



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp.No:4272

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Mr. Kannan

Oceanus Dwellings Pvt. Ltd.

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP-4272

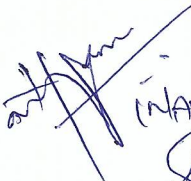

23.09.2022

As per the oral request of the complainant and respondent the execution proceeding in the above case is taken-up for amicable settlement, in the National Lok Adalat.


Sri. Naveen James authorised person of the complainant and Sri. Srinivas R Director- Commercial of the respondent M/s. Oceanus Dwellings Pvt. Ltd., are present and the authorised person has filed the copy of authorization letter given in his favor by the complainant. After due deliberation they have got their dispute pertaining to the execution proceedings in the above case before the Lok - Adalat, in terms of joint memo dated: 23.09.2022. The settlement entered between the parties is voluntary and legal one. The settlement is accepted and the execution proceedings in the above case are closed as settled between the parties in terms of the joint memo. The revenue recovery certificate issued in the above case is recalled and intimation be given to the concerned DC about the recall of RRC. The conciliators of the Lok Adalat shall draw the award.


Judicial Conciliator.


Advocate Conciliator.


(NAVEEN JAMES)

(SRINIVAS R. SIDDARATHA)

For Oceanus Dwellings Pvt. Ltd.


P. R. SRINIVAS
DIRECTOR 23/09/22


Advocate for Respondent

23/09/2022

**BEFORE LOK-ADALAT IN THE KARNATAKA REAL ESTATE
REGULATORY AUTHORITY, AT BENGALURU**

COMPLAINT NO: CMP/190923/0004272

Complainant : Mr. Kannan


-Vs-

Respondent : M/s. Oceanus Dwellings Pvt. Ltd.,.


JOINT MEMO

Sri. Naveen James authorised person of the complainant and Sri. Srinivas R Director- Commercial of the respondent M/s. Oceanus Dwellings Pvt. Ltd., jointly submit as under:

1. Sri. Naveen James authorised person of the complainant and Sri. Srinivas R Director- Commercial of the respondent M/s. Oceanus Dwellings Pvt. Ltd., are personally present before the pre Lok – Adalat sitting held today and settled the dispute involved in the above case in connection with execution proceedings, as follows:
 - a. That the complainant/allottee agreed to pay Rs. 5,25,000/- (Rupees Five Lakhs and Twenty Five Thousand only) to the respondent, towards final balance consideration amount payable in respect of flat bearing No.1104 in Block No. A1 in the project "Oceanus Classic", at the time of execution and registration of sale deed.
 - b. The respondent agreed to complete the above flat in all respect as per the terms of construction agreements entered between the parties and hand over the possession of the flat to the complainant on or before 31.12.2022 subject to payment of balance consideration amount of Rs.5,25,000/- (Rupees Five Lakhs and Twenty Five Thousand only) to the respondent.
 - c. The complainant has agreed to bear stamp duty charges and registration charges of the registration of the sale deed in respect of above flat.
 - d. The respondent has agreed to handover the Occupancy Certificate in favor of the complainant whenever obtained from the competent authority and at any rate on or before 28.02.2023.


(NAVEEN JAMES)

For Oceanus Dwellings (P) Ltd.


DIRECTOR 23/09/22

Complaint No. 4272

23.09.2022

Before the Lok-Adalat

The above case is taken up before the Lok-Adalat. The joint memo filed by both the parties is hereby accepted. Hence, the execution proceedings in the above case, is settled before the Lok-Adalat as per joint memo. The joint memo filed by the parties shall be part and partial of award/order.

The execution proceedings in the above case stands disposed off accordingly.


Judicial Conciliator.


Advocate Conciliator.

KARNATAKA STATE LEGAL SERVICES AUTHORITY
BEFORE THE LOK ADALAT
IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU

DATED: 23rd DAY OF SEPTEMBER 2022

: CONCILIATORS PRESENT:

Sri: I. F. Bidari

..... Judicial Conciliator

AND

Smt.: Preethi N

..... Advocate conciliator

COMPLAINT NO: CMP/190923/0004272

Between

Mr. Kannan

..... Complainant

AND

M/s. Oceanus Dwellings Pvt. Ltd.,

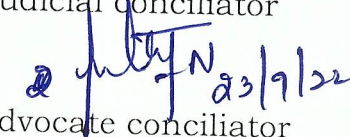
.....Respondent

Award

The dispute between the parties in connection with execution proceedings in the above case having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, as per the joint memo dated: 23.09.2022 filed during the pre-Lok Adalat sitting on dated: 23.09.2022 and filed the joint memo settling the dispute same is accepted. The settlement entered between the parties is voluntary and legal one.

The execution proceedings in the above case stands disposed off as per the joint memo dated: 23.09.2022, same is ordered to be treated as part and partial of the award.


