

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190416/0002487

Dated: 16th September 2019

Complainant : Zaheer Ahmed Mulla,
Flat No. 203, Ansal Krsna-2,
Hosur Road, Adugodi,
Bengaluru-560030.
Rep. by E suhail Ahmed Advocate.

AND

Opponent : Purva West End,
Purvankara Limited,
130/1, Ulsoor Road,
Bengaluru - 560042
Rep. by Kumari Sonali, Advocate.

J U D G M E N T

1. This Complaint is filed by the Complainant against the Developer seeking for the relief of recovery of loss due to delay in refunding the amount. The facts of the complaint is as follows:

On the basis of commitment given by marketing executive that flat will be ready in 36 months (3 yrs i.e. by end of Dec 2016), I had booked 3BHK flat measuring 1691 sft in Purva Westend project situated at Municipal No. 1195/55/5 (Old Sy. No 55/5, & 55/7) Hongasandra Village, Begur Hobli, Hosur Main Road, Bangalore South Taluk, Kudlu Gate, Bangalore promoted by Puravankara Ltd. I had paid sum of 3 Lacs vide cheque No.329401 DATED 26-OCT-13 DRAWN ON ICICI BANK LTD BLR Towards Booking of flat at Purva Westend with construction linked payment plan. Flat No.A1001 was allotted to me on 21st Dec 2013 at ITC Gardenia hotel in pre-launch party the moment it was opened for allotment. Next day i.e. 22nd Dec 2013 builder had sent an email asking to release 15% (i.e. Rs. 1367643/-) of total flat cost with applicable taxes on or before 15th

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January 2014 to dispatch the agreement. In spite of making 15% payment as per the request from builder, there was a delay of two months to sign the agreement. Finally with all my efforts, agreement was signed on 15th March 2014. Again I was promised (in Agreement) that possession will be handed over in 36 months from the date of agreement or upon receipt of commencement certificate whichever is later with 6 months grace period. Though the agreement was one sided in terms of terms and conditions, I had to proceed because of fear of losing 15% amount that I had already paid (Before signing the agreement) Initially they delayed project by more than one year in pretext of getting delay in Commencement certificate though the actual work was in progress and ground breaking ceremony took place on 15th Feb 2014. I have made all the payments on time as per the agreement. Though the Rera act has directed the promoters to demand money on completion of the activity, Punitvankara has been charging me at the commencement of the activity. So far I have paid 98% of agreement value including taxes (i.e. Rs. 9465915/-) and still waiting for possession. Its been five and half years now. I am still waiting for possession of my flat and compensation for delay. I have taken loan of Rs. 75 Lacs from SBI and paying heavy EMI of Rs. 77305/- per month. Because of the delay and cascading financial impact on my personal life, going through mental agony. Considering the commitment starting from date of booking amount paid i.e. 26 th Oct 2013, its already 30 months delay. Hence requesting for compensation as per Rera act and recent honorable SC judgement i.e 30 (Months delay) x 77305 (monthly EMI) = Rs. 2319150/-

Relief Sought from RERA : Compensation as per Rera act & recent SC Judgement

2. After registration of the case notice has been issued to the Respondent. The Developer has appeared through his Counsel Kumari Sonali and filed objections.
3. Heard the arguments.
4. The point that arisen for my consideration was:
Is the complainant entitled for delay compensation?

My answer is affirmative for the following;

REASONS

5. This Complaint is filed by the complainant seeking for the relief of compensation. The developer has strongly denied the case of the Complainant. At the time of argument it was brought to my notice that the Developer has received the Occupancy Certificate on 29/12/2018 itself. In view of the same it is submitted that the Complaint itself is not maintainable. In this regard the complainant has said in his written arguments as under:

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It is submitted that sometime during the month of January 2019; the Complainant was informed that the Occupancy Certificate has been obtained by the Respondent on 29/12/2018. After having obtained the Occupancy Certificate, on 30/04/2019, the Respondent sent a letter intimating that the apartment is ready for taking possession and that the customers could come forward for registration. The Respondent called upon the Complainant to pay the final installment as per the payment schedule recited in the Construction Agreement, which amount the Complainant proceeded to pay to the Respondent. Thereafter, in spite of having paid the entire amount, possession of the apartment was not offered to the Complainant until 31/05/2019. On 31/05/2019, the possession of the apartment was delivered to the Complainant in terms of the evenly dated letters acknowledging delivery of possession of the apartment. It is submitted that even though the Occupancy Certificate had been obtained by the Respondent, the development work in the project had not been completed as is required under the Act. it is pertinent to mention here that the development work in the project is not completed in all respects even to this day and in particulars, the following amenities are yet to be made available by the Respondent in the project-

- i. Rooftop sly gazing observatory area
- ii. Music in Ground floor Entrance lobby areas
- iii. Shoe cleaning machines in Ground floor entrance lobby areas

It is submitted that in view of the above, the project being a project which is registered under the Act for which the date of completion has been given as 31/12/2018 as on which date, as per the provisions of the Act, in particular, Section 2(z)(f) which defined Occupancy Certificate and require that the project should have provisions for civil amenities such as water, sanitation and electricity and further it was incumbent upon the Respondent to have completed all the development works in the project including internal and

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external works in the project, for the project to be deemed to have been completed as per the provisions of the Act. The Respondent, after handing over possession of the apartment to the Complainant, has refused to pay delay compensation as had been agreed on various earlier occasions. Finally, the Respondent vide an e-mail dated 18th May 2019 informed the Complainant that he is entitled for compensation to the tune of Rs.13,068/- (Rupees Thirteen Thousand Sixty Eight Only).

