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: 7th of March 2020

Complaint No.	**CMP/190917/0004219**
Complainant	Harish Kumar, 1796/1, Oil Mill Road Sait Palyam Lingarajapuram Bengaluru-560084
Opponent	A.Rama Reddy Phoenix Towers, #16 & 16/1, 4th Floor, Museum Road, Bengaluru-560001

"J U D G E M E N T"

1. Hariskumar, the complainant has filed this complaint bearing No.CMP/190917/0004219 under Section 31 of RERA Act against the project 'Parkway Homes PH-II' developed by 'Parkway Homes LLP', seeking delay compensation. His complaint reads as under:

> *Delay in Handover of our apartment, As per agreement Possession date was June 2016 + 6 months grace, effectively should have been handed over by December 2016, which has not happened till date & NO communication NO update on our property, Builder not responding & avoiding*
> *Relief Sought from RERA : Possession & quality check + Compensation*

2. After registering the case, Notice has been issued to the parties. Complainant has appeared in person when the case was called but in the next date of hearing he remained absent. Sri Samarth, Advocate has appeared on behalf of the developer and filed his objections.

3. I have heard arguments of the respondent and posted the matter for judgment.

4. The point that arise for my consideration are:
   a. Whether the complainant is entitled for the relief as sought in his complaint?.
   b. If so, what is the order?

5. My answer is affirmative for the following

REASONS

6. This complaint is filed by the complainant against the developer seeking for the relief of delay compensation. According to the complainant the completion date was agreed by the developer was June 2016 with grace period of six months, it means on or before December 2016 the project was to be completed. But the project is not completed as on the date mentioned in the agreement of sale. However, the developer has submitted his objection statement taking many contentions. He admitted indirectly delay, but it is his case the delay caused on some reasons.

   1. *When I perused the papers I found that the developer has taken different kind of defenses. But I would say that those defenses are no good grounds to hold that the developer has been prevented from completing the project. The events are not having any direct bearing on the completion of the project. It was agreed in Clause 6.1 of the Construction*

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*Agreement that the Respondent would hand over the apartment by June **2016** with 6 months grace period.*

2. *The Respondent has said that as the Section 18 of the Act is prospective in nature the Complainants are not entitled for compensation as claimed, but the same was strongly opposed by the complainants and submitted that Section 18 of the Act clearly provides that it is applicable to all on-going projects under the ambit of the Act. Judicial decisions have also held that the calculation of compensation for delay must be in accordance with Section 18, i.e. from the date of possession as promised in the agreement. In support of the same I have taken the following decisions:*

3. *In the case of **Tufail Ahmed Abdul Quddus & Ors. v. Pramod Pandurang Pisal & Ors. (COMPLAINT NO: CC006000000023023)**, the Maharashtra Real Estate Regulatory Authority (MahaRERA) was pleased to give compensation for every month of delay from the date of possession as agreed in the agreement.*

   *A similar decision has been made in **Subodh Adikary v. Reliance Enterprises (COMPLAINT NO: CC006000000055349)** delivered by the MahaRERA.*

4. *Section 18 of the Act provides that in the event the promoter fails to complete or is unable to handover possession of an apartment, plot, or building as the case may be in accordance with terms of the agreement entered into between the parties, the allottee is given the right to claim either delay compensation or to withdraw from the project by demanding refund of the amount. As evident from the object and wordings of the Section, the very purpose of Section 18 is to compensate the Complainants for any delay caused in handing over the possession of the flat, plot or building as the case may be.*

5. *As against the case made out by the complainant it is the case of the developer that the Respondent has launched a construction project in 2014 called Parkway homes developed by SJR Prime Corp Project, situated at Doddanagamangla Village, Begur Hobli, Bengaluru South Taluk, Bengaluru (**"Project"**) for construction of residential apartments. The project was divided into 2 phases. It is submitted that both phases of the project of the respondent is registered with this authority and the authority has approved the date of delivery for two phases is 18.03.2019 and 18.06.2019 respectively. It is relevant to note that the project as on 29/10/2018 (Phase-1) and 04/01/2019 (Phase-2) itself was fully completed and ready for occupation. The Occupancy certificate has also been issued by the B.D.A on 29/10/2018 and 04/01/2019 evincing the fact that the project is completed and ready for Occupation. It is the argument of the respondent that he has received the occupancy certificate even earlier to the date as mentioned to the registration authority and as such there is no force in the claim of the complainants for delay compensation. From this kind of defense one thing is clear that now the developer has completed the project and it is his submission that the complainant cannot seek any kind of compensation in view of receipt of OC.*

6. In this regard the developer has taken defense by reading clause 6.1 and 6.4 of the construction agreement which clearly states as follows:

" 6. COMPLETION & DELIVERY OF POSSESSION:

6.1 The possession of the Schedule `C' Apartment in Schedule `A' Property will be delivered by the First Party to the Second Party by June 2016 from this day, with six months grace period. Though every effort will be made to obtain electrical, water and sewerage connections within the stipulated time, no responsibility will be accepted by the First Party for delays in obtaining such connections,

Clearances, Occupancy and other Certificates from the statutory authorities and Second Party shall not be entitled to claim any damage/ losses/ interest against the First Party on the ground such delay. The Second Party shall however pay the consumption charges as per bills raised.

