

ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Complaint No. CMP/190219/0002210
Presided by Sri K Palakshappa
Adjudicating Officer
Date: 14th August 2019

Complainant : Akshat Saxena,
C1601, IREO Uptown, Sector 66,
Golf Course Extension Road,
Badshapur-122101
Rep. by. Sri. H.M. Sudheer. Advocate

AND

Opponent : Mantri Manyata Lithos
Mantri Technology Constellations Pvt.
Ltd., No. 41, Vittal Mallya Road,
Mantri House,
Bengaluru- 560001
Rep. by: Veersh R Budihal, Advocate.

J U D G M E N T

1. Mr. Akshat Saxena, Complainant filed this complaint bearing No. CMP/190219/0002210 has filed this complaint under Section 31 of RERA Act against the project "Mantri Manyata Lithos" developed by Mantri Technology Constellations Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

The Complainant entered into an Agreement for Sale of undivided interest (undated) with the Respondent (Developer) and M/s. Manyata Realty (Owner) agreeing to purchase undivided share in the project by name ?Mantri Manyata Lithos? (?said Project?),

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situated at Rachenahalli, K R Puram Hobli, Bangalore South Taluk, Bangalore. The said Project has been registered under Real Estate (Regulation and Development) Act, 2016 (?RERA Act?) and the Karnataka Real Estate (Regulation and Development) Rules, 2017 (?RERA Rules?) bearing registration number PRN/KA/RERA/1251/309/PR/171201/000444. The copies of the Agreement for Sale of undivided interest and the RERA registration certificate are enclosed herewith as Annexure A & B. 2. Simultaneously the Complainant also entered into an Agreement of Construction (undated) with the Respondent to get the apartment No. D-702 constructed in the said project (?said Apartment?). A copy of the Agreement of Construction is enclosed herewith as Annexure C. As per clause 6.1 of the Agreement of Construction, the respondent is supposed to construct for the said apartment and handover the possession of the same as per Annexure B1. Annexure B1 to the Agreement of Construction which is a tabular sheet indicates that the date of possession is 1.07.2017. 3. Pursuant to the execution of the aforementioned Agreements the Complainant has been regularly making the payments towards Sale consideration and till date a sum of Rs. 1,09,41,192/- (Rupees One Crore Nine Lacs Forty One Thousand One Hundred and Ninety Two only) has been paid to the Respondent. The balance payment has to be made at the time of handing over the possession of the said apartment. 4. Representative of Respondent by name Ms. Divyashree wrote emails to the Complainant requesting the Complainant to get the Sale Deed of the said Apartment registered and also demanded the balance sale amount. Copies of the emails exchanged with Ms. Divyashree are enclosed herewith as Annexure D. 5. From the above documents it is clear that the Respondent has failed to complete the project/apartment as per the commitment given to the Complainant under the Agreement of Construction. Further the Respondent has unilaterally extended the time line to hand over the said Apartment to the Complainant from July 2017 which is contrary to the provisions of RERA Act and Rules. 6. Because of the delay in handing over the said apartment before the scheduled date, the Complainant has to shell out additional amount towards Stamp duty and registration fee as the Government has increased the guideline value and the same should be borne by the Respondent.

Relief Sought from RERA :Handover possession, delay interest, compensation

2. In pursuance of the notice issued by this authority, Shri H.M. Sudheer Advocate filed Vakalath on behalf of the complainant. Sri. Veeresh R Budihal filed vakalath on behalf of the developer. Later

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the developer has filed Objection for which the complainant filed their reply.

3. Heard the arguments.
4. The point that arisen for my consideration was:
Is the complainant entitled for the relief ?

REASONS

5. In the month of December 2013, both the parties have entered into Agreement with respondent to Unit No. D-702 wherein it was agreed to handover the possession in the month of 01.07.2017. The total consideration amounts to be paid was Rs. 1,10,62,500/- excluding taxes. Out of it the Complainant has paid Rs. 1,09,41,192/- It is alleged by the complainant that the developer has failed to complete the project/apartment as per the commitment given to the complainant under the agreement of construction. Further the respondent has unilaterally extended the time line to hand over the said apartment to the complainant from July 2017 to December 2018 which is contrary to the provisions of RERA Act and Rules. Even before completing the construction work and obtaining the occupancy certificate from the concerned authorities, a representative of respondent by name Ms. Divyashree wrote several e-mails to the complainant requesting the complainant to get the sale deed of the said apartment registered and also demanded the balance sale amount. It is his submission that he was under the impression that these amounts were already included in the total sale consideration to be paid by him as per the agreement.
6. The said judgment referred by him to state that the present complaint is pre mature as the new completion date given to RERA is 1/07/2019 which is accepted by the statutory body. But I would like to say that this aspect has already been decided in many cases stating that the date mentioned in the agreement is the criteria to

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decide the date of completion of the project. Therefore, the stand taken by the developer cannot be accepted.