6. From the above paragraphs the Complainant wanted to say that he is entitled for the Delay Compensation from 23/10/2018 till 30/05/2019.
7. It is an admitted fact that the date of completion was 31/12/2018. But in the meanwhile the developer has received the Occupancy Certificate. As per S. 17 of the Act, the developer has to hand over the possession of the unit by executing the sale deed within a prescribed time. Similarly as per S. 19(10) the consumer shall take possession within 2 months. But the developer has to give the possession with all amenities. Just because he has received the Occupancy Certificate does not mean that the project was completed in all sense. It means the Complainant wants to take the Compensation for the period commencing from 01-01-2019 till 30-05-2019. But the complainant has said in his case that he wanted to change in his complaint by asking the compensation from 23/10/2018 instead of 31/12/2108. But his prayer cannot be sought because the date mentioned in the agreement is to be prevailed and hence the complainant is entitled for compensation if any only from 01/01/2019 till the possession is delivered.
8. It is the case of the Complainant that the Developer is liable to compensate him on account of delay. He had executed the agreement of sale in favor of the Complainant in the year 2014 where he has agreed to complete the project by the end of 2018. But it is the case of the Developer is that he has received the Occupancy Certificate before the completion and submits that

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there is no delay. However the Developer has delivered the possession on 30/05/2019. Of course the Complainant now raises his voice stating that the Developer had failed to give the above said amenities.

9. Against the same Kumari Sonali Advocate, representing the developer drawn my attention to the letter executed by the Complainant where he said that he has taken the possession of the apartment with good condition. In spite of it if there is any lack of amenities with quality work then, the Complainant has to file the separate Complaint by getting appointment of Commissioner. In view of the same I would say that the claim made by the complainant for payment of delay compensation from 23/10/2018 is not correct and the claim made by the developer that in view of receipt of OC the complainant is entitled for delay compensation is also not correct. Hence, the complaint is deserved to be allowed in part.
10. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 16/04/2019. In this case the parted have appeared on 22/06/2019 and as such there is some delay in completing the complaint. Hence, I proceed to pass the following;

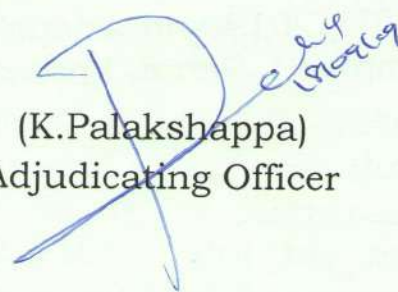


ORDER

The Complaint No. CMP/190416/0002487 is allowed.

- a. The Developer is hereby directed to pay interest @ 2% p.a. above the SBI marginal rate of interest on home loan commencing from 01/01/2019 till 30/05/2019 on the principal amount paid by the complainant on the sale deed dated 30/05/2019
- b. The developer shall deduct the compensation if any already paid to the complainant in the compensation payable as per this order.
- c. Further the developer shall pay Rs. 5000/- as cost.
- d. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 16/09/2019)



(K. Palakshappa)
Adjudicating Officer

CMP-2487

13.08.2022

Before the Lok-Adalath

The execution proceedings in the above case taken up before the Lok-Adalat. The email dated: 29.07.2022 forwarded by the complainant in the case is hereby accepted and the said email shall be part and partial of the award. Hence, the execution proceedings in the above case stands disposed off as settled and closed in the Lok Adalat.


Judicial Conciliator.


Advocate Conciliator.



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ವಿಷಯ Zahur Ahmed Mulla

Ruwa Westend Phase-1

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CMP- 2487

11.08.2022

As per the request of the complainant, the execution proceedings in the above case is taken-up for disposal in the National Lok Adalat to be held on 13.08.2022.

The complainant through email dated: 29.07.2022 has reported that the respondent/developer has complied the order passed in the above case. Therefore in view of the said email the execution proceedings in the above case have been closed as settled between the parties. The matter is referred to Lok-Adalat to be held on 13.08.2022 for award.


Judicial Conciliator.


Advocate Conciliator.

KARNATAKA STATE LEGAL SERVICES AUTHORITY

BEFORE THE LOK ADALAT

**IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU**

DATED: 13TH DAY OF AUGUST 2022

: CONCILIATORS PRESENT:

Sri.I.F. Bidari

..... Judicial Conciliator

AND

Smt. Preethi N

..... Advocate conciliator

CMP/190416/0002487

Between

Mr. Zaheer Ahmed Mulla
(In Person)

..... Complainant/s

AND

M/S Puravankara Ltd


.....Respondent/s

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having settled the matter, as per email dated:29.07.2022 forwarded by the complainant and same is taken on record during the pre lok Adalat sitting on dated:11.08.2022

The execution proceeding in the above case taken up before the Lok-Adalat. The email dated:29.07.2022 forwarded by the complainant in the case is hereby accepted and the execution proceedings in the above case have been closed as settled between the parties. The email shall be part and partial of the award.


Judicial conciliator


Advocate conciliator