanction and that it is fit for use for which it was erected.

12(a). The first part of Bye-law 5.7 clearly narrates that no person can occupy the building or part thereof without an occupancy certificate. Admittedly persons have been induced prior to grant of POC. It is contrary to law. The occupation of the building or part thereof is opposed to law. No person can be induced in any manner whatsoever, without an occupancy certificate by the corporation. Therefore, all such persons who have been induced prior to the grant of POC, are in illegal occupation.

14. It is observed that the developer cannot put the allottee into possession of the flat in the absence of occupancy certificate. In view of the same and also as per observation made by the Hon'ble High Court the stand taken by the developer regarding the grant of OC has no validity since the High Court never discussed about the deemed OC. Further as per the observation the developer shall put the buyer into possession only after obtaining the OC which is absent here and as such it is to be held that the developer has not taken the OC as on the date of sale deed. Therefore the project has not been officially completed.

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15. Further it is also said that the project was involved with so many litigations. It is not denied by the developer and per contra he has given his explanation as to the nature of litigations.

One Venkatesh, S/o.Late Bylappa, residing at Shettihalli Village, Janata Colony, Jalahalli West, Bangalore-560086, herein whose old Sy.No was 83 and subsequently assigned with new Sy.No 80/1 & 80/3, who is not in any way connected with the lands in question, have put forth some claims on the lands in question and accordingly who had instituted proceedings in respect of Sy.No.83 of Mallasandra Village, Yeshwanthpur Hobli to delete the name of owners from the Record of Rights moved an Application before the Special Tahsildar, Bangalore North Taluk and against the entries effected by the Tahsildar in proceedings Nos. IHC.12/74-75, MR.1/74-75, MR.5/05-06 and MR.9/03-04. The Special Tahsildar, after going through the documents of title and papers conducted an enquiry and dismissed the claim of the said Venkatesh on the ground that he is not having any rights over the property vide his order dated 8.12.2006 in his proceedings under RRT(D)47/2004-05 and when the matter was Appealed before the Assistant Commissioner, Bangalore

North Division against the order of the Tahsildar and the Assistant

Commissioner in his order dated 07.06.2008 also dismissed the claim of the said Venkatesh as he is not having rights of any kind over the said property in Sy.No.83/1 and 83/2 of Mallasandra Village.

Further, the said Venkatesh has filed an appeal before the Special Deputy Commissioner, Bangalore District in Revn.Petn.46/2008-09 against the order of the Special

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Tahsildar, Bangalore North Taluk and the Special Deputy Commissioner after enquiry has passed an order dated 02.09.2010 and he has upheld the order of the order of the Special Tahsildar, Bangalore North Taluk vide order dated 8.12.2006 in his proceedings under RRT(D)47/2004-05 and dismissed the claim of the said Venkatesh as he is not having any rights of any kind over the property in sy.Nos.83/1 and 83/2 of Mallasandra Village.

(ii) Proceedings Before Civil Court:

Since the said Venkatesh was constantly disturbing the possession of the Landlords, the Landlords have filed an Injunction suit before the Principal City Civil & Sessions Judge, Bangalore in O.S.No.1429/2008 and in the said suit an order of Status Quo dated 21.02.2008 was passed against the said Venkatesh to maintain the status Quo of the suit property in respect of the possession of the Plaintiffs over the suit property.

Subsequently, the said Venkatesh, by misrepresenting facts and suppressing the new Sy.No.80/1 & 80/3 from the old Sy.No.83 and trying to confuse the revenue authorities and the courts has instituted a fictitious and frivolous suit against the land owners herein in O.S.No.2295/2010 on the file of the learned I Addl. City Civil & Sessions Judge, Bangalore City.

