BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by:- Sri. K.PALAKSHAPPA

Adjudicating Officer.

Complaint No. CMP/180905/0001237

Date: 26 th December 2018

Complainant : **JYOTI SUDHINDRA PAPPU**
3F/22 Aditya Garden City,
Phase 2 SNo 109/110, Warje
Pune – 411052, State:Maharashtra

AND

Opponent : **Raghavendra Reddy**
Radiant Elitaire
RADIANT STRUCTURES Pvt. Ltd.,
No 590, 14th Cross, J P Nagar I Phase,
Bengaluru -560078

J U D G E M E N T

1. JYOTI SUDHINDRA PAPPU has filed this complaint under Section 31 of RERA Act against the project "Radiant Elitaire" developed by RADIANT STRUCTURES Pvt. Ltd., bearing complaint no. CMP/180905/0001237. The brief facts of the complaint is as follows:

1. While booking my flat, the company had promised to complete the project by End December of 2016, However, the progress in

Construction became extremely slow from April 2016 on-wards and till date it remains the same. 2. Even though construction being very slow MD of the company by making false promises, made me to part with 85% of the overall cost of the project including cost of KEB / BWSSB and other amenities by May 2017. 3. MD of the Company has been calling us for meetings, due to our follow-up. In every meeting though he has given many dates for completion for the project all of which have turned out to be false Promises. Infact, in every meeting MD went on extending the project completion date. 4. Meanwhile, Radiant Structures Pvt Ltd was restructured, without informing us or the Lending Banks. Till date conditions of restructure and its effect on the project has not been made known to us. 5. Due to slow progress and lack of supervision, Quality of construction is getting deteriorated. 6. All the above clearly indicate that the delay in completion of project is intentional. Inordinate delay in handing over of flats has caused hardship and unbearable loss both financially and emotionally.

Relief Sought from RERA : Complete within 60 days & compensate as per RERA

2. On 16/10/2018 the parties have appeared. Again the case was called on 20/11/2018 for filing objections and accordingly the Developer has filed his objections. Argument was heard on both sides.

3. Originally the complainant was present in person later he is represented by his counsel. The Complainant has sought for delay compensation and also for completion of the project. At the time of arguments it is submitted that the Complainant has paid 85% of the amount as per the agreement. The Developer was expected to give the possession on or before 31/07/2018 including grace period. To this agreement the counsel for Developer has submitted that the limitation for the possession will start from the date of 30% payment made by the consumer.

4. I would like to say that at the time of argument it was submitted to the authority that the Complainant has already paid more than 30%. However the counsel for the complainant has clearly mentioned in his written submission that the complainant has paid 30% of the amount on 31/01/2015. Therefore it was the obligation on the part of the Developer to give possession on or before 31/07/2018 but till today it is not yet materialised.

5. The counsel for the complainant has filed his written arguments stating that the developer has given different dates of commencement of completion to his project to avoid the delay compensation. It is not correct to say so simply because it is an admitted fact that the date of completion has to be computed from the date of payment of 30% of the total amount. Based upon the same the delay compensation has to be calculated and accordingly it is done in all the cases.

6. Now at the time of argument it is submitted that the Developer still in need of 11 months from this day to complete the project. The Complainant submits that the prayer of the Developer for 11 months to complete the project is beyond the scope of Section 6 of the RERA Act because the authority may extend the time to one year maximum from the date of completion shown in the application. It means it comes to 31/03/2019. Hence, the prayer made by the Developer before the authority to grant time of 11 months from today means it comes to October 2019 which is not permissible under law. Therefore it is the obligation on the part of the Developer to deliver the possession within the time. That is on or before 31/03/2018 or within the time extended by the authority if any, but now the time schedule given by the developer to the authority is also expired.

7. The complainant has filed the Xerox copy of the application made to the RERA seeking extension of his completion period where in the developer has stated that he has completed 80% of work on his project. It means as on August 2018 still the completion is not nearer even to 90%. What it indicates? There is a delay. The counsel for the Complainant has produced some photos showing the present status of the project. The same is supporting the discussion made by me.

8. From the above discussion it is very clear that there is an inordinately delay in completing the project. Therefore the Complainant certainly entitled for delay compensation.

9. In this regard the learned counsel for the Developer submits that he is ready to pay the delay compensation as per the agreement which means in the agreement it is mentioned as Rs. 4 will be paid per square feet of the total super built up area. During the course of arguments it was submitted on behalf of the developer that the Act cannot over ride the agreement. He also submitted that the agreement was executed prior to 01/05/2017 and therefore the claim made by the Complainant cannot be accepted but the argument canvassed on behalf of the Developer holds no water. Further the complainant has filed his written argument where it is said that the rate of compensation from Rs.4 to Rs. 12 till 30/04/2018 and also sought the compensation as per rule 16 from 1st may 2017 till the date of completion.

10. Further the complainant has sought the relief of Rs. 22,000 to 25,000/- per month in the form of rent. But it is not correct to say so since the delay compensation has to be awarded from the date of delay. Though the RERA Act is not retrospective but it is retroactive. Further the default on the promoter in not completing the project has been continued even after the induction of this Act.

26/12/18

11. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of its filing. This complaint was filed on 05/09/2018. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 16/10/2018 and hence, there is little delay. With this observation I proceed to pass following order.

ORDER

The Complaint No. CMP/180905/0001237_ is allowed.

The developer is hereby directed to pay the delay compensation @ 10.25% on the amount paid by him from August 2018 till the notice for delivery of possession is issued along with Occupancy Certificate.

Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 26/12/2018)

(K.PALAKSHAPPA)
Adjudicating Officer