7. The developer has given some reasons for non completion of the project in stipulated period in

"It is hereby submitted that the schedule flat could not be delivered on the date as mentioned in the said construction agreement due to various reasons such as;

- a. Firstly, there is no availability of sand due to strike by sand suppliers and lorry drivers;
- b. Secondly, the Hon'ble High Court of Karnataka had imposed restriction on the working hours of construction by the builders. Subsequently, the pace at which construction work should have proceeded declined further adding to delay in handing over possession of the apartments.
- c. The formulated plan of construction was delayed and also for other reasons such as non - availability of raw materials, work force and other Force majeure events which are beyond the control of the respondent. As per the construction agreement, it is specifically mentioned and agreed upon that the date of delivery of possession with regard to schedule property is subject to payment of all dues by complainant and issuance of the occupancy certificate. It is hereby submitted that the Complainant has not fully completed the total payment towards Sale consideration and Construction cost.

The completion of project named MANTRI MANYATA LITHOS is, burdened due to non-payment of installments on time by other purchasers like Complainant.

I state that, while the construction work was under progress, during November 2016, our country faced

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work in a smooth manner. As stated supra and coupled with the fact that the respondent's project was a big one, laborers were large in number. Laborers at the construction site were to be paid their daily wages for their work. Since the laborers did not possess bank accounts, the respondent could not deposit/transfer the money to their respective accounts."

6. The developer calls these reasons as Force Majeure. But I am not going to accept this reason because the developer has collected the amount from the complainant from the year 2014. In this regard I would refer the wordings and meaning of the word "force majeure in a judgment which is as follows.

"Only defense taken by the opposite party for failure to deliver possession of respective apartments to the complainants is the plea of Force Majeure. On careful perusal of written statements filed in response to the respective complaints as also the affidavit evidence by the opposite party, the opposite party has tried to justify plea of Force Majeure on four counts: (a) restriction imposed by the order of Punjab and Haryana High court on user of underground water for construction activity and scarcity of the sewerage treated water; (b) shortage of labour due to various reasons; (c) shortage of bricks due to restriction imposed by the Ministry on brick kilns and; (d) shortage of sand due to suspension of mining activities aravali range. In our considered view the opposite party has failed to substantiate the pleas in supports of the plea of force majeure"

7. In view of the above observation the plea taken by the developer on the ground of force majeure holds no water. There is a clause in the agreement for delay compensation in case of delay in completion of

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the project. Admittedly the delay has been caused and the developer has not completed the project within the time mentioned in the agreement. When the agreement shows the clause for the payment of delay compensation, the developer has to pay the same. Of course he submits that he is liable to pay compensation only from the month July 2019 but not from the month of July 2017. However the payment of delay compensation from which day has to be ascertained. This point is already made clear and accordingly the developer has to pay the delay compensation from the date mentioned in the agreement.

8. At the time of argument the Learned Counsel for the complainant submits that the developer cannot say that he is ready to pay delay compensation as mentioned in the agreement because he will impose interest @18% to us. Therefore, there should be parity in payment of interest. I find some force because as per Sec. 19(7) the liability to pay interest is prescribed. Therefore, the submission made on behalf of complainant is having force. The developer has no voice against the same.
9. The learned counsel for the complainant has given some decisions given by different authorities including the consumer forum. The main submission made on behalf of the complainant is that the developer who had agreed to deliver the flat in favor of the complainant has failed to comply with the same. According to him Section 18 mandates the developer to give compensation for the delay in completing the project. In support of the same he has relied on some decisions given by this authority itself along with the decisions given by Consumer Redressal forum New Delhi.
10. The advocate for the complainant has given the decision of Haryana RERA authority where it is said that the developer who is collecting the interest @ 18% for the delayed payment and giving a meagre

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12. The advocate for the complainant has given the decision of Haryana RERA authority where it is said that the developer who is collecting the interest @ 18% for the delayed payment and giving a meagre amount to the Consumer as delay compensation is nothing but an unfair practice.
13. Also referred one more decision given by the Haryana RERA where it is observed that the interest shall be paid from the due date as mentioned in the agreement.
14. I would like to say that there is no quarrel on this point because Section 12, 14, 18 and 19 of RERA act is applicable as per the clauses mentioned in the agreement since it is said that the disputes pending before the consumer forum either before the commencement of the Act or after the commencement of the act may be transferred to the RERA authority for disposal. This principle goes to show that the delay compensation has to be paid only from the date mentioned in the agreement of sale as a due date. When that being the case the argument canvassed on behalf of the developer that the delay compensation has to be paid by the developer only in case he fails to deliver the possession from the date as mentioned in the RERA application falls on the ground. Therefore I say that the argument submitted on behalf of the Complainant is supported with various decisions and I say that the complainant is entitled for the delay compensation from the due date as mentioned in the agreement of sale which was duly executed between the parties. In addition to it the developer shall not call the complainant to get the sale registered until the developer gets the Occupancy Certificate.
15. 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. In this case the parties were present on 15/05/2019. Hence, there is a



little delay in closing this complaint and as such I proceed to pass the following;

ORDER

The Complaint filed by the complainant bearing No. CMP/190219/0002210 is allowed by directing the developer to pay delay compensation @10.75 % p.a. on the amount received from the complainant towards purchase of flat commencing from August 2017 till the developer executes the Sale deed after obtaining Occupancy Certificate by providing all the amenities.

Further the developer shall also pay Rs. 5000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced

on 14/08/2019).

(K. PALAKSHAPPA)
Adjudicating Officer