

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K. Palakshappa

Adjudicating Officer

Complaint No. CMP/190130/0002024

Date: 3rd of June 2019

Complainant: Suraj Kundoor
157, 1st floor, 9th main, BCC layout,
Bangalore – 560040.

AND

Respondent: GM Infinite Silver Spring Field,
M/s GM Infinite Dwelling (India) Pvt. Ltd.,
No. 6, GM Pearls, BTM Layout, 1st stage,
1st Phase, Bangalore- 560068.
Rep. by: Sri T.N. Advocate.

J U D G E M E N T

1. Mr. Suraj Kundoor, has filed this complaint under Section 31 of RERA Act against the project “GM Infinite Silver Spring Field” developed by M/s GM Infinite Dwelling (India) Private Limited., bearing no. CMP/190130/0002024. The facts of the complaint is as follows:

“I am allottee of flat no. 1003 in Tower 4 of the project GM infinite Silver Spring. Flat was booked on 15.12.2014. As per agreement, flat was supposed to be handed over to me by 30 November 2015. It was agreed that in case of delay I shall be paid a compensation of Rs. 15,000/- per month in the agreement. Till date, builder has not completed the project. NOC from Fire Department has not been obtained. Occupancy Certificate has not yet been obtained. However, under pressure from builder, some of the buyers

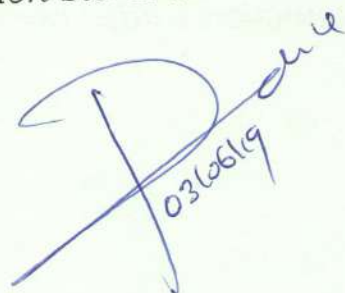
[Handwritten signature and date 03/06/19]

have got sale deed executed and have started living. Builder is now putting pressure on me also to get the sale deed done and has informed that they can provide me compensation only for Rs. 90,000. Delay so far is of 40 months. Further it is not known when OC will be made available. It has now come to my notice that a court case is pending against owners of land and builder challenging their title on land. Many amenities including one lift for my tower are not yet complete. Builder is saying that I will have to pay interest and penalty in case I do not go for sale deed. I am ready to go for sale deed provided builder gives me interest as per my right, gives definite date for OC and continues paying interest to me till grant of OC.

Relief Sought from RERA Compensation for Delay"

1. In pursuance of summon issued by this authority, the complainant was present on 11/2/2019, the developer has appeared through his Advocate. After filing objection, I heard the argument.
2. The complainant has sought for compensation for delay. The developer has given his own reasons for delay caused. According to developer there is delay from the date of Agreement and the delay is because of legal hurdle. In this regard he has said as

"that in terms of the Sale and Construction Agreement both dated 15/12/2014 the respondent has taken initiative and put maximum efforts to deliver the said flat within the stipulated period of 30/5/2016 (including grace period of 6 months) but for the reasons of the court intervention in the false case filed under O.S no. 1429/2008 and OS no. 2295/2010 and the respondent was prevented from proceeding with the construction by the order of injunction and as a consequence, the delivery of possession of the apartment/units could not be completed within the stipulated time and the respondent has sustained huge loss and thereafter full trial the Hon'ble Trial Court has



given judgment in favour of the respondent and injunction has been vacated. Even the petitioner was aware of the said facts and he has entered into an agreement with full knowledge about the legal hurdles and only due to the said reasons, the respondent unable to proceed with the said construction and further one more false case filed by one Srinivas Murthy on the same cause title under OS no. 8163/2016 to hinder the process of completion of apartment and the respondent has taken all initiative by filing rejection of plaint and its pending for orders and as the consequences as said above, the delivery of the possession of the apartment/units could not be completed within the stipulated time"

3. In this connection he has produced Xerox copy of judgment of civil court. During the course of argument, it is submitted that the developer had already terminated the Agreement of sale. In this regard he contended that,

"that the respondent submits that the delay in delivery of possession in the said project was not intentional and only due to the legal hurdle out of a false case which beyond the control of the respondent and further in order to protect the interest of the petitioner and all the purchaser, the respondent company has arranged a meeting with all purchaser in the said project, even the petitioner also was a part of it. Further, in the said meeting, considering the above material facts about the cause of delay the respondent and all the purchasers of the said project including the petitioner came to an understanding and have agreed to take compensation of Rs. 12,000/- per month for 12 months (October 2016 to October 2017) accordingly the respondent company has sent a mail stating that owing to false case and injunction the said project is getting delayed and agreed to give

