BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Complaint No. CMP/190416/0002673
Presided by Shri K Palakshappa
Adjudicating Officer
Date: 3rd October 2019

Complainant:

N.J.BABU
Residing at No.53, NTI Layout,
Vidyaranyapura,
Bangalore-560097
Rep. by Sri P.P. Sunil Advocte.

AND

Respondent:

Dr.K.BALARAM
Residing at No.559, RMV II stage,
New Bell Road,
Bangalore Urban.
Rep. by Law Square Advocate

J U D G M E N T

1. This Complaint is filed by the Complainant against the Developer seeking for the relief of Delay Compensation with interest. The Complaint reads as under:

> *The Complainants most respectfully submits as follows; 1. The Complainants being desirous of purchasing a flat for themselves approached the Respondent who claimed to be the owner and developer of the property bearing Municipal No. 28/7, PID No. 100-521-529), measuring total extent of 30,081 Sq.ft. (Earlier forming a portion of Municipal No. 559, RMV 2nd Stage, Dollars Colony, Sanjaynagar Ward No. – 100, Bangalore) carved out of erstwhile Sy.No. 24/5 of*

Chikkamarenahalli Village, Kasaba hobli, Bangalore North Taluk (hereinafter referred to as "Said Land") and is developing the Said Land by construction of residential building in the name and style of "KRSNA LABURNUM". 2. Based on the representations made by the Respondent, the Complainants entered into an Agreement to sell dated 25.02.2017 with Respondent thereby agreeing to purchase 570 Sq.ft. of undivided share, right, title and interest in the Said Land, for a valuable consideration of Rs.51,30,000/- (Rupees Fifty One Lakh Thirty Thousand Only). As per the terms of the said Agreement to Sell, the Respondent has agreed to construct and allot the residential apartment bearing No. D-6, on the Sixth floor, in the said residential building "KRSNA LABURNUM", having super built up area of 2561 Sq. Ft, consisting of 03 bedrooms with RCC roofing, Marble/Wooden/Indian Marble/Tiled flooring, veneer with plywood/UPVC doors and aluminium windows including proportionate share in common area such as passage, lobbies, staircase with 2 Nos. of covered car parking space (hereinafter referred to as "Said Flat") for a sum of Rs.1,68,70,000/- (Rupees One Crore Sixty Eight Lakh Seventy Thousand Only). The total cost agreed to be paid by the Complainant towards the Said Flat was sum of Rs.2,20,00,000 (Rupees Two Crore Twenty Lakh Only) inclusive of all deposits, incidental expenses, taxies and other levies. 3. The Complainants herein, as per terms and conditions stipulated under the Agreement to Sell, have complied and paid a sum of Rs. 1,40,00,000 (Rupees One Crore Forty Lakh Only) towards the advance of an apartment bearing No. D-6, to be constructed in "KRSNA LABURNUM" and pursuant to the same, an acknowledgement was issued by the Respondent in favour of the Complainants. 4. The Complainants submits that, as stipulated as per the Agreement to Sell, he has made

subsequent payments as per the payment schedule agreed under the said Agreement to Sell amounting to a total sum of Rs. 2,00,00,000/- (Rupees Two Crore Only) to the Respondent towards the purchase of the Said Flat, which payments have been duly acknowledged by the Respondent. 5. The Complainants submits that, as per terms and conditions stipulated under the Agreement to Sell dated 25.02.2017, the Respondent had agreed to deliver the possession of the Said Flat (i.e. the residential Apartment no. D-6), on or before June 2017 with a grace period of Six Months. However, till date, the Respondent has failed to deliver the possession of the Said Flat to the Complainants.

2.Heard the arguments.

3.The point that arisen for my consideration was:
Is the complainant entitled for the relief?