"6.4 In case of any proven willful delay in delivery of the apartment for reasons other than what is stated above, the First Party are entitled to a grace period of six months and if delay persists, the First Party shall pay the Second Party, as damages a sum equal to Rs. 3/- (Rupees Three Only) per Sq.Ft. per month of the super built-up area of the Schedule 'C' Apartment at the time of possession subject to conditions that:

a) Such delay shall not be attributable to reason/s mentioned in clause 6.2. and 6.3 above;

b) The Second Party has/have paid all amounts payable as per this agreement and within the stipulated period and has not violated any of the terms of this Agreement and Agreement to Sell;

d) The delay is proved to be willful delay on the part of the First Party. However, if the delay is on account of Second Party seeking modifications in Schedule 'C' Property there is no liability on the First Party to pay any damages as aforesaid."

7. It is submitted that complainant has defaulted in making timely payment to the respondent for which the respondent is entitled for interest as well as also entitled to cancel the agreement in terms of the agreement. Due to default on the part of the complainant in making timely payment to the respondent, the respondent herein have suffered huge loss, which is completely attributable to the complainant. Instead of making the payments, the complainant has filed the present complaint only to avoid making payments which is lawfully due to the respondent.

In the present case, the Construction Agreement, in Clause 6.1 states that the date of possession is June 2016 with 6 months grace period. The Respondent has not given possession to the Complainant as agreed in the agreement in the present case. Therefore, it is submitted that compensation be given in accordance with Section 18(1)(a) of the Act read with Rule 16.

9. It is the case of the developer that there is no delay at all. Even for any reason if the authority holds that there is delay then also the liability cannot be fixed for the following reasons.

(1) Delay in obtaining Occupancy Certificate and other approvals:

1. The Respondent has argued that there was a delay in obtaining relevant government approvals and the Occupancy Certificate. Further, it has also been contended that changes made to various rules and regulations by the B.D.A., resulted in delays as the Respondent had to comply with the same. As an entity engaged in the construction industry, the Respondent should have been aware of delays in procuring government approval and accordingly applied for the same in time.

(2) Federation of Karnataka State Lorry Owners' and Agents Association Strike:

2. The Respondent has argued that the abovementioned Strike placed substantial restrictions on transport of the sand and this resultantly delayed the project.

(3) The Cauvery Strike

3. *The Respondent has argued that the Cauvery strike caused hindrances to the supply of raw materials such as steel, cement and sand. It is well established that the strikes substantially affect the procurement of these materials. However, the all entities engaged in the construction industry have alternative sources for procuring such raw materials.*

4) Demonetization

4. *The Respondent has argued that the Demonetization in 2016 caused delay in completion of the project.*

(5) Enactment of the Goods and Service Tax

The Respondent has contended that the implementation of GST caused considerable delay to the project.

(6) Heavy Rainfall

5. *The Respondent has contended that heavy rainfall in Bangalore brought the project to a standstill for some period.*
6. *(7) Restriction on Extraction of River Sand by the NGT*
7. *The Respondent claims that due to an order of the National Green Tribunal. Chennai, there was non-availability of river sand for a period of two months.*

It is the case of the developer that these are the grounds prevented from completing the project with some delay. I am not going to accept the same since these grounds are not covered by the word Force Majaurae and as such his arguments cannot be accepted.

10. Of course it is the case of the complainant that he is entitled for delay compensation only because of non completion of the project within the time as mentioned in the agreement. Hence, there is no merit in the argument of the developer and hence, the present complaint has to be allowed by directing the developer to pay the delay compensation commencing from January 2017 till the possession is delivered.

11. 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 17/09/2019. The parties have appeared on 18/11/2019. After the appearance, the parties have filed their arguments, reply to the same and hence, there is some delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

a. The complaint No. CMP/190917/0004219 is hereby 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 him towards purchase of flat commencing from January 2017 till the possession is delivered after obtaining the Occupancy Certificate.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 07/03/2020).

07/03/2020

(K.Palakshappa)
Adjudicating Officer