The I Addl. City Civil & Sessions Judge, Bangalore City after full-fledged Trial of both the said suits in O.S.No.1429/2008 and O.S.No.2295/2010 have been decreed wherein, the Injunction suit in O.S.No.1429/2008 was decreed in favour of the land owners and the declaration suit in O.S.No.2295/2010 was dismissed in favour of the land owners and held the said properties are the absolute properties of the present land owners and the Injunction restraining the said Venkatesh and his counterparts has been made absolute. It is submitted that

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as against the Common Order passed in OS No. 1429/2008 and OS No. 2295/2010 which are suits filed by certain disgruntled persons, an Appeal in RFA No. 602/2016 was preferred. It is pertinent to submit that the Interim Order dated 19.06.2018 passed in said Appeal has not affected the title of the Respondent in any manner as wrongfully portrayed by the Complainants in the present Complaint. It is a well settled principle of law of Lis Pendens that has been reiterated by the Hon'ble High Court in the said order which does not affect a person's title unless specifically held otherwise by the Hon'ble Court. It is pertinent to submit that mere pendency of the suit in respect of the Schedule Property does not lead to a conclusion that the Respondent does not have right, title and interest over the Schedule Property. Since the said suits O.S.No.1429/2008 and O.S.No.2295/2010 have been decreed favourably holding that the said properties are the absolute properties of the present land owners and the Injunction restraining the said Venkatesh and his counterparts has been made absolute, the counterpart of the said Venkatesh namely Srinivasamurthy again filed a false and frivolous suit against the present land owners in O.S.No.8163/2017 claiming same rights which has already been declared by the Revenue offices and the Civil Court in nO.S.No.1429/2008 and O.S.No.2295/2010 with an ulterior motive for the purpose of harassing the Respondent in every possible manner. It is further submitted that the Respondent has already filed a detailed Written Statement before the said Court stating that the present suit filed by the said Srinivasamurthy in O.S.No.8163/2017 is not having any bearing and liable to be dismissed and the matter is pending disposal before the Court. It is submitted that on a perusal of the facts pleaded above, it clearly reveals that the said Venkatesh and some of his companion persons including Srinivasamurthy are making consistent efforts to extract money by one proceeding or another with a dishonest intention to

harass the Respondent and to extort money in all possible ways.

(iii) Proceedings before BBMP:

The said Venkatesh having lost his chances in the Revenue and Civil Courts, has been trying to grab the properties in the new Sy.No.83 belonging to the owners who are the respondents herein knowingly, deliberately with ulterior and fraudulent mentality with the help of local goons and rowdy elements with an dishonest intention, made an application before the Additional Director, Town Planning, BBMP, alleging that the owners and Builders herein have obtained the sanction of plan and license by suppressing of facts and the Commissioner, BBMP passed an impugned order dated 24.07.2014 Bangalore against the Respondent being the owners and the Company by cancelling the sanctioned Plan and License and aggrieved by the said order, the Respondent have filed a Writ petition vide W.P.42485-42497/2014 to quash the impugned order of the Commissioner, BBMP and the High Court in its order dated 19.09.2014, directed the Respondent and the Builder to approach the BBMP Appeal Committee for the relief under section 443(4) R/w Section 444 (1)(e) of the Karnataka Municipal Corporations Act,1976. Accordingly the Landlords and the Builders moved an Appeal against the impugned order of the Commissioner, BBMP before the BBMP Appeal Committee and the said Appeal Committee after examining the title Deeds and papers of the Landlords and the Venkatesh have passed an order dated 17.03.2015 thereby setting aside the impugned order dated 14.07.2014 of the Commissioner, BBMP as illegal and unsustainable and restored the Building sanctioned Plan and the License with immediate effect and held that the said Venkatesh has no right, title and interest over the propertied bearing sy.Nos.83/1 and 2 of Mallasandra Village, Yashwanthpur Hobli, Bangalore

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North Taluk, Bangalore District. Respondent completes construction despite Legal Hurdles. It is submitted that the Respondents completed the construction of the 'Project' and applied for the Occupancy Certificate on 09.06.2017. In view of the legal hurdles which are well within the Complainant's knowledge, there was a delay in getting the Occupancy Certificate of the Apartment Units in the 'Project'

16. This is the history of litigation faced by the developer on different forum for different kinds of litigation. Despite of it the developer is telling that he has completed the project. Is it true? My answer is no., because the developer has not been able to get the occupancy certificate for the reasons of those litigations. Even then he has executed the sale deed in favour of the complainant and his wife.
17. It is submitted that even after the sale deed having been executed by the respondent in favour of the Complainant, various common amenities have been promised while marketing the project as per the project brochure stand incomplete. The complainant has given the list which are as under:

viii) Promised Amenities that are not yet completed

- a. Gym with fully functional equipments*
- b. Intercom Facilities not installed*
- c. Rain Water Harvesting not installed*
- d. Security Kiosk for each tower not built*
- e. Garbage Collection System not properly provided*
- f. Fully functional and operational STP and WTP not provided*
- g. Bamboo Garden, Tennis Court, Basket Ball Court and Creche not provide.*

