



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Cmp.No : 4699

ಪುಟ ಸಂಖ್ಯೆ - 06 -

ವಿಷಯ Sankar Azhakesan

Pashmina Waterfront - Phase-1


ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP-4699

12.03.2022

As per the request of the complainant the matter is taken up today before the Lok - Adalat. The complainant through requisition dated:01.02.2022 has requested to withdraw the complaint as the respondent has satisfied the claim of the complainant in this case. Therefore the execution proceedings in the above case is disposed off and closed in the Lok - Adalat as settled. The revenue recovery warrant, if any, issued against the respondent in execution proceedings in the above case is hereby recalled. The office is hereby directed to issue intimation to the concerned revenue authority about the re-calling of revenue recovery warrant.


Judicial Conciliator.


Advocate Conciliator.

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 30th JUNE 2020

Complaint No.	CMP/191112/0004699
Complainant	Snakar Azhakesan 13, Nccrazhikarai street, Vadiveeswaram, Nagercoil, Kanyakumara, Tamil Nadu - 629002 ABSENT
Opponent	Lilly Realty Ltd., No. 19/1, Doddamane Building, 2 nd Floor, Vittal Malya Road, Bengaluru-560001 Rep. by: Sri Salimath Basavaraj, Advocate

J U D G M E N T

1. Sankar Azhakesan, the complainant has filed this complaint no.CMP/191112/0004699 under Section 31 of RERA Act against the project "Pashmina Waterfront Phase-1" developed by 'Lilly Realty Pvt. Ltd.,' seeking for the relief refund of his amount paid to the developer towards purchase of flat bearing No. T0219A. His complaint reads as under:

Peru
30/6/2020

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I BOOKED FOR THIS PROPERTY Y0219A THE BUILDER PROMISED TO DELIVER BY
2017 BUT STILL NO DELIVERY IN SIGHT
RELIEF SOUGHT; NEED MY MONEY BACK WITH INTEREST

2. After registering the case, notice has been issued to the parties. The complainant never appeared and the respondent has appeared through his advocate and filed his objection statement.
3. I have heard arguments of advocate for the developer and posted the matter for orders on merits.
4. For what relief the complainant is entitled for ?
5. The complainant is entitled for sale deed but not for refund for the following

REASONS

6. The complainant has entered into agreement of sale with the developer on 09/11/2012 in respect of flat bearing No. T0219A in Pashmina Waterfront. As per the gist of the complaint he is seeking for refund of his amount on the ground that the developer has failed to complete the project as promised. Hence, he has filed this complaint. The complainant except filing of this complaint absolutely no assistance is received from him. Hence, I have to go to the objection statement of the developer. The developer says in his objection statement to the effect that the complainant is a defaulter and due to a sum of Rs. 12,86,056/-to the developer.

- The complainant had opted for the Live lite scheme i.e., the Pre-EMI scheme vide supplemental deed to

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agreement to sell dated 9.11.2012, wherein the respondent have duly paid monthly instalments to the bank on behalf of the complainants for more than 39 months. It is pertinent to note that the respondent has disbursed Rs.30,88,343/- to the bank under the Live Lite scheme i.e., the Pre-EMI scheme, until the receipt of Occupancy Certificate i.e 26/06/2019. It is also pertinent to note that the respondent has continued to pay the EMI to the banks despite the default of the complainants. The respondents did not exercise the right of termination of the Pre-EMI scheme, on the default of the complainants, just to maintain cordial relationship with the complainants. It is pertinent to note that, for delivery beyond the stipulated period the respondent bore the EMI cost. Hence, the complainant is not entitled to receive any compensation during this period. The complainant has utilized the said scheme and enjoyed the Pre-EMI paid by the respondent, he filed this suit as and when respondent intimated the fact of obtaining Occupancy Certificate and asked him to come forward for registration of the flat in terms of the sale and construction Agreement. At this point of time he filed this complaint before this authority to make unlawful gain against this respondent.

- It is pertinent to note that the complainant is in violation of Section 19(6) to 19(11) of the RERA Act, 2016. Therefore, this very complaint is not maintainable and is liable to be dismissed in limine since the complainant is failed to perform his obligations in making balance amount and not willing to register his unit.

