

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190309/0002399

Dated: 4th November 2019

Complainant : Vinoth Sampath
A-302, SPK Gardens Apartment,
Kudlu,
Bengaluru-560068

AND

Opponent : Purva Westend
Purva Star Properties Ltd.,
Purvankara Limited,
#130/1, Ulsoor Road,
Bengaluru - 560042

J U D G M E N T

1. This Complaint is filed by the Complainant against the Developer seeking for the relief of delay compensation. The facts of the complaint is as follows:

Dear Authorities, I would like to bring to KRERA attention that I purchased an yet to build apartment from Puravankara in Dec'13. My flat number is C1203 in Block C. Myself+Spouse and Puravankara agreed on certain terms and signed the customer and construction agreement in March'14. As per the agreements signed between myself and Puravankara the completion date for the project is 3 years from the date of receiving commencement certificate plus a grace period of 6 month. The commencement certificate for the project was issued on April'15 (Attached) hence the date for handover is Oct'18 including the grace

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period of 6 month. Wherein, Purva has repeatedly replying to buyers that the handover date is Dec'18. And Dec'18 is the RERA registered handover date. How come this is allowed in the ambit of RERA? Puravankara has clearly misguided RERA and cheated its customers by registering Dec'18 as the handover date. Puravankara is clearly violating the true spirit of KRERA, which is to safeguard the buyer interest. With regards to handover they have violated the customer agreement and given a date that is not agreed between us. I request the authorities at KRERA to summon the builder and provide me relief on the violations of agreement mentioned above.

Relief Sought from RERA : Compensation as per RERA Act

2. After registration of the case notice has been issued to the Respondent and he has appeared through his counsel.
3. Heard the arguments.
4. The point that arisen for my consideration was:
Is the complainant entitled for delay compensation?
5. My answer is affirmative in part for the following;

REASONS

6. This complaint has been filed by the complainant making the above allegations but during the course of hearing he has given a Letter wherein she has contended as under:

As per construction agreement, builder has committed a carpet area of 1083.29sqft but when it was measured actual area is coming 1041.515. sqft. The Purva's CRM team did re measurement and conformed this (no official email sent from them only noted down) and asked architect team.

Rera Executive engineer measured again with RERA's guidance and totally coming- 1037 sqft matching my measurement.

Attached RERA measurement breakup my report again.

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RERA measurement includes the DOOR/Frame space which were not included in the agreement diagram (attached herewith).

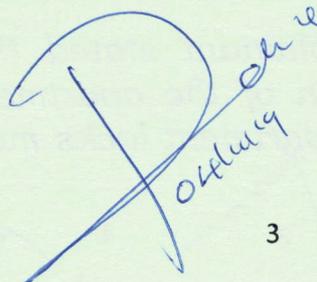
In total there is a difference of ~46Sqft which is ~4.2% deviation from the agreed area.

But if the Door/Frame space is executed the difference is ~7% (15sq.ft).

I request RERA team to take cognisance of the complete mis-lead of Purva and provide relief for the same.

7. I would like to say that the allegation made by the complainant in his complaint and the allegations made in the Letter are different to each other. As per the allegations made by him he has taken the Sale Deed from the developer but there is a difference of measurement in the Carpet Area. As per the say of the developer he has taken the Occupancy Certificate on 29/12/2018. The Sale Deed was executed on 29/07/2019. Before execution the Deed of Declaration was executed on 03/04/2019. As per Section 19(10) of the Act, the developer shall call the consumer to take the possession. The developer has submitted in his reply by stating as under:

- a. The project was duly and properly completed by 31.12.2018; and
- b. On account of the project being developed under a JDA and the DOD being registered on 03.04.2019, we were unable to legally deliver possession and register conveyance deeds prior to that date; and
- c. For all the intents and purposes, the period of 60(sixty) days referred to in Sec.19(10) of RERA be calculated from 04.04.2019, and consequently, any adjudication on delay in possession alleged by a complainant be determined with due consideration given to the mitigating factors described above.


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8. It means the project was not completed within the due date but the Sale Deed was executed after 60 days. I would say that execution of Sale Deed is a mark of resolution of the payments. Generally when once the developer has received the O.C. the authority will lose its jurisdiction. In this connection the learned counsel for the developer has drawn my attention to some decisions.

Complaint no. 417

BEFORE THE MAHARASHTRA
REAL ESTATE REGULATORY
AUTHORITY MUMBAI.

COMPLAINANT NO:CC006000000000417

Harish Bulchandani

Versus

Satra Properties India Ltd

Maha RERA Regn. No.P51800007235.

The complainant has filed this complaint praying for possession of his apartment with all amenities as agreed upon in the agreement. A registered agreement dated 22nd December 2014 for sale of apartment was executed between the wife of the complainant Smt. Rachana Harish Bulchandani Respondent.

The matter came up for hearings on 27th October 2017. The complainant was represented by complainant him self Shri Bulchandani and for the Respondent. Shri Bharath K Gala, Advocate was present.

The complainant stated that he has taken the possession of the apartment on 20th April 2017 but the apartment lacks many facilities that were

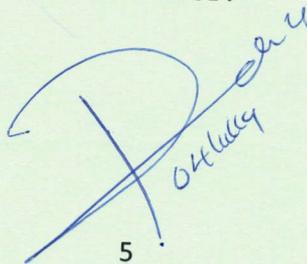
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to be provided as agreed in the agreement. Therefore he prayed that Respondent may direct to provide the said facilities to the complainant.