Done
21/09/2016

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18. It is submitted that the entire project was promised to consist of it is submitted that the entire project was to be developed over land measuring 4 Acres 13 Guntas Club House and other amenities. It is submitted that the Respondents as on today has put up construction of 4 towers and club house and other amenities is incomplete. It is submitted that even earth work for the fifth tower is yet to be commenced. It is submitted that Respondents have collected huge sum of money towards Kaveri Water supply through BWSSB, however, the same is not provided as promised. It is submitted that the Respondents has not yet applied of the same nor has deposited the security deposit.
19. Further the complainant has made several allegations regarding the litigations and also about the amenities. It is also his allegations that the developer has not at all commenced the 5th tower. Of course the flat of the complainant is coming in tower-4 but he wanted to say that the project is not yet completed by saying that the tower-5 is yet to get the commencement work.
20. In view of the same I would say that though the developer has executed the sale deed but it is clear in violation of S.17 and 19(10) of the act and as such the complainant is entitled for delay compensation till the date of OC with all amenities. Further the compensation payable by the developer is concerned I would say that it is better to go to the recitals of sale deed. At page No. 9 clause 5.2 where the purchasers have agreed for the following amenities which are as under:

The purchasers hereby confirm having taken possession of the scheduly C apartment as aforesaid and before taking the possession, the purchasers have inspected and satisfied as to completion of all works in the schedule C apartment and its fitness for occupation and the purchasers have no

Done
21/04/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

claims against the vendors and/or builder in respect of the schedule C apartment including but not limited to the following :

- a) Correctness of the measurement/area of the schedule C apartment, area and location of car parking space/s allotted.*
- b) Amenities/services provided in/to the schedule C apartment.*
- c) Quality of construction of the schedule C apartment and the apartment block in which schedule C apartment is situated,*
- d) Electrification and plumbing etc., in the schedule C apartment and the apartment block in which schedule C apartment is situated*
- e) Finishing of common areas and facilities in the apartment block in which schedule C apartment is situated;*
- f) Construction in schedule C apartment and the apartment block in which schedule C apartment is situated being in conformity with sanctioned building plans and the agreed specifications.*

21. In view of the same the buyers have given consent to those items but even now he is alleging that the developer has not provided the amenities.

22. At the time of arguments the counsel for the developer submits that the complainant is trying to take unlawful benefit of compensation even though the same has already been settled at the time of sale deed. In this regard I say that the developer and buyer have settled their amount payable by each other at the time of sale deed but the factum of delay compensation does not find place in the said deed. As per the discussion made by me the project is not officially completed and therefore the developer shall compensate from the date of sale deed till the receipt of OC.

Deen
21/09/2020

23. However the complainant has sought for refund of the amount paid towards BWSSB water connection and also towards car parking. In this connection he has stated in his complaint alleging Rs.2,65,000/- towards BESCOM & BWSSB Charges and Rs.2,50,000/- towards car parking has been collected by the developer but failed to give relief.
24. Now coming to the refund of the amount paid towards BWSSB water and car parking. I would say that the project is not completed as per the say of the complainant itself. When that being the case the question of refund of the said amount does not arise for two reasons. One is that the complainant has already taken the sale deed with car parking. Further the water connection to the entire project is also depending upon the completion of the project.
25. Further, recently the complainant has filed rejoinder on 15/09/2020 by expressing some other kind of grievance which are listed as under:

It is submitted that the Respondent has not paid any kind of compensation as claimed under the objection statement. It is submitted that the Respondent is liable to compensate complaint in accordance with law and cannot unilaterally decide that compensation. It is submitted that the Respondent has paid a sum of Rs.10,000/- as compensation without any kind of documentary proof.

Done
21/09/2020

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It is submitted that complainant is entitled for following statutory rights Viz.

