

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
**Karnataka Real Estate Regulatory Authority Bangalore**  
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,  
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

**BEFORE ADJUDICATING OFFICER, RERA**

**BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Date 20<sup>th</sup> JUNE 2020**

Complaint No.	CMP/191125/0004688
Complainant	Pradeep Kumar Raju B-908, Krishna Shelton Apartment, Bagalur Cross Main Road, Vinayak Nagar, Near Dine Spot Restaurant, Pin Code:560063
Opponent	KRISHNA ENTERPRISES (HOUSING & INFRASTRUCTURES) INDIA PRIVATE LIMITED, # 32, 2nd Floor, PSR MARVEL Bellary Road, Hebbal Pincode:560024 State:Karnataka

**J U D G M E N T**

1. Pradip Kumar Raju the complainant has filed this complaint no. CMP/191125/0004688 under Section 31 of RERA Act against the project "KRISHNA SHELTON" developed by 'Krishna Enterprises (Housing and Infrastructures) India Private Ltd.,' seeking for the relief of delay compensation. His complaint reads as under:

1) BUILDER PROMISED TO COMPLETE THE PROJECT AND HANDOVER COMPLETED PROJECT BY 2ND HALF OF 2016. BUT PROJECT IS DELAYED AND TILL DATE PROJECT IS NOT COMPLETED. 2) BUILDER TOLD TO MAKE THE FULL AND FINAL PAYMENT AND REGISTER THE FALT BY END OF 2016. I ABIDED BY

*Deenu*  
20/06/2020

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THIS AND MADE THE FULL AND FINAL PAYMENT AND REGISTERED THE FLAT 3) SINCE PROJECT IS NOT COMPLETED, NO PROPER MAINTENANCE IN TERMS OF BUILDING STRUCTURE, WATER LEAKS, CRACKS, CORROSION OF STRUCTURAL BARS, LIFTS, ONLY 2 LIFTS ARE INSTALLED IN PLACE OF 4, PAINTING, INCOMPLETE AMENITIES, SECURITY ISSUE, NO BESCOM POWER, NO FIRE AND SAFETY, NO CO, ETC.

Relief Sought from RERA PLS INTERVENE AND BUILDER SHOULD IMMEDIATELY COMPLETE THE PROJECT, PAY DELAY COMPENSATION OR REFUND THE ENTIRE AMOUNT PAID TO THE BUILDER TILL DATE

2. After registering the case, notice has been issued to the parties. The complainant has appeared in person and the respondent has appeared through his advocate and filed his objection statement.
3. I have heard arguments parties.
4. The points that arise for my consideration are:
  - a. Whether the complainant is entitled for the relief of delay compensation?
  - b. If so, what is the order?
5. My answer is Affirmatively for the following

**REASONS**

6. The complainant has entered into agreement of sale with the developer on 18/09/2014 in respect of flat bearing No.B-908 in the said project. It is the case of the complainant that the developer has agreed to complete the project on or before March 2015. It is the case of the complainant that the developer has to give compensation and to complete the project. At the time of argument it is brought to my notice that till today the developer has not been able to obtain the Occupancy Certificate. During the course of argument the learned counsel for the developer has filed a memo stating that the developer has applied for grant of OC on 18/05/2017 but till today it is not granted for the best reasons

*Peru*  
*20/06/2017*

known to developer alone. Surprisingly it is also important to note that the developer has executed the sale deed in favour of the complainant on 16/11/2016. The developer has completely denied the case of the complainant and said that the present complaint is not maintainable.

7. The relationship is admitted. Execution of agreement and completion date is also admitted. It is also admitted that the developer has executed the sale deed on 16/11/2016. Now the question arisen for my consideration as to delay compensation as sought by the complainant.
8. The developer has not completed the project as per the terms of the agreement is proved. The complainant has given the calendar of events commencing from day one. According to him on 17/09/2016 the developer has assured in a meeting to the effect that the project would be completed before 25/12/2016. As per Mail sent in the month of October 2016 a promise was made to give delay compensation. On 5<sup>th</sup> November 2016 the complainant had visited the site but found some snags, admittedly on 16/11/2016 Sale Deed was executed. On 23/12/2016 the developer promised that they handover will be delayed and would be completed before 15/01/2017. On 11/02/2017 the developer has said in a meeting that everything was almost over and applied for Occupancy Certificate. The minutes of meeting dated 16/02/2017 are as under:
- Entire project will be completed by the end of March 2017 and there will be only minimum labour working in the project for final painting, touch-ups, electrical and plumbing snags.
  - All amenities would be completed within 3 months.

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- The electricity charges would be borne by the builder till the permanent BESCOM connection is given to individual flats with respective individual electrical meters.
- The builder would hand over all the project related legal set of documents viz. Completion Certificate, Occupancy Certificates, building plan Drawings, relevant no objection certificates, project manuals of the yet to be formed apartment owners association before May, 2017.
- The builder also agreed to share the weekly update reports to all the buyers on the work progress.

