

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟ 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: 6th March 2020

Complaint No.	CMP/190823/0003847
Complainant	Sumeet Malhotra F302, ITC Grden Enclave, Jakkur Plantation Bangalore-560001 Rep.by Sri M.Mohan Kumar,Advocate
Opponent	1. Mantri Developers Pvt.Ltd., No.41, Vittal Mallya Road, Bangaluru -560001. 2. Sushil Pandurang Mantri No.41, Vittal Mallya Road, Bangaluru -560001. 3. Pratik Sushil Mantri No.41, Vittal Mallya Road, Bangaluru -560001. R1 Rep. by: Sri. Sunil P. Prasad, Advocate. R2 & R3 are remained absent.

"J U D G E M E N T"

1. Sumeet Malhotra, Complainant filed this complaint bearing complaint no. CMP/190823/0003847 under Section 31 of RERA Act against the project "Mantri Webcity 3B" developed by ' Mantri Developers Pvt.Ltd.,' as the complainant is the consumer in the said project. The complaint is as follows:

[Handwritten signature]
6/6/2020

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

Sir, I Sumeet Malhotra along with my wife Mrs Rohini Malhotra booked our flat in ?Mantri Webcity? Project on Apartment N803 in Phase 3 of Mantri WebCity was booked on 14th December 2014 in Tower N under a PRE-Emi scheme of 20:60:20. It is submitted that as per the scheme we were to pay 20% of the total consideration price of the apartment and balance 60% was to be paid immediately by obtaining bank loan which was pre-approved by the respondents. I state that the total consideration of the said apartment is Rs. 95,98,380/- including all taxes and amenities charges. Out of the said Sale Consideration, we have paid 20% as per the scheme amounting to a sum of Rs. 19,19,576/-. We state that the promoter got arranged for loan from PNBHFL to an extent of Rs. 60,00,000/- and out the same a sum of Rs. 57,59,027/- was disbursed to the Respondents, as such we have totally paid a sum of Rs. 76,78,603/-. As per our Sale Agreement and Construction Agreement with M/s. Mantri Developers Private Ltd., the completion date was fixed on 30/11/2017 (with a promise to pay Pre EMI's till February 2018 should there be a delay of 2/3 months). I state that we were paying PRE-EMI subsequent to disbursement of loan amount which was reimbursed by the Respondent, however after lapse of few months, the Respondent became irregular in reimbursing of PRE-EMI instalment and stopped reimbursing the Pre EMI's due from May 2017. As such in order to reduce our financial burden we requested the bank to convert the loan from PRE-EMI scheme to regular scheme on 16/12/2017 on payment of a fee of Rs. 11,800/- to PNBHFL. I state that the Respondent has paid a sum of Rs. 12,61,040/- as reimbursement of the PRE-EMI's payable till 30/04/2017, whereas I have paid a sum of Rs. 16,32,529/- till conversion of PRE-EMI to regular loan in December 2017. I state that during this intervening period I have repaid ma part of the loan amount to an extent of Rs. 15,00,000/-, as such as on July 2019 total loan moutstanding amount is Rs. 36,08,128/-. I state that since the Respondents failed to complete the project on time and deliver possession on time, we are suffering financially by paying loan instalments. I further state that had the possession been handed over to us, we would have earned a sum of Rs. 35,000/- by renting out the apartment. We have taken hand loan and arranged for funds to pay the Respondents as initial payment / advance amount. I state that we are entitled to an interest @ 12% per annum for the delayed period for all our money paid to Respondents. I state that we are badly treated by the Promoter

[Handwritten signature]
06/02/2020

causing immense mental pain and agony. We state that the Respondents has indulged in unfair trade practice and enriched themselves at our cost. I state that all the agreement and documents is prepared in favour of the Respondents and agreement is dotted line agreement which is totally unilateral and one sided. I state that the delay in completion and handing over of the Apartment, has caused immense mental pain and agony as such entitled for compensation and damages as per various provisions of RERA Act. We state that due this our savings and earnings on our savings have been completely wiped off, as such the promoters are liable to make good for the said losses. We request to file detailed claim statement and additional documents during the course of hearing. Hence for the brief facts mentioned above we are seeking for following Reliefs :- 1. Direct the Respondents to complete the construction at the earliest and handover the flat along with O.C. 2. Direct the Respondents to reimburse 12 unpaid PRE-EMI instalment promised till December 2017 which is Rs. 3,89,696/- along with interest at rate of 12% per annum until reimbursement. 3. Direct the Respondents to pay delayed compensation interest at the rate of 12% per annum on our entire Sale Consideration paid by us that is Rs. 76,78,603/- from 01/01/2018 when we converted our loan from PRE-EMI to Regular Loan till handing over of the Apartment. 4. Direct the Respondents to pay a sum of Rs.35,000/- which we would have earned, if we had rented out the Apartment had the possession being handed over to us as per the agreement. 5. Compensation for the Mental Agony and pain and Damages to an extent of Rs. 5,00,000/-. 6. Compensation for unfair Trade practice to an Extent of Rs. 3,00,000/-. 7. Cost of litigation and expense to an Extent of Rs. 50,000/-. We kindly request RERA to look at our case with compassion and allow our complaint. Regards Sumeet Malhotra & Rohini Malhotra

Relief Sought from RERA :Handing of Apt, refund PreEMI & as prayed in facts

2. In pursuance of the notice issued by this authority, complainant appeared through his advocate Sri M.Mohan Kumar and 1st respondent appeared though his advocate Sri. Sunil P. Prasad, 2nd & 3rd respondent remained absent

