**BEFORE ADJUDICATING OFFICER, RERA**
**BENGALURU, KARNATAKA**
**Presided by Sri K.PALAKSHAPPA**
**Adjudicating Officer**
**Date 16th JUNE 2020**



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| **Complaint No.** | **CMP/191102/0004608** |
| **Complainant** | Ragolu Srinivasa Rao and Another<br>No.35, 3rd Cross Vinayaka Layout,<br>Marathahalli<br>Bengaluru-560037<br>Rep. by Sri Srinivasa, Advocate. |
| **Opponent** | 1. Shrivision Towers Private Limited<br>No.40/43, 8th Main,<br>4th Cross, Sadashiv Nagar,<br>Bengaluru-560080<br>Rep. Sri R.V.Budihal, Advocate.<br>2&3. M/S Gardencity Realty Pvt. Ltd<br>by its Managing Partner<br>#845, 5th Cross Road,<br>10th Main Road,<br>Bengaluru -560038<br>4. M/S. Vision Towers Pvt., Ltd.,<br>by its Managing Partner<br>#40/43, 8th Main, 4th Cross,<br>Sadashivanagar,<br>Bengaluru – 560080<br>R2 to R4 Absent |

## JUDGMENT

1. D. Karthik and another the complainants have filed this complaint no. CMP/191102/0004608 under Section 31 of RERA Act against the project "Shri Rama Green Field Phase-1" developed by 'Sri Vision Towers Private Ltd.,' seeking for the relief of delay compensation. His complaint reads as under:

> *The complainants above named most respectfully submit as follows:- 1. The complainants are married couple settled in Bengaluru city since 10 years in a rented house in the above said address. As such the complainants wanted to purchase a residential Apartment in Bengaluru city and they were in search of suitable project to own house for their peaceful residence. The respondents are promoters/developers claimed as absolute owners of Sy. No.73/1, 73/2A, 74/(P) 81, which are adjacent lands consisting of totally 20 Acres, situated at Bommanahalli village, Bidarahalli Hobli, Bengaluru East Taluk, and the respondents had entered in to two separate registered Joint Development Agreement dated: 19-12-2014 and two separate registered General Power Attorney dated: 19-12-2014 between them to develop the above said lands in to Multistoried Residential Apartments in project by name ?Shriram Greenfield?, Phase-1 & Phase-2. 2. Such being the situation the respondents have offered the complainants to purchase residential Apartment in their project by name ?Shriram Greenfield? Phase-1, at reasonable price and attractive Home Loan scheme provided by the Punjab National Bank. The complainants have been convinced about the project and on 21-01-2016 the complainants have paid booking amount of Rs.1,00,000/- (Rupees One Lakh Only) through a cheque bearing No.271968 dated: 21-01-2016 drawn on Axis Bank. Thereafter on 17-02-2016 paid a sum of Rs.2,00,000/- (Rupees Two Lakh Only) through a cheque bearing No.271973 dated: 17-02-2016 drawn on Axis Bank, to purchase Apartment #E-307, 3rd Floor, Tower-E, Building-1, measuring 113.80 square meters/1225 square feet. 3. The complainants submit that thereafter the respondents and the complainants have entered in to Agreement of Sale dated: 17-02-2016 and also entered in to Construction Agreement dated: 17-02-2016 to purchase the above said Apartment for total sale consideration of Rs.47,71,250/- (Rupees Forty Seven Lakh Seventy One Thousand Two Hundred and Fifty Only) and other statutory charges. The complainants also entered in to Tripartite Agreement dated: 18-02-2016 along with the respondents/builders and the*

*Punjab National Bank and availed loan of Rs.19,90,000/- (Rupees Forty Nine Lakh Ninety Thousand Only). Accordingly the Punjab National Bank from 19-03-2016 to 28-09-2017 periodically credited a sum of Rs.43,12,886/- (Rupees Forty Three Lakh Twelve Thousand Eight Hundred and Eighty Six Only) to the respondents account. The complainants are paying EMI regularly to the Bank with floating interest which was initially @ 9.4% per annum. 4. The complainants submit that in the Construction Agreement dated: 17-02-2016 the respondents have specifically assured the complainants that the construction will be completed and the possession of the Apartment will be delivered on or before December 2017, with additional grace period of 6 months. The complainants trusted the assurance of the respondents and acted on good faith. The complainants on all these years as tenants used to pay huge rent and suffered a lot of harassment from the landlords. After entering in to the agreements with the respondents dreamed their own home at Bengaluru city within short period i.e., maximum June 2018.*

*Relief Sought from RERA : Direct the respondents to pay compensation*



2. After registering the case, notice has been issued to the parties. The complainants have appeared through their advocate and the 1st respondent has appeared through his advocate and filed his objection statement. Whereas respondent No.2 to 4 remained absent.

3. I have heard arguments parties.

4. The points that arise for my consideration are:

   a. Whether the complainant is entitled for the relief of delay compensation?

   b. If so, what is the order?