3
D
03/06/19

compensation for the said delay period of 12 months @12,000/- per month (Rs. 96,000) in pursuance of the same all purchaser by taking the aforesaid compensation had occupied the flats in the said project and living peacefully without any interruption by enjoying all the amenities. And inspite of several reminder the petitioner herein has not paid the outstanding amount of Rs. 4,96,923/- to the respondent company till date, which shows clear infringement of the sale and construction agreement by the petitioner and there is no option to the respondent company apart from taking legal action against the defaulter and for the said reasons the respondent company has sent a legal notice to the petitioner on 12/02/2019 for the cancellation of the said agreement"

4. Per contra the complainant has contended that the developer has failed to give amenities which have been shown in

"Promised Amenities for which the process to establish has not even started

1. Bamboo Garden
2. Tennis court
3. Basket ball court
4. Creech
5. Association office.

Promised Amenities that are not yet complete

1. Intercom
2. Rain water harvesting
3. Number plates.
4. Security Kiosk for each tower.
5. Closer of Ducts in balcony
6. Garbage collection system.

A handwritten signature in blue ink, followed by the date '03/06/19' and a small '4' at the end.

7. *STP and WTP.*

8. *Gym- many of the promised equipment's have not been installed.*

9. *Jacuzzi/ Sauna."*

6. I would say the complainant has sought for delay compensation. As per S.18 the developer has to pay the delay compensation. This complaint was filed on 30/1/2019 thereafter the developer has got issued a legal notice on 12/2/2019 alleging the complainant is very irregular in making payment.

7. Of course as per Section 19(6) of the Act, it is the duty of the consumer to make payment payable to developer. In case of nonpayment of installment, there will be clause for imposing penalty. The controversial point is that the developer is not completing the project because of nonpayment of installment; the complainant is not paying the installment because the developer has not completed the project. Therefore, Section 19 makes both the parties to undergo some obligations. I would say that as per Section 18 of the Act, if there is delay from the date mentioned in the agreement including grace period then complainant is entitled for delay compensation. Therefore, I would say that developer has to pay delay compensation as per Section 18 of the Act. At the same time the consumer has to pay installments as per Section 19(6). In this regard, it is my observation that the parties have to make adjustment towards the same.

8. Another important aspect is that the developer has got issued a notice dated 12/2/2019 alleging that,

A handwritten signature in blue ink, followed by the date '03/06/19' and a small '4' at the end of the line.

"owing to your irregular payments and default in making the balance sale consideration, our clients are not inclined to sell the said apartment unit to you hence you are hereby called upon to take notice that the agreement of sale entered between yourself and our client stands cancelled forthwith for the above said reasons and our client shall repay the sale consideration amount paid by you after deducting 20% of the total sale consideration from out of the payments made by you only after selling the apartment unit to third parties as per the terms of the said agreement"

9. This legal notice has been issued subsequent to this complaint came into be filed on 30/1/2019 where as notice was issued on 14/2/2019. Therefore the action taken by the developer for termination is illegal; moreover forfeiture of 20% of the amount is not sustainable because the developer himself is terminating the contract. Prior to this notice the complainant has filed his complaint seeking the relief of delay compensation; it means he has expressed his willingness to continue with the project. Even then the developer terminates him from the project, how can he exercise the forfeiture clause.

I have already said that the developer can recover the installment as per the agreement at the same time; he has failed to deliver the goods on time. Therefore the complaint has to be allowed.

10. As per Section 71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the parties were present on 30/01/2019. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the developer has appeared on 11/02/2019 and hence there is some delay in closing this complaint. With this observation I proceed to pass following order.

A handwritten signature in blue ink, followed by the date '03/06/19' and a small superscript '4'.

ORDER

- a) The Complaint No. **CMP/190130/0002024** is allowed by directing the developer to pay delay compensation.
- b) The developer is directed to pay delay compensation in the form of interest @ 9% p.a. commencing from June 2016 on the amount received on respective date till 30/04/2017 and at the rate of 10.75% P.A commencing from 1/5/2017 till the possession is delivered with all amenities.
- c) Both the parties are directed to adjust the amount payable and receivable by both as per the agreement.
- d) The developer is directed to pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 03/06/2019)


(K.PALAKSHAPPA)

Adjudicating Officer