Devi
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- As per the said construction Agreement, the schedule property was agreed to be delivered by 31.12.2014 with a grace period of 6 months i.e., by 30.06.2015, subject to time taken for securing Occupation Certificate, water, electricity and sanitary connection and time consumed for procuring Occupancy Certificate and other certificates. The respondent is not liable to pay any damages/compensations to the complainant if the respondent is unable to deliver the apartment/ Schedule Property within the prescribed period due to delay in getting the above mentioned necessary permissions and the same is agreed upon in clause 6.1 and 6.2 of the construction agreement dated 17.01.2013. However, due to factors which were not under the control of the respondent the possession has not been delivered to the complainant by the agreed time. The extension of these periods were intimated to the complainant through mail on several occasions and he did not make the payment since 01.03.2015 onwards. He is aware of these facts of extension of the project. Periodically, he verified the extension period mentioned in the RERA website also. Initially he sought for exemption of interest for delayed payments, which we refused. Hence, he filed this complaint belatedly which is against the spirit of RERA Act. Further, it is submitted that the occupancy certificate to the schedule property has been issued by the BBMP personals on 26.06.2019.

It is the case of the complainant that the developer has failed to give the completed unit as said above to him and

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therefore he has filed his complaint. As against the same it is submitted that the construction of building has been completed in the month of September 2018. The completion of construction of building in Pashmina Waterfront Phase-1, has been duly certified by the competent and registered Architect. The fire and emergency services department issued a Clearance Certificate vide no. GBC (1)/366/2010 on 10.08.2018. The residential Apartments and the club house buildings built by the respondent were thoroughly inspected by the officers of Town planning section on 09.04.2019 for the issue of the Occupancy Certificate. The Occupancy Certificate was issued on 29.06.2019.

In the meanwhile, vide order dated 07.05.2015, the National Green Tribunal, had issued certain directions to the BBMP and other planning authorities including the state, not to sanction any construction projects etc., Further, on 04.05.2016 the National Green Tribunal, constituted a committee and issued certain directions to the planning authorities and also the state in relation the buffer zone to be maintained from the edges of Lakes and Rajakaluves, are concerned. In the light of the said orders passed by National Green Tribunal, the BBMP authorities have suspended the issuance of Occupancy Certificate. Said order dated 04.05.2016 of NGT has been set aside by the Hon'ble Supreme Court of India, vide order dated 05.03.2019 passed in civil Appeal Nos.5016/2016 and connected Appeals. Pursuant to it, respondent has continuously endeavoured to obtain the Occupancy Certificate from the BBMP authorities. However, on one or the other pretext, the BBMP authorities. However, on one

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30/06/2019

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or the other pretext, the BBMP authorities were postponing the issuance of Occupancy certificate. Various builders have approached the Hon'ble High Court of Karnataka, seeking writ of mandamus against the BBMP authorities for issuance of Occupancy Certificates, which have been withheld on the ground of NGT orders. Even, the Hon'ble High Court, in several writ petitions, has issued directions to the BBMP authorities to issue Occupancy Certificates which have been withheld on account of the NGT orders.

- The development project -pashmina waterfront phase-1, of the respondent has been duly registered with the Karnataka Real Estate Regulatory Authority, as required under the Karnataka Real Estate Regulatory Act, 2016 under the Karnataka Real Estate Regulation and Development Rules, 2017. The Hon'ble regulatory has granted registration No. PRM/KA/RERA/1251/446/PR/171014/000345 to the said project. Further, the respondent had also applied for extension of the date of completion and the same has been extended till 31.12.2018. Further, extension was sought for and the same is acknowledged by the authorities on 29.12.2018. On account of delay in issuance of Occupancy Certificate by the BBMP authorities, though the apartments/units are ready to occupy, the respondent was unable to hand over possession of the apartments/units to the purchasers within the time fixed under the Agreement entered into with them. Even the time fixed for delivery of possession before RERA at the time of registration of development project, has expired on account of non-issuance of

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Occupancy certificate by the BBMP authorities. However, the respondent has made a physical application on 31.03.2018 and again on 22.05.2019 through the online portal before the REFA seeking extension of time for delivery of possession of apartments/unit to the purchasers and the said application is being considered by the Authority.

