

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority, Bengaluru
ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI I.F. BIDARI
DATED 11th August 2022

Complaint No: CMP/180703/0000996A

Complainants : Archana Patil
318, 18th G Main,
6th Block, Koramangala,
Bengaluru - 560095
(By: Sri. Vijayendra D Joshi & Associates,
Advocates.)

VS.

Respondent: SJR Prime Corporation Pvt. Ltd.,
SJR Primus, 7th Floor,
#1 Industrial Layout
Koramangala 7th Block,
Bengaluru - 560095.

J U D G M E N T

Complainant Mrs. Archana Patil, did file complaint bearing No. CMP/180703/0000996, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the developer SJR Prime Corporation Pvt. Ltd., (here-in-after referred as respondent), praying for refund of entire amount paid to the respondent with 18% P.A., interest and compensation.

2. The brief facts of the complaint are as under:

The complainant Mrs. Archana Patil (here-in-after referred as complainant) on 06.09.2013, has booked 3 BHK flat bearing No. 404 in Unit "C" in Block Albany, in Hamilton Homes, being developing

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and constructing by respondent M/s SJR Prime corporation Pvt. Ltd. The complainant has paid Rs. 10,31,329/- to the respondent as advance amount. The complainant and the respondent/builder on 06.09.2014 have entered in to agreement to sell and construction agreement, as per which, the respondent was to handover possession of flat in July 2016 but till date of filing of the complaint respondent did not handover possession of flat to the complainant. The complainant till date of filing of complaint had paid around Rs.43,59,034/- to the respondent in-respect of the flat. The complainant has borrowed home loan from bank to pay the flat consideration amount to the respondent. The complainant had visited the project spot and on inspection came to know that progress of construction of the project building including flat in question was very slow. The complainant is residing in a rented house and paying rent because of delay in handing over of possession of the flat also paying EMI's to the home loan which is causing her stress. Under the circumstances the complainant did file a complaint bearing No. CMP/180703/0000996, praying for refund of entire paid amount with 18% interest per annum, along with loan interest, bank processing fees for the home loan, modification charges paid to the bank, stamp duty expenses of the agreements and compensation of Rs.3,50,000/- for the delay, including benefits or payment which complainant is entitle under agreements and in law. These main grounds among others urged in the complaint prayer to grant the relief as prayed.

3. Thereafter receipt of the complaint No. CMP/180703/0000996 from the complainant (my learned predecessor) the learned Adjudicating Officer, issued notice to the respondent but in-spite of service of notice, respondent did remain absent. Thereafter my learned predecessor, on hearing the complainant, appreciating materials and documents on record, through judgment/order dated: 07.11.2018

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did allow the complaint in part and directed the respondent to refund the entire received amount with interest from the period as mentioned therein, against which complainant had preferred an appeal before the Hon'ble Karnataka Real Estate Appellate Tribunal Bengaluru (here-in-after referred as Appellate Tribunal) in appeal No. (K-REAT) 14/2020 (Old No. 03/2019). The Hon'ble Appellate Tribunal through it's judgment/order dated: 18.03.2022 allowed the appeal in part, set aside the order dated: 07.11.2018 passed by the learned Adjudicating Officer (here-in-after referred as AO) in Complaint No. CMP/180703/0000996, as one passed without jurisdiction and remanded the matter to Hon'ble RERA for fresh consideration in the light of the judgment of the Hon'ble Apex court in the case of **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD VS STATE OF UP AND ORS. ECT.** and in accordance with law, after affording an opportunity to both the parties to adduce additional evidence (both oral and documentary), if any; and further directed the Authority to transmit the issue relating to "compensation" to the AO along with a copy of the complaint, without insisting the complainant to file fresh complaint in Form "O" and to dispose off the matter as directed therein. After receipt of records in complaint No. CMP/180703/0000996 from the Hon'ble Appellate Tribunal, the Hon'ble K-RERA Authority split-up the complaint No. CMP/180703/0000996 in the web portal and registered this complaint No. CMP/180703/0000996A in-respect of issue relating to compensation and forwarded the said complaint CMP/180703/000996A to the AO for adjudication of compensation as directed by the Hon'ble Appellate Tribunal. Thus the instant complaint No. CMP/180703/0000996A has been taken up for disposal with regard to issue relating to compensation as directed by the Hon'ble Appellate Tribunal.

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4. There-after receipt of the complaint No. CMP/180703/0000996A from the Hon'ble K-RERA Authority, notices were issued to the respondent but the respondent remained absent in-spite of service of notice.
5. I have heard the Sri. V.D.J. learned Advocate for the complainant. The argument of respondent, taken as nil. The written argument is filed on behalf of complainant. Perused the records, written argument of the complainant and materials.
6. The points that would arise for my consideration are:
Point No.1: Whether the complainant is entitle for compensation? If so, to what extent?
Point No.2: What order?
7. 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 the following:-

