

ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Complaint No. CMP/190405/0002482
Presided by Sri K Palakshappa
Adjudicating Officer
Date: 18th November 2019

Complainant : Umashankar
#2, Prashansa, Behind Chetana Vidya
Mandira, Batawadi,
Tumakuru - 572103

AND

Opponent : MANTRI WEBCITY 3A
Mantri Developer Pvt. Ltd.,
Mantri House, No. 41, Vittal Mallya Road,
Bengaluru- 560001
Rep. by: Veersh R Budihal, Advocate.

J U D G M E N T

Sri Umashankar, Complainant filed this complaint bearing No. CMP/190405/0002482 under Section 31 of RERA Act against the project "Mantri Webcity 3A" developed by Mantri Developers Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

I have entered into an agreement with the promoter of Mantri Webcity project to purchase of the apartment - X-202 in the project Mantri Webcity during Nov. 2013 along with my son Sandeep Makam as the co owner under the construction linked payment plan. During the time of agreement we were assured of the delivery of the apartment during Jan 2016. We have cleared the payment as per their call and have already paid 95

% of the amount towards the purchase of the apartment. But till date they are not ready with the Occupancy certificate and are not ready to give possession of the flat. They are just dodging with one or the other reasons and not responding properly to the investors. Every time I call them the Prevailing CRM would not be available and in his/her place a new CRM would be there. The new CRM would not have all the details that we ask and would only turns pale with some vague answers. They just say that they would discuss with the seniors and would respond back and that has never taken place so far. the next time if we call them they would not pick the call. None of the management members would come in front to talk and discuss the grievances of the investors and their contact details are not available to anyone. The management members are just playing with the hard earned income of the POOR investors who have believed them. The compensation what they have assured is just peanuts compared to the investment made so far. We have invested our hard earned money and are left in lurch only to gaze at the sky.

Relief Sought from RERA: Either immediate delivery or refund with interest

2. In pursuance of the notice issued by this authority, complainant is present in person. Sri. Veeresh R Budihal filed vakalath on behalf of the developer. Later the developer has filed Objection for which the complainant filed his reply.
3. Heard the arguments.
4. The point that arisen for my consideration was:
 - a. Is the complainant entitled for the relief?
 - b. My answer is affirmative for the following

REASONS

5. It is the case of the complainant that he may be awarded delay compensation with possession. The main reason is because the developer has failed to complete the project on or before the end of January 2016 but the same was denied by the developer on different grounds.

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19/11/19

6. The developer submitted in this regard as

That, as per the said Agreement of Construction, date of delivery of possession of Scheme Apartment was mutually agreed to be 31.01.2016. However, this was subject to receiving Occupancy Certificate and also was subject to variations on account of Force Majeure or acts of God or non-availability of steel, cement, other vital building materials, water and electricity supply etc. as mentioned in clause 604 of the said Agreement.

7. In addition to it is the case of the developer that the complaint is premature since he has given the date of completion as 30/01/2020. According to developer the complainant will have to wait till the expiry of the date given to RERA. In this regard he said that in Neelkamal Case it has been referred and said that none of the provisions of RERA are retrospective. But I would like to say that this aspect has already been decided holding that the delay compensation has to be paid irrespective of the date given by the developer to the RERA.

8. The developer has filed his objection statement wherein he has said in ph-no 11 & 12 as under:

- The total cost of the flat bearing no. X-202 agreed between complainant and respondent was Rs.72,36,000/- which excludes tax, deposits, stamp duty, registration fees and other charges, out of which the complainant has made payment of Rs.71,80,360/-till date, after being fully satisfied with the milestone achieved by the respondent. In fact complainant has made delayed payments on many occasions.*
- That, as per the said Agreement of Construction, date of delivery of possession of Schedule Apartment was mutually agreed to be 31.1.2016. however, this was subject to receiving O.C. and also was subject to variations on account of Force Majeure or acts of god or non-availability of steel,cement,other vital building*

Devi
18/11/19

materials, water and electricity supply etc. as mentioned in clause 6.4 of the said agreement.

9. These two pharases proves the relationship of the developer and consumer between the parties. The developer also admitted that the completion date was January 2016 but the developer has said that the complaint is Pre-Mature one. I have already answered to this point.
10. Now the question is regarding the payment of compensation because I have said that the project was to be completed in the month of January 2016. However the developer has said that he could not able to complete the project within the time mentioned in the agreement for the following reasons:
 - a. *Issues while excavation; it is submitted that during the process of construction of the apartment complex, we have encountered a hard rock while excavating the land and therefore, to cut the same it took us more time than anticipated time. This added up to the delay and this being an unforeseen event/force majeure was beyond our control.*
 - b. *Legal issues: it is submitted that during the process of construction of the apartment complex, we had to face multiple legal issues from the neighbor of the property at the time of excavation, which also added to the delay of the project which was beyond our control.*
 - c. *License issue; in order to cut the said hard rock the license for blasting the rock was required after obtaining the same the local police authorities have disturbed the construction process by withdrawing the license given for blasting the rock. Due to this many a times the process of construction was slowed down, which added to the delay.*