[Handwritten signature]
06/03/2020

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

3. I have heard arguments on both sides.
4. The points that arise for consideration are:
 - a. Whether the complainant is entitled for the relief as sought 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. Advocate representing the 1st respondent -developer submits that as per section 18, the allottee to whom the developer has failed to deliver the possession of the flat, plot or building as the case may as agreed failed to deliver or failed to complete the project then only the consumer could claim the relief. In this regard complainant has said that he has entered into agreement with the developer on January 2015. The parties have entered into agreement in respect of an apartment bearing No. 803 Block N, 8th floor, in Mantri Webcity 3B. The complainant has paid a total amount of Rs.76,78,704/-. According to the agreement the developer has agreed to complete the project on or before May 2018 including the grace period. It is his grievance that till today the project is not completed.
7. The developer has appeared and filed his objection by giving his explanation as against the case of the complainant:
 - (a) *Issues while excavation: during the process of construction of the apartment complex, the respondent encountered a hard rock while excavating the land and therefore, to cut the same took opposite party more time than anticipated. This added up*

to the alleged delay and this being an unforeseen event/force majeure which was beyond the control of the opposite party.

(b) Legal issues: during the process of construction of the apartment complex, the respondent had to face multiple legal issues from the neighbours of the property at the time of excavation, which also added to the delay of the project which was beyond the control of the respondent.

(c) License Issues: in order to cut the said hard rock the license for blasting the rock was required, which took some additional time for approval and thereafter the local police authorities started to interfere with construction process by withdrawing the license given for blasting the rock and harassing the workers deployed at the project site. Due to this, many times the process of construction was stalled, which has resulted in delay in executing the project work as per the scheduled time.

(d) Due to heavy and continuous rainfall and flooding in the project site during monsoon season, the construction work could not be carried out for three to four months in the years 2015 to 2018, which is beyond the control of the respondent. Continuing construction activity during such heavy rains and flooding would affect the safety of the labourers and damage machinery.

(e) Due to demonetization of currency declared by the central government, in the year 2016 there was major financial crises and there were no sufficient currencies with the banks for more than 6 months. This affected the Real estate industry at large. The respondent was also affected financially and faced various issues to continue with the construction work in a smooth manner. Since it is a huge project, more than 1000 skilled labourers were engaged for the work. However, the payment of their daily wages could not be processed for a prolonged time since no hard cash could be withdrawn by the

[Handwritten signature]
06/7/2018

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

respondent, as a result many labourers abandoned work and returned to their native.

(f) The Hon'ble High court of Karnataka had imposed restrictions on the working hours of construction by the builders. Subsequently, the pace at which construction work should have proceeded declined further adding to delay in handing over possession of the apartments.

(g) Due to curb on illegal sand mining mafia, there was strike by the sand suppliers in the past and hence, there was non-availability of good quality of sand. Sand being an important ingredient in construction of a building, the respondent could not continue with the construction of the building, which resulted in delay in executing the project work.

(h) The respondent faced grave issues in relation to the shortage of skilled labour, steel and good quality of sand. Due to non-availability of these basic ingredients on proper time the construction was stopped, this also added up to the alleged delay.

(i) The formulated plan of construction was critically affected which caused the alleged delay also for other reasons such as non-availability of raw materials, skilled work force and other force majeure events which are beyond the control of the respondent.

8. The counsel for the developer submits that he has given the completion date to RERA as 31/03/2019. Further he has also filed application for extension of the completion date. In view of the same it is his submission that the present complaint is premature one. He also admitted that at this stage the complainant may not be ordered for refund of the amount. In case the complaint is allowed by directing the developer to refund the amount then the developer would be put to hardship. I would like to say that such prayer

06/03/2020

cannot be accepted for the simple reason that the date mentioned in the agreement of sale is the deadline to consider the prayer either for delay compensation or refund of the amount.

9. I would say that the above reasons given by the developer cannot be terms as force majeure and as such the question of giving relief to the developer does not arise. As per Sec.18 the developer was expected to complete the project within the due date as mentioned in the agreement of sale. The contention taken by the developer that he has given a different date to the authority while registering the project could be considered as deadline and as such there is no delay will fall on the ground. The stand taken by the developer that he has given the completion date to authority has not yet completed and therefore the present complaint be treated as premature holds no water. He cannot take shelter under section 4(2)(l)(d) of the Act which is given only to the developer for completion of his project. So far as determination of completion or non completion of a project for the purpose of grant of compensation is concerned the date mentioned in the agreement will have the importance. Therefore, the date given in the agreement May 2018 including the grace period will have to be taken into consideration. Therefore, I would say that the developer cannot escape from the liability to pay the delay compensation. In view of the above settled principle of law I would say that the stand taken by the developer has no basis and therefore, this complaint has to be allowed.

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

10. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the Complaint was presented on 23/08/2019. The 60 days to be computed from the date of appearance of parties. In this case the parties have appeared on 03/10/2019. Hence, there is little delay in closing the complaint. With this observation hence I proceed to pass the order.

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190823/0003847 is allowed.
- b. The developer is hereby directed to pay delay compensation @ 2 % above the MCLR of SBI as on today on the total amount paid by the complainant commencing from June 2018 till the possession is delivered after obtaining Occupancy Certificate.
- c. Further the developer shall also pay Rs. 5000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 06.03.2020).

(K.Palakshappa)
Adjudicating Officer