

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190412/0002602

Dated:4th November 2019

Complainant : Aashish Jindal,
2nd Floor, 1354,
Sri Sai Ram Building,
Rajiv Gandhi Nagar, 11th Cross,
Bengaluru-560068

AND

Opponent : 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:

Delivery is delayed from the committed date and builder is denying compensation 2. Flat size is smaller than agreed dimensions 3. Builder is asking double the money for Infrastructure and also huge money for advocate fees

Relief Sought from RERA: Compensation for delay and size mismatch

Peru
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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:

This is regarding the Flat C-1104 at Purva Westend. I would like to rise following grievances to competent authority.

1. *While selling the apartment I was committed 3 years completion period from booking date. Later when the contract came after 3 months, builder smartly added clause saying 36 months from agreement or upon receipt of commencement certificate whichever is later. This clause itself is contradicting because commencement certificate can never be received before work starts. So builder played around this clause and took 1 year to get the Commencement Certificate. Builder had already taken 35.5% payment by that time. I request you to get us compensation from the date of booking + 36 months i.e., Dec 2016 to the date of possession i.e., May 2019. Refer following:*
 - a. Annexure 1 a- Part of contract copy
 - b. Annexure 1 b- payment history
 - c. Annexure 1 c- Possession date communication
2. *Builder had committed a carpet area of 863.7 Sq.ft but when I measured actual area it is coming 823.5 Sq.ft, Refer annexure2.*

3. Builder has charged huge money for infrastructure charges Rs.1,53,340/- stating actual charges without providing any details. Initially charges were told to be Rs. 1,79,250/- refer Annexure 3.

I request you to provide us relief on above points.

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 18/06/2019. 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 Occupancy Certificate 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

BERORE 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

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. The complainant has alleged that the developer has inserted the clause for the completion of the project as 36 months from the date of Commencement Certificate and thereby he has failed to deliver the possession on or before 2016. But this is not acceptable because he has raised this voice against the construction agreement after long gap. Moreover the clause in the construction agreement cannot be over looked now.
10. 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-1104 and arrived to the conclusion that the total carpet area of the said unit is 850.23 Sq.ft, whereas the Unit No. C-1104 is measuring 863.70 Sq.ft., Further the engineer/Commissioner opined that the difference of carpet area is 1.55%. It means the developer has given 1.55% of carpet area less than what he has agreed. Based upon the same the complainant is seeking refund of the amount on the lesser carpet area. In this regard I would like to refer the clause 1.7 of the agreement of sale specified by the Central Government stating that:

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[Applicable in case of an apartment] The Promoter shall conform to the final carpet area that has been allotted to the Allottee after the construction of the Building is complete and the occupancy certificate is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is reduction in the carpet area then the Promoter shall refund the excess money paid by Allottee within forty-five days with annual interest at the rate prescribed in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase in the carpet area, which is not more than three percent of the carpet area of the apartment, allotted to Allottee, the Promoter may demand that from the Allottee as per the next milestone of the Payment Plan as provided in Schedule C. All these monetary adjustments shall be made at the same rate per square feet as agreed in Para 1.2 of this Agreement*

11. In view of the same the developer has to re calculate the price for the lesser carpet area and to return the same to the complainant.
12. The complainant has said that the project was supposed to be completed on or before December 2016 but I have already said that as per the construction agreement it was to be delivered on or before 31/10/2018. But the developer has taken the OC on 03/04/2019 and sale deed was executed on 18/06/2019 and as such there is a delay. 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) and therefore the Complainant is entitled for delay compensation from the month of November 2018 till 18/06/2019.

Deed
04/04/19

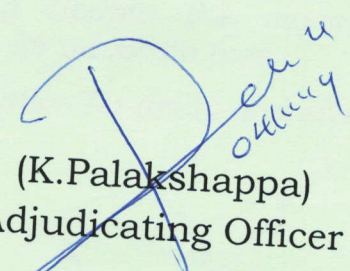
13. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 12/04/2019. In this case the parties have appeared on 03/05/2019. At the time of hearing the dispute raised with 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;

ORDER

The Complaint No. CMP/190412/0002602 is partly allowed.

- a. 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 17/06/2019.
- b. The developer is directed to re calculate the price and to return the difference amount of the carpet area to the complainant within 45 days with interest at the @ 2% p.a. above the SBI marginal rate of interest levied on its home loan.
- 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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ಕಡತ ಸಂಖ್ಯೆ Comp.No: 2602

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ವಿಷಯ Ashish Jindal

Purva Westend

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CMP- 2602

12.10.2022

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. Ashish Jindal joined through phone call in pre Lok Adalat sitting held on 12.10.2022 and he has reported that the respondent/developer has complied the order passed in the above case and also has forwarded E-mail dated: 07.09.2022 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.


12/10/22.
Advocate Conciliator.

CMP - 2602

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 12.10.2022 and the email dated: 07.09.2022 forwarded by the complainant in the case is hereby accepted and the said email 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.:

..... Advocate conciliator

COMPLAINT NO: CMP/190412/0002602

Between

Mr. Ashish Jindal

..... Complainant/s

AND

M/s. Purvankara Limited.,

.....Respondent/s

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: 07.09.2022 forwarded by the complainant and complainant appeared through phone call during the pre Lok Adalat sitting on dated:12.10.2022, 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 shall be part and parcel of the award.


12/11/22
Judicial conciliator


12/11/22
Advocate conciliator