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(Signature)

- d. Labour and Material issue; we have faced grave issues in relation to the shortage of skilled labour, steel and good quality of sand. All these are the basic ingredients of the process of construction. Due to non-availability of these basic ingredients on proper time the construction was stopped, this also added up to the alleged delay.
- e. Sand strike; The construction was further stopped due to strike by the sand suppliers in the past and hence, there was no availability of good quality of sand. Sand being an important ingredient in construction of a building, the opposite party could not continue with the construction of the building.
- f. Demonetization, due to which the laborers were not available and other reasons which were beyond the control of the respondent and other hardships faced by the respondent during the progress of the project, the possession could not be handed over to the complainant before agreed time.

11. The developer says that his project was delayed for the above reasons and as such he may be exempted from paying the delay compensation. The same holds no water since the developer will not give any concession to the consumer in case he pays the installments with delay. Section 18 says that the developer is bound to pay the delay compensation when he fails to complete the project within the time given in the Agreement. Therefore the stand taken by the developer will not sustain.

12. 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 is filed on 05/04/2019. After appearance of the parties objections have been filed. The complainant has filed the rejoinder which consumes the time.

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18/11/19

On 28/08/2019 the Counsel for the developer has filed a memo for reconsideration in view of the Judgment passed by the Appellate Tribunal. However, on 30/09/2019 the same memo was not pressed by the developer and hence the complaint is being disposed of with some no delay. Hence, I proceed to pass the following

ORDER

The complaint no. CMP/190404/0002482 is allowed.

The developer is hereby directed to pay the delay compensation @9% p.a. from February 2016 till 30/4/2017 and also directed to pay interest @2% p.a. above the SBI rate marginal lending on homes loans commencing from 1/5/2017 till the possession is delivered after taking the Occupancy Certificate.

The developer is also directed to pay Rs. 5000/- as cost.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 18/11/2019)

Adjudicating officer
K.PALAKSHAPPA



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ಕಡತ ಸಂಖ್ಯೆ Comp. No: 2482

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Sri Umashankar

Mantri Webcity 3A.

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CMP- 2482

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09.11.2022

As per the request of the Sri. Umashankar complainant and Sri. B.S. Ravi Shankar Authorised person for the respondent the execution proceeding in this case is taken-up for settlement, in the Lok Adalat.

Sri. B.S. Ravi Shankar Authorised person for the respondent and Sri. Umashankar complainant are present, in the Lok - Adalat held today and they filed the memo reporting settlement during the Lok Adalat settling the matter in connection with execution proceedings. The claim of the complainant in this complaint is fully satisfied as stated in said memo reporting settlement and complainant has no further claim in this case against the respondent whatsoever. The settlement entered between the parties is voluntary and legal one. The settlement is accepted and consequently the execution proceedings in the above case have been closed as settled between the parties as per the above memo reporting settlement. Consequently the revenue recovery certificate issued against the respondent (developer) is hereby recalled. Issue intimation about the recall of the revenue recovery certificate to the concerned DC. Conciliators to pass award.

Umashankar
(UMASHANKAR)

9/11/22
Judicial Conciliator.

For MANTRI DEVELOPERS PVT. LTD.

9/11/22

Authorised Signatory

9/11/22
Advocate Conciliator.

CMP - 2482

09.11.2022

Before the Lok-Adalath

The case in connection with execution proceedings in the above case taken up before the Lok-Adalat. The memo reporting settlement is filed during the Lok Adalat in the case same is hereby accepted and the said memo reporting settlement shall be part and parcel of the award. Hence, the execution proceedings in the above case settled before the Lok-Adalat as per memo reporting settlement.

The execution proceedings in the above case stands disposed off as settled and closed accordingly.


Judicial Conciliator.


Advocate Conciliator.

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

DATED: 9TH NOVEMBER 2022

: CONCILIATORS PRESENT:

Sri. I. F. Bidari

..... Judicial Conciliator

AND

Smt. Preethi N

..... Advocate conciliator

COMPLAINT NO: CMP/190405/0002482

Between

Sri. Umashankar
(In Person)

..... Complainant

AND

M/s. Mantri Developers Pvt. Ltd.,

.....Respondent

(By: Sri. B.S Ravi Shankar, Authorised person for respondent)

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, as per memo reporting settlement dated: 09.11.2022 filed during the Lok Adalat, same is accepted. The settlement entered between the parties is voluntary and legal one.

The execution proceedings in the above case stands disposed off as per joint memo and joint memo is ordered to be treated as part and parcel of the award.


Judicial conciliator


Advocate conciliator