My answer is affirmative for the following;

REASONS

4. As per the above allegations the prayer of the Complainant is for delay compensation. Admittedly, the Complainant has agreed to Purchase the Flat No.D-6 for a total consideration amount of Rs.2,20,00,000/-. The developer has constructed an apartment namely KRSNA LABURNUM situated at property bearing Municipal No. 28/7, PID No. 100-521-529), measuring total extent of 30,081 Sq.ft. (Earlier forming a portion of Municipal No. 559, RMV 2nd Stage, Dollars Colony, Sanjaynagar Ward No. – 100, Bangalore) carved out of erstwhile Sy.No. 24/5 of Chikkamarenahalli Village, Kasaba hobli, Bangalore North Taluk (hereinafter referred to as "Said Land"). As per the agreement the developer was to complete the project on or before June 2017 with a grace period of Six Months grace period. It further means

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as on December 2017 it was ought to be completed. But admittedly till-today the project is not completed. Therefore it is the case of the Complainant that he is entitle for the delay compensation as per law.

5. But the Developer has taken different contention which reads as follows:-

a) *It is pertinent to mention here that pursuant to obtaining the plan sanction, the Respondent had acquired the TDR.*

b) *Thereafter the Respondent with an intention to construct additional floors has approached the Bruhat Bangalore Mahanagara Palike to get the revised plan sanction for the construction of additional floors.*

c) *It is further submitted that though the Respondent made a timely application with the BBMP seeking sanction of revised plan, there was delay by the concerned authorities to issue the conditional sanction in view of notification dated 04.03.2017 bearing UDD 283 BEMRUPRA 2015, Bengaluru. Though the Respondent filed an application seeking revised sanction plan the conditional sanction came to be issued only on 31.07.2018. It is only after receipt of revised sanction the Respondent put construction of the additional floors.*

d) *It is pertinent to mention here that the construction is completed and the Respondent being the dutiful has handed over the flat of the purchaser for commencement of interior works of the flat order to keep up the promise made to the Complainants.*

e) *It is humbly submitted that Clause 19 Sub-clause iii of the agreement to sell states that if there is delay in issue of NOC/Permissions, Occupancy Certificate, sanction by Government authorities/local bodies, the Vendor (Respondent) shall not be liable to any compensation to the purchaser (Complainants). The Complainant after agreeing to all terms and conditions laid by the Respondent have entered into the agreement of sale.*

f) *It is further submitted that the Respondent in connection to clause 19 of the agreement has already mentioned*

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about the variations for delivery of possession in the agreement. The Complainants have agreed and have duly signed the agreement with a promise to abide all the terms and conditions laid by the Respondent.

6. But I would say that the stand taken by the Developer cannot be accepted since at the time of entering into agreement what the date given in the agreement shall holds good. In this case the parties have entered into agreement on 25.02.2017 and as per the agreement the project was to be completed on or before December 2017. The reasons given by the developer holds no water since the clause which is inconsistent to RERA cannot be accepted. Merely because the consumer has agreed to the clause 19 (iii) of the agreement to sell has no relevancy because once the developer has failed to complete the project within the date mentioned in the agreement then S.18 comes into picture. In view of the same the defence taken by him falls on the ground.

7. Further handing over the key to the consumer for interior decoration is not the completition of the project. The delivery of possession shall be as per S. 17 and 19(10). It is not his case that he has received the OC. Till he receives OC he cannot say that his project is completed and hence, the complaint is entitled for the relief for compensation.

8. 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 16/04/2019. In the present case, the parties have appeared on 10/05/2019. Hence, the Complaint is being disposed off with little delay. With this observation I proceed to pass following order.

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ORDER

The Complaint No.CMP/190416/0002673 is allowed.

a. The Developer is hereby directed to pay delay compensation as per present State Bank of India highest marginal cost of lending rate plus 2% i.e., SBI MCLR+2% per annum on the total amount paid by the complainant to the developer towards purchase of flat from January 2018 till the possession is delivered after obtaining Occupancy Certificate.
b. The outstanding amount to be paid by the allottees may be given set off against this payment.
c. Further the developer shall pay Rs. 5000/- as cost.
d. Intimate the parties regarding this order

(Typed as per dictation Corrected, Verified and pronounced on 03/10/2019)

(K.Palakshappa)
Adjudicating Officer