- It is respectfully submitted that though application for Occupancy Certificate was made on 11.09.2018, on account of the judicial proceedings i.e. NGT order, BBMP authorities delayed the issuance of Occupancy certificate. Hence, the respondent is not at all responsible for non-issuance of Occupancy Certificate by the BBMP authorities.

7. In addition to it the learned counsel for the developer has vehemently argued that the present complaint is not maintainable since the same has been filed only after the developer gets the occupancy certificate. It is his submission that when once the OC is received then the RERA will not get jurisdiction to try the matter. In support of the same he has drawn my attention to the Maha RERA judgment which reads as under:

Complaint No.CC006000000057420

Rekha and Manoj Gandhi

v/s.

Propel Developers Pvt. Ltd

MahaRERA Regn. No.P51800000271

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ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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It is said by the Maha RERA authority in this decision as under:

Simple present tense used in the starting line of section 18 clearly indicated that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given, as the case may be the said provision ceases to operate.

In view of the above facts, the provision regarding interest on delay, as per section 18 of the Real Estate (Regulation and Development) Act, 2016, shall not apply. The matter regarding enhancement of the carpet area has already been addressed by the learned counsel for the respondent. Parties are directed to execute and register the supplementary agreement within 30 days from the date of this order. The complainant is advised to take possession of his apartment.

8. I am not quarrelling with the principle as said. But the question is the prayer made by the complainant. The present complaint is filed by the complainant seeking for refund of the amount since the developer has failed to complete the project. The admitted facts are now the developer has got the OC and ready to hand over the possession. The complainant has said nothing as against the arguments placed by the developer. Absolutely no important material has been placed by the complainant to consider his prayer.

Deenu
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9. As per MAHA RERA judgment the advocate for developer submits that the complaint filed after OC is not maintainable. In addition to it I would like to refer some decision where different authorities have held that after receipt of OC it is not wise to pass an order for refund.

a. Haryana Real Estate Regulatory Authority

in

CMP No. 326/2018

dated 27/11/2018

Mr. Ashok Jaipuria v. M/S Ireo private limited:

Keeping in view the present status of the project and intervening circumstances, awarding of refund of the paid amount to the complainant with the termination of agreement dated 26.10.2012 at this belated stage would not serve the ends of justice and this will also hamper the very purpose of completion of project and interest of existing allottees who wishes to continue with the project.

As such complainant is entitled for delayed possession charges @ 10.75% p.a. as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till actual handing over the offer of possession failing which the complainant is entitled to withdraw from the project

P. D. Chow

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b. Complaint No. 743/2018
Puneet Dhar & Eilla Dhar
v.
M/s Supertech Ltd.

The complainants are demanding refund of the entire amount paid till date but keeping in view the current status of the project and the revised date as per the RERA registration certificate, giving refund at this time will hamper the interest of other allottees in the project. So, the complainants are not allowed to get refund and they will get interest for delay @ 10.75% p.a. from the due date of possession till the possession is actually delivered.

c. Complaint No. 63/2018
Pramod Kumar Agarwal
v.
S.S. Group Pvt. Ltd.,

However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint at this stage of the project, it will adversely affect the rights of other allottees who wish to continue with the project. However, the complainant will be entitled to a prescribed rate of interest till the date of handing over of possession.

d. Complaint No. 145/2018
Smt. Pushpa Gupta

v.

Pushpa Gupta
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M/s. VSR Infratech Pvt. Ltd.,

Thus the authority, exercising powers vested in it under Section 37 of the Haryana Real (Regulation & Development) Act, 2016 hereby issue directions to the respondent to promoter is directed to pay interest at the prescribed rate of 10.75% per annum for every month of delay. Promoter is allowed to adjust amount if due against the allottee and shall be allowed to charge interest at the same rate of 10.75%. calculation sheet be shared with the allottee within 7 days. Allottee has alleged that necessary information was not shared by the respondent, accordingly promoter is directed to share necessary information with the allottee concerning the unit allotted to her so that she may not be kept in dark.

e. Complaint No. PKL 451/2018,

Manoj Suneja

v.