REASONS

8. Point No.1: The records disclose that the M/s. Hamilton projects LLP, (1). M/s. SJR Prime Corporation Pvt. Ltd (2). Sri. A Ramareddy are developing and constructing apartments in building known as "Hamilton Homes by SJR Prime corp." on non-agricultural converted immovable properties bearing Surry No. 29/1 measuring 38 Guntas, Surry No. 28 measuring 03 Acres 30 Guntas and Surry No. 26/1 measuring 9 Guntas out of 01 Acre 04 Guntas of Gattahalli Village, Anekal Taluk of Bengaluru District. The respondent along with M/s. Hamilton projects LLP and Sri. A Ramareddy have entered in to an agreement to sell

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dated: 06.09.2014 with the complainant to sell the 3 BHK flat bearing No. 404 in Unit "C" in Block Albany on 4th Floor, measuring 1229Sq. Ft., supper built-up area with one car parking in "Hamilton Homes by SJR Prime corp" along with undivided share, right, title and interest in the aforesaid converted immovable properties. The complainant on 06.09.2014 itself has entered into construction agreement with the respondent/promoters to got construct the flat in aforesaid "Hamilton Homes by SJR Prime corp". The aforesaid non-agricultural immovable properties have been described as Schedule "A" property in the agreement to sell and construction agreement both dated: 06.09.2014 and whereas aforesaid flat agreed to be got constructed has been described as Schedule "C" property and whereas the undivided share agreed to be sold to the complainant is described as schedule "B" property in the agreements.

9. Admittedly the construction agreement and agreement to sell in respect of flat No.404 have been entered between the complainant Mrs. Archana Patil and the respondent, prior (i.e., dated: 06.09.2014) to coming into force of RERA Act. The complainant has booked the flat on 06.09.2013. 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. 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

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provisions of the Act, Rules & Regulations framed there-under. Therefore, it is made clear that in the present case though the agreement is entered prior to coming into force of RERA Act and project is not registered with RERA but as on date of coming into force of RERA Act, the project was an ongoing project, so, required to be registered with K-RERA, as an ongoing project, as such, the provisions of the RERA Act and K-RERA Rules are made applicable in the present case, though the agreement has been entered between complainant and the respondent, much prior to coming into force of the RERA Act.

10. As already discussed above in the body of this judgment the Hon'ble Appellate Tribunal in Appeal No. (K-REAT) 14/2020 (Old No. 03/2019) remanded the case No. CMP/180703/0000996 (here-in-after referred as Complaint No. 996) to the Hon'ble K-RERA for fresh consideration in the light of the judgment of the Hon'ble Apex court in the case of **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD VS STATE OF UP AND ORS. ECT.**, and in accordance with law, consequently on receipt of records in Complaint No. 996 from the Hon'ble Appellate Tribunal, the Hon'ble K-RERA authority split-up Complaint No.996 and this separate Complaint No. CMP/180703/0000996A (here-in-after referred as Complaint No. 996A) registered in respect of issue relating to compensation in Complaint No. 996 and forwarded the Complaint No. 996A to the AO, as directed by the Hon'ble Appellate Tribunal. Therefore the AO is required to consider issue regarding compensation only, in this Complaint No. 996A. In view of the judgment dated: 11.11.2021 passed by the Hon'ble Supreme Court of India, in Civil Appeal Nos. 6745-6749 of 2021, in the case of M/s Newtech Promoters and Developers Pvt. Ltd., Vs State of UP & ORS.ETC., With Civil Appeal Nos. 6750/21, 6751/21, 6752/21, 6753/21, 6754/21, 6755/21, 6756/21 and

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6757/21, the AO is only empowered to adjudicate the compensation and interest thereon U/Secs.12, 14, 18 & 19 RERA Act, as contemplated U/Sec. 71 taking into account the factors enumerated U/Sec.72 of the RERA Act. The relevant portion in Para No. 86 of the said judgment reads as under:

"From the scheme of the Act of which a detailed reference has been made and taking not of power of Adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls, out is that although the Act indicate the distinct expressions like "refund", "interest", "penalty", "compensation", a conjoint reading of Section 18 and 19 clearly manifests that when it come to refund of amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon it is regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudicating compensation and interest thereon under Section 12,14,18 and 19 the adjudicating officer executively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Section 12,14, 18 and 19 other than compensation as envisage, if the extending to the adjudicating officer as prayed that, in our view, may interested to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of Act 2016".

11. As per the terms of construction agreement dated: 06.09.2014 the respondent was to give possession of the flat 404 to the complainant on or before July 2016 with 6 months grace period, which means the respondent had to hand over possession of the said flat to the complainant in January 2017, including 6 months