- a. *Right to get Occupancy Certificate;*
- b. *Right to all amenities such as BESCOM, BWSSB which is essential services;*
- c. *Right to get common area amenities which was represented in the marketing Pamphlets and Sale brochures etc.*
- d. *Right to information by way of declaration of all pending litigation etc.*
- e. *Right to compensation as per the prescribed rate under RERA Act and Rules thereunder.*
- f. *Right to get Khatha for Apartment. It is submitted that non availability of Occupancy Certificate, the complainant cannot get Khatha of the Apartment.*
- g. *Right to Form Owner Association, which the duty of the Respondent to establish and same is not established.*
- h. *It is submitted that a numerous apartment owners have preferred complaint before this Honourable Authority establish the fact that the owner are not happy with the quality of service and construction*
- i. *It is submitted that the since the Occupancy Certificate itself is not procured by the Respondent, the claim that the project is complete is nothing but figment of imagination of the Respondent, that the apartment buyer are living happily.*
- j. *It is submitted that the respondent ought to have produced following document to establish that the various statutory and regulatory compliance has been completed.*

21/09/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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- a. LIFT INSPECTION REPORT AND APPROVALS.
- b. FIRE DEPARTMENT CLEARANCE.
- c. BESCOM INSTALLATION AND APPROVAL CERTIFICATE.
- d. BWSSB INSTALLATION AND APPROVAL CERTIFICATE.
- e. BRUHAT BANGALORE MAHANAGARA PALIKE COMPLETION AND OCCUPANCY CERTIFICATE.
- f. CERTIFICATE FROM POLLUTION CONTROL BOARD FOR INSPECTION, COMPLETION AND APPROVAL OF THE WATER TREATMENT PLANT AND SEWAGE TREATMENT PLANT.
- g. *Handing over of the Original Title Document to Association of Allotees.*
- h. *Handing over of the Maintenance to Association of Allotees.*
- i. *Closure of the Litigation before various Courts.*
- j. *Loan Closure letters for financial institutions.*
- k. CERTIFICATE OF COMPLETION OF PROJECT FROM RERA AUTHORITY.

26. At this stage I would like to say that the complainant has mixed his relief with delay compensation and with amenities. In this regard I am drawing the attention of the complainant that he has given consent to the developer with regard to amenities at the time of execution of sale deed. In spite of it he has given the list of amenities alleging that which have to be still provided to the complainant. In addition to it I would say that the amenities provided or not provided as alleged by the complainant will have to be examined by the expert but no such attempt has been made by the complainant. In the registered sale deed the complainant has surrendered with regard to amenities but he has made serious allegation regarding non-providing of amenities. As such it is my

[Handwritten signature]
21/6/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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firm opinion that the question regarding amenities shall be taken up separately. Therefore the learned counsel for the developer has rightly submitted that the complainant had to file the complaint by alleging the violation under S 14(3) of the Act. It is my finding that the question of amenities cannot be mixed with the delay compensation. In view of the same I would say that none of the citations relied upon by the respondent/promoter is applicable to facts and circumstance of case on hand. It is submitted that the project was to be handed over the complainant as on 30/7/2017, however the sale deed was executed on 18/9/2018, by surpassing lot of material facts such as pending litigation, non availability of essential service such as water supply from BWSSB, Occupancy Certificate etc. Hence the Complainant has a right to seek relief with regard of delay compensation.

27. In view of the same and also as per the discussion made by me I would say that the complainant is entitled for delay compensation. However the file be placed before the authority where the complainant can take adjudicating on the other points which are beyond the jurisdiction of Adjudicating Officer. With this observation I allow this complaint in part.

28. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 12/09/2019. In this case the complainant was appeared on 24/12/2019. After hearing the complainant the file was transmitted to Authority on the ground of jurisdiction but it was returned on some observation. Notice has been issued to the developer who failed to file any kind of objections except a memo. In the meanwhile the hearing was stopped from 18/03/2020 due to

Deek 4
21/07/19

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Covid-19. Further on account of lock down the hearing of cases was shut down and after lifting the lock down it was heard through Skype. Hence, there is some delay and I proceed to pass the following

ORDER

- a. The Complaint filed by the complainant bearing No. CMP /190912/0003898 is hereby allowed in part.
- b. The developer is hereby directed to pay delay compensation in the form of simple interest @ 2% above the MCLR of SBI on the principal amount paid on the sale deed from the date of sale deed till the developer obtains the OC.
- c. The developer is also hereby directed to pay Rs.5,000/- as cost of the petition.
- d. Place this case before Authority with all the necessary documents to hear the other plea raised by the complainant.
- e. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 21/09/2020).

K. PALAKSHAPPA
Adjudicating Officer