9. In addition to it the complainant has said that in a meeting held on 17/06/2017 that the developer would complete the entire project with permanent BESCOM power on or before 16/08/2017. It is also the allegation of the complainant that the developer has not given the permanent electricity power. Like that the complainant has given the list of lapses on the part of the developer. He has made the 38 items to be completed by the developer. Of course at the time of argument the complainant has said that his prayer be restricted to delay compensation and so far other allegation are concerned it may be referred to authority for taking further action. But I have referred all those items only to say that though the developer has applied for grant of O.C. in the month of May 2017 but not able to get the same because of these non completion of works. I would say that the competent agency shall certify the completion of the project to enable the competent authority to issue occupancy Certificate. I would say that why the O.C. has not been granted to developer because his project has not been completed internally as well as externally. I would say that the execution of the sale deed and putting the

*[Handwritten Signature]*  
20/06/2017



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complaint in possession of the unit before obtaining the O.C. is illegal. In support of the same I would like to refer to a decision of As per observations made by the Hon'ble High Court of Karnataka in Writ petition No.11522/2012 clubbed with 739/2013. Wherein it is observed that:

Bye-law 5.6 is with reference to grant of an occupancy certificate, which reads as follows:

"5.6. Occupancy certificate-5.6.1(a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of the erection of a building shall send intimation to the Commissioner in writing of such completion accompanied by a certificate in Scheme VIII certified by a Registered Architect/Engineer/Supervisor and shall apply for permission to occupy the building. The authority shall decide after due physical inspection of the building (including whether the owner had obtained commencement certificate as per section 300 of the Karnataka Municipal Corporations Act, 1976 and compliance regarding production of all required documents including clearance from the Fire Service Department in the case of high-rise buildings at the time of submitting application) and intimate the applicant within thirty days of receipt of the intimation whether the application for occupancy certificate is accepted or rejected. In case, the application is accepted, the occupancy certificate shall be issued in the form given in Schedule IX provided the building is in accordance with the sanctioned plan.

*Devi*  
*Prasanna*

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(b) Physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and requirement of building bye-laws, and includes inspections by the Fire Service Department wherever necessary.

(c) If the construction or reconstruction of a building is not completed within five years from the date of issue of licence for such a construction, the owner shall intimate the Authority, the stage of work at the expiry of five years. The work shall not be continued after the expiry of five years without obtaining prior permission from the Authority. Such continuation shall be permitted, if the construction or reconstruction is carried out according to the licensed plan and if the Authority is satisfied that at least 75% of the permitted floor area of the building is completed before the expiry of five years. If not, the work shall be continued according to a fresh licence to be obtained from the Authority.

5.6.2. For all high-rise building, the work shall also be subject to inspection by the officers of the Karnataka State Fire Service Department and the occupancy certificate shall be issued only after obtaining a clearance certificate from the Director of Fire Services."

11. Bye-law 5.7 postulates various requirements. The first is that no person shall occupy or let-in any other person to the building or part thereof, until an occupancy certificate to such a building or part thereof has been granted. Therefore, until and unless an occupancy certificate is granted, no building or part of it, can be occupied. Secondly, the grant of occupancy certificate shall be only after the opinion of the officer is to the effect that in every respect, the building or part thereof is

*Delu*  
25/6/2019

complete, according to the plan sanction and that it is fit for use for which it was erected

12(a). The first part of Bye-law 5.7 clearly narrates that no person can occupy the building or part thereof without an occupancy certificate. Admittedly persons have been induced prior to grant of POC. It is contrary to law. The occupation of the building or part thereof is opposed to law. No person can be inducted in any manner whatsoever, without an occupancy certificate by the corporation. Therefore, all such persons who have been induced prior to the grant of POC, are in illegal occupation.

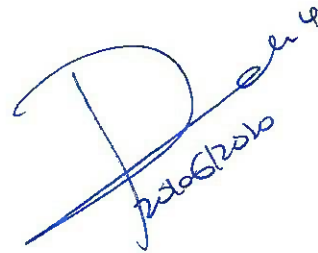
10. In view of the above observation made by the Hon'ble High Court Of Karnataka the submission made on behalf of the developer to the effect that the present complaint is not maintainable u/s 18 of the Act falls on the ground. The whole argument placed by the developer because of the execution of Sale Deed and putting the possession debars the complainant is not at all correct. The execution of sale deed before obtaining the Occupancy Certificate is clear violation of Section 17 of the Act. The possession shall be delivered only after obtaining the Occupancy Certificate. In view of the same and also as per the observation made by the Hon'ble High Court Of Karnataka the developer is liable to pay the delay compensation from the date of sale deed till the possession is ratified after obtaining the Occupancy Certificate. It is the duty of the developer to get the Occupancy Certificate and then only he has to take steps for execution of sale deed as per Section 17 of the Act and deliver the possession as per Section 19(10) of the Act. Otherwise he is bound to pay the compensation. Unless the works are completed question of giving the O.C. doesn't arise in this regard I would like to refer to sum mail sent by the developer dated 23/12/2016 where it is said

*P. D. S.*  
24/06/2020

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that the balance works to be completed like marking of car parks, club house interior works, final coat of external painting and final clean up all areas will be completed within 45-60 days at which point you will be able to move into your flats in a liveable condition. This mail is subsequent to execution of sale deed then what purpose the sale deed was executed when it is not ready for Occupation. Another mail dated 09/02/2018 where the developer has said that he has prepared a schedule for completion of project. It means in the month of February 2018 also the project was not ready for occupation. There fore the liability will not stop just because the sale deed was executed. With this observation I allow this complaint in part.

11. 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 25/11/2019. In this case the parties have appeared on 10/01/2020. After hearing arguments of the parties, the matter came up for judgment. In the meanwhile on account of natural calamity COVID-19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2010 and as such this judgment could not be passed.

  
22/06/2020



12. With this observation, I proceed to pass the following.

**ORDER**

- a. The Complaint filed by the complainant bearing No. CMP/191125/0004688 is hereby allowed.
- b. The developer is hereby directed to pay delay compensation in the form of simple interest on the principal amount paid on the Sale Deed dated 16.11.2016 @ 9%p.a. till 30/04/2017 and @ 2% p.a. above the MCLR of SBI commencing from May 2017 till the Occupancy Certificate is received. (MCLR to be calculated @ prevailing rate as on today)
- c. Intimate the parties.  
(Typed as per dictated, corrected, verified and pronounced on 20/06/2020).

( K. PALAKSHAPPA )  
Adjudicating Officer

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