

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

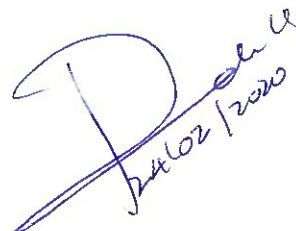
BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K PALAKSHAPPA
Adjudicating Officer
Date: 24th FEBRUARY 2020

Complaint No.	CMP/191012/0004428
Complainant	Rekha Chandrashekar, A-406, Aishwarya Opulence, Sariapur Outer Ring Road, Bangalore-560037 Rep. by: Smt. Sharada H.V. Advocate
Opponent	LGCL Properties Pvt.Ltd., No.12/1, Rest House Road, Bangalore-560001.

“J U D G E M E N T”

1. Rekha Chandrashekar, Complainant filed this complaint bearing complaint no. CMP/191012/0004428 under Section 31 of RERA Act against the project “LGCL PUEBLO developed by ‘LGCL Properties Pvt.Ltd.,’ for the relief of delay compensation. The facts of the same reads as under:

The complainant herein has entered into agreement for sale and construction agreement for purchase of the row house bearing no.52 in the project named as LGCL pUBELO. as such the complainant has paid the sale consideration amount as and when demanded by the respondent. (i) The applicant herein has booked an Row house bearing no. 52, having super built up area of 2191 sqft and 585 sqft of exclusive terrace area, 202.15sqft area of garden , in the project named as ?LGCL PUBELO?, which is


24/02/2020

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situated at, Naganathapura Village, Begur Hobli, Bangalore South Taluk, Bangalore dist. Bangalore. The copy of brochure of project is produced as Document no.1 (provide if you have) (i) The complainants have booked the rowhouse & entered into Agreement for Sale dated 22.6.2013 with the respondent in respect of the mentioned flat for a sale consideration. The complainant has paid an amount of Rs.1,31,38,239/- excluding taxes and other statutory charges. and the same is acknowledged by respondent towards the purchase of the said apartment from applicant. The complainants have paid 100% of the sale consideration amount as per the payment schedule of the agreement. Copy of the said agreements are produced as Document no. 2& 3 respectively. (ii) The complainant states that while entering into the Agreement for sale and Construction agreement, the respondent has agreed to handover the possession by March 2016, inclusive of grace period of 6 months. But even after the payment of 100% of sale consideration amount respondent has failed to deliver the apartment and committed breach of contract. thus there is a delay in handing over the possession the construction work has been going of at very slow pace from the beginning of the project since 2013, there was no progress in the project. That as per the agreement terms the possession was to be handed over to the complainants on or before 31.3.2016 with grace period of 6 months. Because of the delay and default committed by respondent the complainants are suffering huge financial loss by paying House rent without possession and mental agony of uncertainty of handing over the possession. The complainants are paying rent of for every month and have lost the interest because of the delay caused the complainants are suffering financial loss and mental stress. While registering the project with RERA the Respondent has given false date of commencement of the project as 2.6.2015, it is evidently clear that entered into agreement with complainants and agreed to handover the Possession of the row house by March 2016.

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24/6/2020

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Relief Sought from RERA : Delay compensation as per RERA

2. In pursuance of the notice issued by this authority, complainant has appeared through her advocate Smt. Sharada and respondent also appeared through his representative. The representative of the developer has filed objection statement.
3. I have heard arguments on both sides and posted for judgment.
4. The points that arise for consideration are:
 - a. Whether the complainant is entitled for the relief as prayed in the complaint?
 - b. If so, what is the order?
5. My answer to the above point is in the affirmative for the following

REASONS

6. This complaint has been filed by the complainant against the developer seeking the relief for delay compensation. The parties have entered into agreement of sale on 22/06/2013 wherein the developer has agreed to complete the project within 34 months including the grace period, so it comes to March 2016. But it is the case of the developer that he has given the completion date to the RERA as 30/06/2019. Therefore, it is his submission that claims made by the complainant for the above relief holds no water. Further it is said that the developer has applied for occupancy certificate on 20/06/2019, but it is not his case that he has received occupancy certificate.

Deena
24/02/2020

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7. I would say that completion date given in the agreement of sale is prevailing than the date given by the developer to the RERA while registering the project and the said principle is already settled. However, at the time of argument, the learned counsel for the developer submitted that the complainant is still due to the developer. But I would say that the developer has not complied with the terms of the agreement and failed to complete the project with the date given in the agreement. When that being the case, as per sec.18 he is liable to pay delay compensation. If there is any due then same may be recovered at the time of registration of the sale deed. In para-14 of the objection statement he has submitted as per clause 4.3.2 of the agreement:

Para-14- In terms of clause 4.3.2 of the construction agreement the respondent is entitled to suspend the construction activity during the period during which the delay continues. Further, the period during which the construction activity was stopped due to the non-payment of any amount payable in terms of this agreement, shall be excluded in computing the time period for completion of the construction of tow house and the respondent is not obligated to handover possession of the schedule-C property, together with all constructions carried thereon, until all amounts payable under this agreement have been paid to the respondent by the complainant.

Para-15- Further under Clause No.8.4 of the construction agreement as agreed between the parties respondent shall not be held liable or responsible for non-completion of the construction and delivery of its possession by the due date to a default on the part of the complainant to make payment of installment of the contract price and or any other amount payable by the complainant to the developer under the agreement.

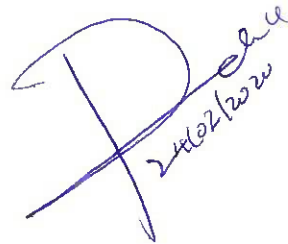
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8. Further it is submitted that because of lack of human labour, scarcity of cement, steel and sand lorry strikes made him to stop the work. Therefore, he wanted to say that the reasons caused to prevent him from proceeding with the construction are the grounds to cause delay. I would say that the reasons given by the developer cannot be accepted as Force majeure clause and as such those reasons are not sustainable. Even though in the month of June 2019 he has applied for occupancy certificate, but till today he has not been able to get the same means something wrong with him. Therefore, till the occupancy certificate is received by the developer, he shall liable to pay delay compensation as per Sec.18 and the reasons given by him are not sustainable. Accordingly, I answer point No.1 in the affirmative.
9. 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. The said 60 days to be computed from the date of appearance of the parties. This complaint was filed on 12/10/2019. In this case the parties were present on 06/11/2019. After hearing arguments of the parties, the matter came up for judgment and therefore there is some delay in disposing of this complaint. With this observation, I proceed to pass the following.



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ORDER

- a. The Complaint filed by the complainant bearing No. CMP/191012/0004428 is hereby allowed.
- b. The developer is hereby directed to pay delay compensation in the form of simple interest @ 9% on the total amount paid as on March 2016 till 30/04/2017 and @ 2% above MCLR of SBI on the total amount paid to developer commencing from 01/05/2017 till possession is delivered after obtaining occupancy certificate with all amenities.
- c. The developer shall also pay Rs.5,000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 24/02/2020).

(K.Palakshappa)
Adjudicating Officer