

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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: 28th MAY 2020

Complaint No.	CMP/191025/0004556
Complainant	Dinesh M No.21, First Floor, 2 nd cross, Kasturi Nagar Layout, Near Magadi Road Bengaluru-560023
Opponent	1. Provident Housing Limited Provident Housing Limited 130/1, Ulsoor Road, Bengaluru-560042. 2. Pradeep Guha 3. Amanda Joy Puravankar 4. Nani Rusi Choksey 5. Sudhir Bhargava 6. Sreeraksha Prabhakar 7. Purvankar Limited

28/5/2020

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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JUDGEMENT

1. Dinesh .M. has filed this complaint under Section 31 of RERA Act against the project "THE TREE" developed by ANANDA JOY PURVANKARA., bearing Complaint no. CMP/191025/0004556. The facts of the complaint is as follows:

Booking of flat in the Tree project in Magad road Flat no TTP-B2-2A-904 , I did my booking on January 2015 (23/01/2015) Sale & construction agreement dated 11th February 2015. Completion of the project should be March 2017 its delayed by 2 + years from builder side. Till date I have not received position My Flat still not completed , as off now the pending job they have to fixed tiles pending since Aug -2019 as per the visit As per the agreement i have paid most of the money till March 2017 that is Rs.4117023 again they informed flat is going completed so again i paid 50000 on 28/11/2017 total till November Rs.4617023 paid, After i visited they did not allow to see, after repeated follow up they informed its been delayed will get back shortly this was communicated in 2017 December Again repeated follow up they told remaining balance to pay i have paid 50000 on 25/03 /19 and Rs.215340/- 17/05/19 provident as Purvankara gave clearing saying now every thing over, But my Flat work still not completed After i visited they are asking for interest charges from me, I informed that i have to get the interest form provident as they have delayed the project for more than two years, They have not completed the as per the Schedule which they received money form me before hand its self Finally they were asking me to pay 500000 extra as interest then only they will complete the project , Since delay from Provident as purvankara they need to pay me the interest which i am paying to bank and rent of my house since i did not get position so taken place in magadi road, They are mentally Torturing me by not giving the property, They are cheating me after receiving full amount Rs.5,527,569 (Fifty Five Lakh Twenty Seven Thousand Five Hundred and Sixty Nine) this includes Bank loan of (RS.2,517,023-Twenty five Lakh Seventeen Thousand and Twenty Three), From 2 years they were saying its delayed also they were saying after finish the project will hand over the Flat, Now they are black mailing me, and cheating me by not giving the property, every time because of these I am going through health issue due to stress given by Provident they are sending mails like if not paid money 500000/ as interest then after 20th Oct its Rs.998,083 need to pay, After received all amount they are not bothering to handover the position or registering the property Amount paid Date of receipt 2,00,000 paid on 23/01/2015 3,00,000 paid on 16/03/2015 1,00,000 paid on 28/04/2015 5,00,000 paid on 14/10/2015 5,00,000 paid on 05/12/2015 25,17,023 paid on 31/03/2017 5,00,000 paid on 28/11/2017 5,00,000 paid on 25/03/2019 2,15,340 paid on 17/05/2019 The Agreement which made is not according to the terms which i agreed, they have mention only the terms and condition which is favouring for builder, not any favour for the allottee . Provident as cheated in making in the transparency agreement . Requesting give compensation and get the property registered Thanking you Dinesh M

Relief Sought from RERA :Property handover and compensation , pending work

2. In pursuance of the summons issued by this authority the complainant was present in person. Kumari Sonali has appeared on behalf all the 7 respondents.
3. Heard the arguments of the parties and posted the matter for judgment.
4. The point that arisen for my consideration is:

[Handwritten signature]
28/05/2020

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- a. is the complainant 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 wherein, the complainant has entered into agreement with the Developer on 23.01.2015. The Developer has agreed to complete the project before March 2017. The Developer ought to have completed the project within that time, but the complainant has filed this complaint alleging that the developer has failed to deliver the possession even though the project was completed much earlier to the date of complaint. Since it is also the case of the developer that he has obtained the Occupancy Certificate on 12/12/2017 itself. However it is the defence of the developer that he is not liable to pay any kind of delay compensation since he is exempted from registration as Rule 4(iv). In this regard the developer has contended in his objection statement which reads as under:

Para No. 2to 4

- I would say that except the said defence the developer has utterly failed to give any explanation as to the claim made by the complainant. I am very unhappy with the move of the developer as he was obliged to answer to the claim of the complainant also. It means what the allegations have been made by him against the developer shall be accepted as alleged by him.

[Handwritten signature]
28/08/2017

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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- I would say another important aspect is that though the developer had received the OC but failed to deliver the possession is a clear violation of S.19(10) of the Act coupled with violation of S.17 of the Act. The complainant has said that he is being paid the amount to the developer when he puts the demand commencing from 23/01/2015 till 17/05/2019. I failed to understand the attitude of the developer as to the collection of amount from the consumer even beyond two months from the date of receipt of OC. He was expected to put the complainant into possession of the same but went on collecting the amount towards one or the other head. He might have demanded from the consumer to pay the legally payable amount but the same also proves that the project was not completed even beyond two years by violating section 19(10) and 17 of the Act. Whether the project is liable for registration or not is a different aspect but it was his duty and obligation to complete the project within the due time. If not, he is bound to compensate the consumer as per S.18 of the Act. Then another question is as to registration of the project, I would say that it is his submission that he is exempted from registration of his project as per Rule 4(iv). But I am not going to accept his argument on the ground that he ought to have taken an order from this authority as to exemption of his project. He himself cannot assume that this project is exempted. Further he had received OC after the coming into force of the Act. Even on the date of filing of this

[Handwritten Signature]
28/05/2020

complaint also he has not handed over the possession means this project was not completed by having development as defined in S.2(s)(t) and as referred in rule 4(iv). When the project was not completed with definition of development then the said project was not eligible for exemption as per rule 4(1)(iv) and as such the stand taken by the developer has no force.

- Further as there is no any explanation from the developer as to the allegations made by the complainant I have to allow this complaint by fixing the responsibility on the developer to pay the delay compensation.

7. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 25.10.2019. 60 days be computed from the date of appearance of the parties. Since the project was not registered the Secretary has initiated the steps against the developer. However on 31/12/2019 secretary has sent the complaint to the Adjudicating Officer for disposal of the complaint. In the meanwhile on account of natural calamity COVID 19 whole nation was put under lock 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.

Devi
27/5/2020

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

ORDER

- a. The complaint no. CMP/191025/0004556 is allowed.
- b. The developer is hereby directed to pay delay compensation on the respective amount paid by the complainant @ 2% above the MCLR of SBI commencing from April 2017 till the possession is delivered.
- c. The developer is directed to execute the sale deed with respect of flat bearing No. TTP-B2-2A-904 within a month from today by putting the complainant into possession of the same.
- d. The Developer is directed to pay Rs.5,000/- as cost of the petition.
- e. Intimate the parties regarding this order.

(Typed as per dictation, corrected, verified and pronounced on 28.05.2020).

(K.Palakshappa)

Adjudicating Officer