TDI Infrastructure Pvt. Ltd,

Keeping in view the conduct of the respondents, they will not be entitled to the benefit as ordered by the undersigned in Complaint Case No. 49 of 2018- Parkash Chand Arohi Vs Pivotal Infrastructure Pvt. Ltd.

The request of the complainant for refund of money cannot be accepted for the reason that the respondents have developed the colony and have obtained a part competition certificate and have offered the possession to the complaints. When the possession is offered, the complainant cannot be

Done
30.6.2018

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allowed refund but they shall be entitled to compensation for the period of delay

10. From the above discussion made by different authorities it is clear that when the project is completed then the question of refund does not arise. In addition to it the complainant has not produced any documents for the proof of payment made by him.
11. The developer himself has admitted the transaction but he has taken some important defence for which the complainant has not answered. At the time of argument the counsel for the developer has drawn my attention to clause 8 of supplementary agreement which reads as under:
 12. Under the scheme LIVE LITE the purchaser specifically agree that in the event of delay by the seller in completing sale of schedule B property and /or construction of schedule C apartment, there is no liability or responsibility on the seller to pay any damages and/or interest on the amounts paid by the sellers till completion of sale schedule B property and completion of construction of C apartment and the development in schedule A property. This is one of the essential condition of the scheme, which the purchaser having understood the same and has agreed.
13. Generally what ever the condition imposed by the developer in his agreement of sale cannot be accepted if it is violating S. 18 of the Act since here the completion date given to the complainant was 30/06/2015 including the grace period. According to developer himself he has received the OC on 29/06/2019 and as such there is clear delay and thereby violation of S.18 of the Act. But the developer has sought for refund of his amount which is not possible as per the above discussion. Therefore the complainant

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30/6/19

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may be entitled for delay compensation if it is permissible. The counsel for the developer submits that since the complainant has entered into a special agreement under the name as LIVE LITE where the developer has to pay the EMI in the place of delay compensation. In this regard the developer has filed a memo which reads as under:

Total Amounts Due By The Complainant	
• Total sale consideration for the Schedule Apartment	1,02,53,256/- (Rupees One Crore Two Lakhs Fifty-Three Thousands Two Hundred Fifty Six Onlu)
• Amount paid by the complainant	89,67,200/-
• Amounts Due	12,86,056/-
• Amounts Due+Interest	17,71,682/-
• Amounts paid by the respondent in lieu of live lite agreement dated 09.11.2012 for the waiver of right to seek damages for delay possession	30,88,343/-

I would say that the presence of the complainant was very much needed to answer to this kind of defence. The complainant has to explain as to the defence taken by the developer either to concede or to place his counter. As per clause 8 of supplementary agreement and also the memo the developer has paid the EMI till the date of OC and as such he is not entitled for delay compensation. There is no any explanation from the complainant. Hence, I would say that it is the duty of the developer to comply with S.17 and 19(10) of the Act. Further the developer shall lead

Devi
30/6/14

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the interest as per section 19(7) of the Act. The complainant has to pay the balance amount as per memo which is in accordance with S.19(6) of the Act and as such I would direct the developer to execute the sale deed within 30 days from today. With this observation I allow this complaint in part by directing the parties to comply the above provisions of law.

14. 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 12/11/2019. In this case the complainant not at all appeared. The developer has appeared on 02/01/2020. In the meanwhile on account of natural calamity COVID-19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2020 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 complainant bearing No. CMP/191112/0004699 is hereby allowed in part.
- b. The developer is hereby directed to execute the sale deed within 30 days from today.
- c. The complainant is directed to pay the lawful balance amount payable to the developer in accordance with S.19(6) of the Act.
- d. The complainant shall co-operate with the developer in executing the sale deed.
- e. The complainant shall pay the lawful payment to the developer and assist him in executing the sale deed.
- f. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 30/06/2020).

(K. PALAKSHAPPA
Adjudicating Officer