Judicial conciliator


Advocate conciliator

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

KARNATAKA REAL ESTATE REGULATORY
AUTHORITY BENGALURU
BEFORE ADJUDICATING OFFICER
PRESIDED BY SPI K. PALAKSHAPPA
DATED 22nd MAY 2020

Complaint No	CMP/190923/0004272
Complainant	Kannan, 4/2, Allankattupudur, Athanur Post, Rasipuram Taluk, Namakkal- 636302, Tamil Nadu.
Opponent	Oceanus Dwellings Pvt.Ltd., 18 th Cross, 3 rd Sector, HSR Layout, Bengaluru -560102. Rep.by Smt.Sujatha H.H. Advocate

1. Kannan, the complainant has filed this complaint bearing no. CMP/190923/0004272 under Section 31 of RERA Act against the project "Oceanus Classic " developed by 'Oceanus Dwellings Pvt. Ltd.,' seeking for the relief of *refund of amount*. The brief facts of the case is as under:

I made agreement for my flat on 25-apr-2014 with the delivered date as 30-July-2016 including 6 months grace period. But the project is not yet delivered and builder is not confirming any confirmed date on deliver. I sent multiple requests to cancel the booking and get the total refund with penalty/interest, but the builder is not even responding to my request.

Done
22/5/2020

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*Relief Sought from RERA: return of money with
applicable
penalty/interest*

2. After registration of the case, notice has been issued to the parties. The parties were not at all present at the beginning. Later complainant has appeared in person and on behalf of the respondent Smt.H.H.Sujatha, advocate appeared and filed objections.
3. I have heard arguments.
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. This complaint has been filed by the complainant seeking for the relief of refund of amount paid by him because the developer has agreed to complete the project on or before 31/01/2017 including the grace period. The agreement was executed in the month of April 2014 in respect of flat bearing No.1104 in block No.A1 measuring 1238 sq.ft., in 11th floor.

[Handwritten signature]
22/6/2017

7. The developer/respondent has filed his objection. It is his submission that:

It is submitted that the respondent was obtained the initial plan approval for 201 units from the concerned authority on 05/06/2013 and later obtained the commencement certificate on 10/03/2015. The construction of the said project was slowed down as there was no further sales activities taken place as assumed by the respondents. As a result of the same, there was a drastic delay in completing the said project within the agreed period. The delay caused in completing the said project was not intentional one and the same was beyond the control of the respondent.

It is submitted that the respondent has made several requests to the complainant to take possession of the flat as the project is completed 95%. In spite of taking possession of the said flat, the complainant has lodged the present complaint to refund of entire money with interest.

It is submitted that, as on today, the project is completed up to 95% and the amount received by the complainant was already invested to the said project. The said flat is ready for interiors and the respondent is hereby agreed to hand over the possession for interiors and agreed to complete the said project in all prospective on or before 28/06/2020. The respondent is ready to bear the compensation as per clause-10 of the agreement of sale as there was no amount left with the respondent to refund to the complainant.

[Handwritten Signature]
22/05/2020

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Therefore, on the above grounds she prays for dismissal of the complaint.

8. Along with the written arguments, the developer has relied upon decision passed by Haryana RERA Authority in complaint No.1194 of 2018. I would like to say that grounds urged by the developer has no meaning just because as per Sec.17 r/w Sec.19(10) of the Act, the developer can call upon the complainant to take sale deed and to take physical possession of the building only after he obtains occupancy certificate. It is not the case of the developer that he has obtained occupancy certificate at the time of filing this objection or prior to it. When that being the case, the contention taken in para-5 of the written objection is invalid. He cannot call the complainant to take the sale deed in the absence of occupancy certificate. 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:

The construction of buildings is governed by the Bengaluru Mahanagara Palike Building Bye-Laws 2003. 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.

(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.

22/05/2019

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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 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 inducted prior to the grant of POC, are in illegal occupation.


22/05/2020

9. It is observed that the developer cannot put the allottee into possession of the flat in the absence of occupancy certificate. When that being the case, the defence taken by the developer in his written objection by putting the blame on the complainant that he failed to take possession holds no water. As per observation made by the High court in Pioneer case, the maximum period can be waived by the allottee is for three years. Here, the due date was 30/07/2016 and now more than three years has been elapsed as on date of the filing of this complaint means as per the observation made by the Apex court in Pioneer case, the developer is bound to return the amount with interest as per law applicable. With this observation, I allow this complaint.
10. 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 23/09/2019. In the meanwhile on account of natural calamity COVID 19 whole nation was locked down completely from 24/03/2020 till 16/05/2020 and as such this judgment could not be passed and as such it is with some delay.


22/05/2020

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

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190923/0004272 is allowed.
- b. The developer is hereby directed to pay Rs.18,64,228/- to the complainant along with interest @ 9% per annum on the respective amount paid on the respective date till 30/04/2017 @ 2% above MCLR of SBI as on today from 01/05/2017 till realization of the entire amount.
- c. The developer is hereby directed to discharge home loan, with interest EMI if due, EMI if paid by the complainant on behalf of the developer and any other statutory charges.
- d. The complainant is hereby directed to execute cancellation of agreement of sale after realization of the entire amount.
- e. The developer shall also pay Rs. 5000/- as cost of the petition.
- f. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 22/05/2020).

(K. Palakshappa)
Adjudicating Officer