5. My answer is Affirmatively for the following

## REASONS

6. The complainants have entered into agreement of sale with the developer on 17/2/2016 in respect of flat bearing No. E-307 in the said project. It is the case of the complainants that the developer has agreed to complete the project on or before June 2018 including the grace period. The developer who was expected to complete the same failed to do so and as such this complaint has been filed with the said relief.

7. I would say that as per S.18 of the Act, the allottee will get a right to file this kind of complaint either to claim refund or delay compensation. Of course the developer has taken so many contentions as against the allegations made by the complainants. The important aspect of this case is that the developer has not completed the project within the due time as promised and he has not yet taken the occupancy certificate. In view of these two loopholes he is liable to compensate the allottee. However the developer has made his own defence as against the case of the complainants.

8. Learned counsel for the developer has vehemently argued that the present complaint is not sustainable since it is filed only to harass the developer. The brief specific plea taken by the developer is that the developer had undertaken to get the occupancy certificate within the time given to allottee subject to grant of the same by the competent authority. It is the case of the developer that in case the OC is given by the authority with delay the developer will not be responsible for the compensation.

16/6/2018

9. It is the plea of the developer that he has given the completion date as 31/03/2019 to the RERA authority and according to S.4(2)(l)(c) he is having the benefit till 31/03/2019. It means he wanted to say that the allottee cannot claim the benefit based upon the agreement. He also submitted that the provisions of RERA cannot supersede the terms of construction agreement. Further it is his submission that the act is applicable prospectively but no retrospectively.

10. The above contentions taken by the developer are all not acceptable since the present act gives a right to the allottee to claim the benefit. S.18 of the Act has no place as to wilful delay or delay from the different authorities in granting permission or delay due to some other aspects beyond the control of developer which are all have no force. What the promise made by the developer regarding completion of the project is the only moot point to be determined. More over the project will come to an end only after receipt of Occupation Certificate and as such taking of OC is also an important stage to the developer. Therefore as rightly argued by the counsel for the complainants that they are entitled for delay compensation cannot be denied.

11. At the time of argument it is brought to my notice that the developer has sent some mails where he has consented to give delay compensation but not as per RERA rules. The complainant has referred to some of the interest points.

    a. *The mail dated 03/03/2018 the developer has said that 'tentative date to receive OC from authorised authority will be December 2018.*

b. *The developer further informed in the said email that- Customers who had signed the agreement is eligible for the compensation as per RERA from July 2018 subject to force and Majeure if any.*

c. *Another mail dated 27/08/2018 wherein he said that "However despite of his best efforts due to certain external factors beyond the control, like demonetization, nationwide truckers strike, including shortage of critical input materials and intermittent shortage of skilled labour, we are anticipating a revision in the handover timelines for the towers. Handover is for fit-outs in a phased manner shall now commence on or before Feb of 2019.*

d. *The mail dated 13/03/2019 states as : in meeting held on 09/03/2019 it was decided to pay a sum of Rs. 29,890/-to the complainants for the delay of 183 days at the rate of Rs.4/-for 1225 square feet.*

e. *Another important mail dated 27/05/2019 states as under: the registration of unit commence only after obtaining OC, the process of OC will take some more time and the willing persons can occupy the possession: with signed letter even before registration. In the said meeting it is further resolved that 'The delay compensation will be calculated post 31-03-2019 as per RERA and will be paid till clients are called for unit readiness. To calculate the period of delay, after considering the reasons beyond the control of the developer, shall be calculated as per the rate prescribed in the agreement.*

12. The above mail sent to the allottee gives some of the important admissions. The developer is aware that he is liable to pay delay compensation. Further he is also aware that the registration cannot be done in the absence of OC. He also knew that he has not obtained the same from the competent authority till he sent such kind of mail. But his stand is not acceptable to some extent

that he is liable to pay delay compensation at the rate of Rs.4/-per square feet. The developer is bound to pay the delay compensation as per S.18 of the Act from the date mentioned in the agreement and as such his stand cannot be accepted. At time of argument it was submitted that even then he is pressurising the complainant to take sale deed even in the absence of Occupancy Certificate.

13. I would say that the developer has committed two important violations. Firstly he cannot defend by saying that he has given the date of completion as 31st March 2019 to the authority and as such he is not liable to pay the delay compensation and second violation is that he is pressurising the complainant to take the sale deed without settling the issue of delay compensation and demanding to take sale deed in the absence of OC. This is clear violation of S.17 and 19(10) of the Act. I am very much surprised to know at the time of argument that the developer has called the complainant to take the sale deed and threatened to impose holding charges in case he fails to take the sale deed. It is utter violation of the present act. The developer shall call the allottee to take the sale deed only after receipt of OC. He shall not execute the sale deed unless he obtains the OC. Only after receipt of OC within two months he has to put the allottee in possession of the flat. The complainants have said that the developer has put in possession of the unit on 01/12/2019 but registration of apartment is not done. It means the complainant admitting the possession but it is not in accordance with law. Even then it is alleged that the developer is threatening to impose holding charges is illegal. Much more the word holding charges is not known to RERA act. The offer made by the developer to put possession of the unit before the grant of OC which is illegal as per the observation made by the Hon'ble High Court of Karnataka which says as under:





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*Writ petition No.11522/2012 clubbed with 739/2013. Wherein it is observed that:*

*(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.*

*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.*

14. Therefore I have no any hesitation to say that the developer has violated S.17, 18 and 19(10 ) of the Act and as such he is bound to pay delay compensation from the due date till the date of possession after obtaining OC. Till then he cannot insist the allottee to take the sale deed by imposing the holding charges.

