

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/190509/0002963

Presided by Sri K Palakshappa

Adjudicating Officer

Date: 21st of SEPTEMBER 2019

Complainant : Shilpa Ambarish
2075, Prestige Sunnyside Oak,
Kadubeesanhalli,
Bengaluru - 560080
Rep. by Sri H.M. Sudheer, Advocate

AND

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

J U D G M E N T

1. Shilpa Ambarish, Complainant filed complaint bearing complaint no. CMP/190509/0002963 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 Complainants entered into an Agreement for Sale of undivided interest dated 21.01.2014 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?), situated at Rachenahalli, K R Puram Hobli, Bangalore South Taluk, Bangalore. The copies of the Agreement for Sale of undivided interest and the

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RERA registration certificate are enclosed herewith as Annexure A & B. 2. Simultaneously the Complainants also entered into an Agreement of Construction dated 21.01.2014 with the Respondent to get the apartment No. H-703 constructed in the said project (?said Apartment?). A copy of the Agreement of Construction dated 21.01.2014 is enclosed herewith as Annexure C. As per clause 5.1 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 31.07.2017. 3. Pursuant to the execution of the aforementioned Agreements the Complainants has been regularly making the payments towards Sale consideration and till date a sum of Rs. 1,05,29,567/- (Rupees One Crore Five Lac Twenty Nine Thousand Five Hundred and Sixty Seven only) has been paid to the Respondent. Statement of Account dated 19.11.2018 issued by the Respondent reflects the amount of Rs. 1,05,29,567/- (Rupees One Crore Five Lac Twenty Nine Thousand Five Hundred and Sixty Seven only) paid by the Complainants towards the Apartment. A copy of the Statement of Account dated 19.11.2018 has been enclosed herewith as Annexure D. The balance payment has to be made at the time of handing over the possession of the said apartment. 4. The Complainant has been following up with the representatives of the Respondent requesting for final payment details and proper account statement. Several emails and calls were made despite of which the Respondent representatives did not bother to provide proper information.

Relief Sought from RERA :Handover possession and compensation

2. In pursuance of the notice issued by this authority, Shri H.M. Sudheer Advocate filed Vakalath on behalf of the complainant. Shri. Veeresh R. Budihal Advocate fled vakalath on behalf of the developer. Later the developer has filed Objection.
3. In the month of January 2014, the complainant has entered into Agreement with the respondent in respect of flat no. H-703 wherein it was agreed to handover the possession on or before 31st July

2017. The complainant till date had paid Rs. 1,05,29,567/- towards sale consideration. 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.

4. At the time of argument the counsel for the complainant has drawn my attention towards the stand taken by the developer in his Written Objection. Wherein he referred the judgment passed by Mumbai High Court in NeelKamal Realtors Suburban Pvt. Ltd., and another Vs. Union of India and others.
5. The said judgment referred by him to state that the present complaint is pre mature as the new completion date given to RERA which is accepted by the statutory body. But I would like to say that this aspect has already been decided in many cases by saying that the date mentioned in the agreement is the criteria to decide the date of completion of the project. Therefore, the stand taken by the developer cannot be accepted.
6. In this regard the learned counsel for complainant has said that the judgment given in one complaint bearing No. 1776 be adopted and thereby the citations given by him is also applied here.
7. The developer has given some reasons for non-completion of the project in stipulated period. He says as

"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

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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 apartment.

c. The formulated plan of construction was delayed and also for force and 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 apartment is subject to payment of all dues by complainant and issuance of the occupancy certificate.

d) The completion of project named MANTRI MANYATA LITHOS is burdened due to nonpayment of installments on time by other purchasers in the project.

e) While the construction work was under progress, during November 2016, our country faced demonetization, due to which there was major financial crises. The respondent was also affected financially and faced various issues to continue with the construction 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."



8. The developer calls those reasons as Force Majeure. But I am not going to accept these reasons because the developer has collected the amount from the complainant since 2014. There is a clause in the agreement for delay compensation in case of delay in completion of the project. Admittedly the delay has been caused and the developer has not completed the project within the time as mentioned in the agreement.
9. 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. It means the delay is proved and eligibility to get the compensation is also proved. Now the only point is from which date the complainant is entitled for Delay Compensation 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.
10. 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 at the rate as mentioned in the agreement because he will impose interest @18% to consumer when there is delayed payment. 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.
11. The learned counsel for the complainant has given some decisions given by different authorities including the consumer forum in the previous judgment. The main submission made on behalf of the complainant is that the developer who had agreed to deliver the flat in favour 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.

12. 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 the varieties of 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 Occupation Certificate. With this observation I would say that the complaint has to be allowed.
13. 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. This complaint was filed on 09/05/2019. In this case the parties were present on 12/06/2019. After filing objections and arguments the matter came up for judgment now and as such there is a little delay in closing this complaint. Hence, I proceed to pass the following



21/06/19

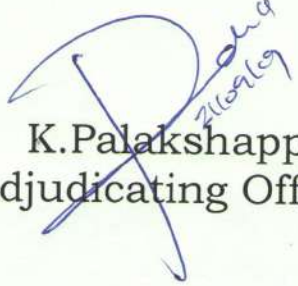
ORDER

The Complaint filed by the complainant bearing No. CMP/190509/0002963 is allowed by directing to pay delay compensation @ 2 % above the rate of interest of SBI marginal lending rate of interest on home loans commencing from February 2018 till the possession is delivered after obtaining Occupancy Certificate.

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 21/09/ 2019).


K. Palakshappa
(Adjudicating Officer)