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grace period. The materials records, as well, the written argument filed on behalf of the complainant prove that as on date of filing of the complaint and till this date the project building including flat No. 404 booked by the complainant has not been completely constructed. Therefore there is no hesitation to hold that respondent failed to handover possession of the flat No. 404 to the complainant within the stipulated period as per the terms mentioned in the construction agreement and agreement of sell, as the version of the complainant remained unchallenged, since respondent remained absent in spite of service of notice in this Complaint No. 996A and not contesting the complaint. Under the circumstances complainant is entitled for the compensation. The complainant in the written argument, among others is submitting that she has borrowed home loan from SBI Banashankari III Stage, Branch Bengaluru, executing mortgage in-favour of the said bank and paid Rs.4,59,034/- to the respondent towards consideration of the flat amount and repaying loan by way of EMI with heavy interest and residing in rented house as even after due date respondent has not handed over possession of the booked flat. The complainant further submitted in the written argument that she has paid stamp duty, loan processing fee, legal fee, apart from suffering mental pain and agony, hence in all complainant has prayed to award compensation to the tune of Rs. 37,34,600/- in-respect of these heads as detailed in the written argument and Sri. V.D.J. learned counsel for the complainant also submitted to award compensation to the complainant as mentioned in the written argument. The complainant has produced rental agreements dated: 25.08.2015, 05.03.2016, 05.04.2017 and 07.10.2017 to show that she is residing in the rented house and in the written argument prayed to award an amount of Rs.17,52,750/- towards rent expenses. The complainant has not produced materials for having paid rent amount to the owners of

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the houses mentioned in the rental agreements. However the possibility of complainant residing in the rented house with family members cannot be overruled as even after the due date of possession mentioned in the construction agreement, the possession of flat has not been handed over. The complainant in the written argument sought Rs.3,350/- towards stamp duty but the stamp amount cannot be reimbursed since said amount being went to the Government. The records disclose that complainant has obtained home loan from SBI to purchase flat 404, mortgaging the said flat, so the possibility of complainant paying interest on home loan cannot be overruled. The copy of statement of accounts and materials on record disclose that the complainant has already paid an amount of Rs. 43,59,034/- to the respondent towards consideration of the flat. These materials on record prove that the respondent has violated the provisions contemplated U/Sec.18 of the RERA Act, in as much as, not handing over the booked flat to the complainant even after the expiry of due date mentioned in the construction agreement, though the complainant has paid the substantial consideration amount to the respondent. These materials on record leads to only probability that the complainant has suffered loss of interest or a reasonable return on her investment apart from mental harassment because of the aforesaid act of the respondent in as much as not completing construction of the flat and giving it for use and occupation of the complainant and her family members for which complainant is entitled for compensation. Admittedly the version of the complainant is remained unchallenged and supported by materials on records. Under the circumstances it is just and proper to direct the respondent to pay compensation to the complainant by way of interest @ 9% per annum on respective amounts from the respective dates of receipt of such amounts towards loss of interest or a reasonable return on her investment.

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At the same time it is just to award an amount of Rs.1,00,000/- as compensation to the complainant towards mental pain and agony. Thus I hold point No.1, accordingly for consideration.

12. 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 Complaint No. 996 was filed on 03.07.2018, thereafter AO has disposed off, said complaint on 07.11.2018 and the Hon'ble Appellate Tribunal in Appeal No. (K-REAT) 14/2020 (Old No. 03/2019) remanded the Complaint No. 996 to the Hon'ble K-RERA for fresh consideration in accordance with law, subsequently on receipt of records in complaint No. 996 from the Hon'ble Appellate Tribunal, the Hon'ble K-RERA authority split-up Complaint No.996 and this separate Complaint No. 996A registered in respect of issue relating to compensation in Complaint No. 996 and forwarded the Complaint No. 996A to the AO as directed by the Hon'ble Appellate Tribunal and same is received by AO on 30.04.2022. Thereafter notices were issued directing the parties to appear for hearing. The parties given the reasonable opportunities to contest the case, as such, the judgment is being passed on merits, with some delay.

13. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

ORDER

(i) The complaint of the complainant bearing No.: CMP/180703/000996A is partly allowed against the respondent.

(ii) The respondent is hereby directed to pay compensation to the complainant by way of interest @ 9% per annum on respective amounts from the

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respective dates of receipt of such amounts till payment of entire amount towards loss of interest or a reasonable return on her investment.

(iii) The respondent is directed to pay compensation of Rs. 1,00,000/- (Rupees One Lakh Only) to the complainant towards mental pain and agony.

(iv) The respondent shall have to pay an amount of Rs.5,000/- (Rupees ^{five} ~~fifty~~ thousand only) to the complainant towards cost of litigation.

* Correction is carried
out as per order
dated : 23.12.2022

23/12/22

(v) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with the order and to enforce this order.

(vi) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 11.08.2022)

I.F. Bidari
I.F. BIDARI

Adjudicating Officer-1
K-RERA



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ಕಡತ ಸಂಖ್ಯೆ Comp. No : 996 A

ಪುಟ ಸಂಖ್ಯೆ 21

ವಿಷಯ Archana Patil

SJR Prime Corp

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

29.12.2022

Inadvertently the word "fifty" is written instead of "five" in para No. 13(iv) of judgment dated 11.08.2022 & in the note sheet.

Hence for your kind perusal.

Atty

Ao) Date: 23.12.2022

Perused the office note dated: 23.12.2022 also perused the records and the judgment dated 11.08.2022 passed in this case. In the operative portion of the judgment dated: 11.08.2022 passed in this case in Para 13(iv) and in the note sheet, due to typographical mistake the amount in the words typed as "fifty" instead of "five", as such, same is ordered to be corrected as "five" deleting the word "fifty".

23/12/22
Adjudicating Officer-1
K-RERA