(120)

15. 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. This complaint was filed on 02/11/2019. In this case the parties have appeared on 11/12/2019. After hearing arguments of the parties, the matter came up for judgment. In the meanwhile on account of natural calamity COVID-19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2010 and as such this judgment could not be passed. With this observation, I proceed to pass the following.



## ORDER

a. The Complaint filed by the complainants bearing No. CMP/191102/0004608 is hereby allowed.

b. The developer is hereby directed to pay delay compensation in the form of interest on the total amount paid @ 2% above the MCLR of SBI commencing from July 2018 till the 30.11.2019 since the possession is delivered to the complainant. (MCLR to be calculated @ prevailing rate as on today)

c. The developer is also hereby directed to pay Rs.5,000/- as cost of the petition.

d. Intimate the parties.

(Typed as per dictated, corrected, verified and pronounced on 16/06/2020).

(K. PALAKSHAPPA)
Adjudicating Officer

# ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತದ ಸಂಖ್ಯೆ CMP No: 4608 ಪುಟ ಸಂಖ್ಯೆ .....

ವಿಷಯ Mr. Ragalu Srinivasa Rao and Another VS Shrivision towers pvt ltd.

| ಕಂಡಿಕೆ ಸಂಖ್ಯೆ | ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು |
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**CMP-4608**

**22.09.2022**

As per the request of the complainants and respondent, this complaint is taken-up for amicable settlement before the National Lok Adalat to be held on 12.11.2022.

The complainants and the respondent have filed the joint memo stating that matter has been settled between the parties. The settlement entered between the parties is voluntary and legal one. Hence, settlement is accepted. For consideration of joint memo and award, matter is referred to Lok-Adalath to be held on 12.11.2022.

Srinivas R. Sarathe
Adv. for Complt

for TSM Law Partners
Adv. for Respondent.

22/9/22

Judicial Conciliator

Advocate conciliator

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

COMPLAINT NO: **CMP/191102/0004608**

Complainants : **Ragolu Srinivasa Rao and Another**

-Vs-

Respondent : **SHRIVISION TOWERS PRIVATE LIMITED**

**JOINT MEMO**

1.The complainants and the respondent in the above complaint jointly submit as under:

2. During the pendency of the above complaint, the complainants/allottees and the respondent/promoter after due deliberation have got their dispute pertaining to the subject matter of the complaint settled amicably before the Lok Adalat.

3. In view of the same, they jointly request this Lok Adalat to dispose of the complaint as amicably settled before the Lok Adalat.

4. The claim of the complainants in this complaint is being fully satisfied and complainant has no further claim against respondent in this complaint. Both parties to the proceedings have no claim whatsoever against each other in respect of the subject matter of the above complaint. If there is any claim by either of the parties to this complaint against the other before any forum or Court relating to the subject matter of the above complaint, they have agreed that the same be disposed off as settled by either party filling an appropriate memo in such cases.

5. Parties further request that this settlement be recorded in the National Lok Adalat scheduled to be held on 12.11.2022.

Srinivas
R. Sivathe

Bengaluru

Date:22/09/2022

Complainants/Allottees

Authorized Signatory of Respondent/Promoter
for M/s JSM Law Partners.
Adv. for Respondent.

**KARNATAKA SATE LEGAL SERVICES AUTHORITY**

**BEFORE THE LOK ADALAT**

**IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT BENGALURU**

**DATED: 22nd DAY OF SEPTEMBER 2022**

**: CONCILIATORS PRESENT:**

Smt. Maheshwari S Hiremath ..... Judicial Conciliator

AND

Sri. Sadhik ..... Advocate conciliator

**COMPLAINT NO: CMP/191102/0004608**

**Between**

Mr. Ragolu Srinivasa Rao and Another ..... Complainant

AND

Shrivision Towers Private Limited ..... Respondent/s

(By: Authorized Person of the Respondent)

**Award**

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, as per the joint memo dated: 22.09.2022 filed during the pre Lok Adalat sitting on dated:22.09.2022, same is accepted. The settlement entered between the parties is voluntary and legal one.

The complaint stands disposed of as per the joint memo and joint memo is ordered to be treated as part and partial of the award.

22/9/22

Judicial conciliator

Advocate conciliator