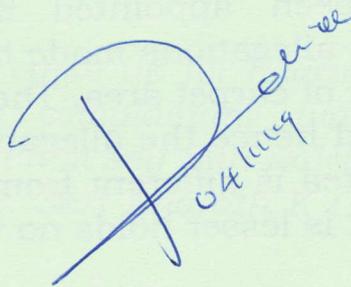
The Respondent submitted that the complainant has in writing taken the possession of his apartment on 20th April 2017 without raising any issues at the time of accepting the possession. He further argued that since the complainant has taken possession of the apartment of the apartment prior to the RERA Act 2016 coming into effect. This matter on issues relating to possession does not fall in the jurisdiction of the RERA.

I agree with the arguments made by the respondent. The complainant is dismissed.

9. However he has concentrated his argument on the shortage of measurement of Carpet Area. With regard to the Carpet Area is concerned, I appointed AEE who is attached in this Authority for inspection of the unit of the Complainant. He has given the report by measuring each and every room, stating that the total carpet area of the unit bearing No. C-1203 and arrived to the conclusion that the total carpet area of the said unit is 1085.80 Sq.ft, whereas the Unit No. C-1203 is measuring 1083.29 Sq.ft., as per the Agreement.
10. The Engineer/Commissioner also opined that the carpet area is more than the area as specified in the Agreement. This report is not denied by the Complainant. The engineer attached to this Authority has been appointed mainly for the purpose of verification of the allegations made by the complainant regarding the measurement of carpet area. The report given by AEE cannot be overlooked and hence the allegation made by the complainant that the carpet area is different from the measurement as shown in the Agreement is lesser holds no water.


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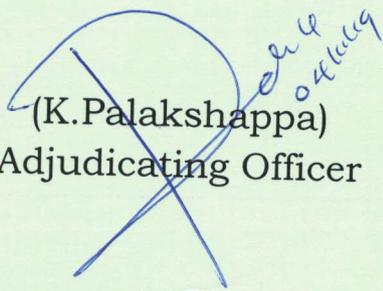
11. The complainant has said that the project was supposed to be completed on or before 31/10/2018 but it was delivered on 29/07/2019 and as such there is a delay. Even though the developer was expected to complete the project on or before 31/10/2018 but he got the Occupancy Certificate on 29/12/2018 and Sale Deed was executed on 29/07/2019 till that date the complainant is entitled for delay compensation because there is a violation of Section 19(10).
12. The developer has said that the compensation if any be calculated only from 04/04/2019 the day after the Deed of Declaration was executed. But it is not correct to say so since the Deed of Declaration was executed by violating Section 19(10) therefore the Complainant is entitled for delay compensation from the month of November 2018 till 28/07/2019.
13. 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 09/03/2019. In this case the parties have appeared on 03/05/2019. At the time of hearing the dispute raised with regard to Carpet Area. Engineer was appointed to inspect the spot. After he gave the report the matter was posted for judgment and as such there is some delay in completing the complaint. Hence I proceed to pass the following;


04/11/19

ORDER

- a. The Complaint No. CMP/190309/0002399 is partly allowed.
- b. The developer is hereby directed to pay delay compensation on the principal amount paid by the complainant on the sale deed @ 2% p.a. above the SBI marginal rate of interest levied on its home loan commencing from November 2018 till 28/07/2019.
- 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 04/11/2019)


(K. Palakshappa)
Adjudicating Officer



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ಕಡತದ ಸಂಖ್ಯೆ Cmp. No: 2399

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Vinoth Sampath

Peerava Westend.

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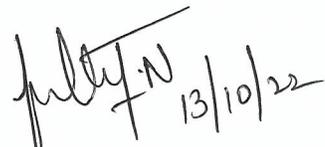
CMP- 2399

13.10.2022

As per the request of the complainant, the execution proceedings in the above case is taken-up for disposal in then National Lok Adalat.

The complainant Sri. Vinoth Sampath joined over phone call in pre Lok Adalat sitting held on 13.10.2022 and he has reported that the respondent/developer has complied the order passed in the above case and also has forwarded E-mail dated: 23.09.2022 in that regard. Therefore in view of the submission of the complainant, the execution proceedings in the above case have been closed as settled between the parties in the Lok Adalat. The conciliators to pass award.


Judicial Conciliator.


Advocate Conciliator.

CMP - 2399

12.11.2022

Before the Lok-Adalath

The execution proceedings in the above case taken up before the Lok-Adalat. The execution proceedings in the above case have been settled in pre Lok Adalat sitting held on 13.10.2022 and the email dated: 23.09.2022 forwarded by the complainant in the case is hereby accepted and the said email copy shall be part and parcel 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.

KARNATAKA STATE LEGAL SERVICES AUTHORITY
BEFORE THE LOK ADALAT
IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU

DATED: 12TH DAY OF NOVEMBER 2022

: CONCILIATORS PRESENT:

Sri: I. F. Bidari Judicial Conciliator

AND

Smt. Preethi N Advocate conciliator

COMPLAINT NO: CMP/190309/0002399

Between

Mr. Vinoth Sampath Complainant

AND

M/s. Purva Star Properties Ltd., Respondent

Award

The dispute between the parties with regard to execution proceedings having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, as per the email dated: 23.09.2022 forwarded by the complainant and complainant joined over phone call during the pre Lok Adalat sitting on dated:13.10.2022, same is accepted. The settlement entered between the parties is voluntary and legal one. The execution proceedings in the above case have been closed as settled between the parties. The email copy shall be part and parcel of the award.


Judicial conciliator


Advocate conciliator