

BEFORE ADJUDICATING OFFICER RERA

BENGALURU, KARNATAKA

Complaint No. CMP/180830/0001199

Presided by:- Sri. K.PALAKSHAPPA

Adjudicating Officer.

Date: 30th NOVEMBER 2018

Complainant : Mr. Nikhil Jayant Undale and
Mr. Jayant Pandurang Undale
J.P Undale, Kedar, Plot No. 101,
Sector No. 2, Shivabasavanagar,
Belagavi - 590010.

AND

Opponent : TEMPLE TREE
M/s. ARV INFRASTRUCTURES,
No. 728, V.T. Kanakaraja Building,
26th Cross, Gunjur Main Road, Opp:
Varthur Government Hospital,
Bengaluru - 560087.

J U D G E M E N T

1. **Mr. Nikhil Jayant Undale and Mr. Jayant Pandurang Undale**, jointly have filed this complaint under Section 31 of RERA Act against the project "**TEMPLE TREE**" developed by M/s ARV INFRASTRUCTURES., bearing Complaint no. CMP/180830/0001199. The facts of the complaint is as follows:

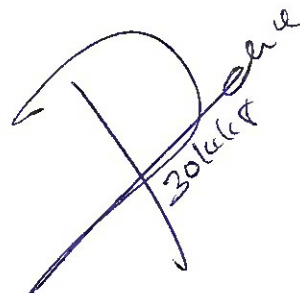
In order to purchase a Flat, the Complainants approached the Builder who were offering flats on sale in their residential apartment project named ?TEMPLE TREE?. The builder assured the Complainants that they will provide all the facilities mentioned in the Brochure. Being convinced by the builder and after discussions

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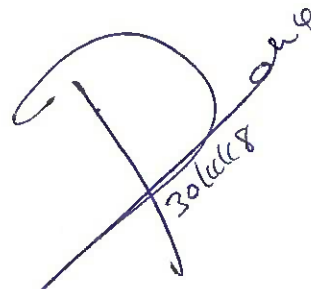
the Complainants agreed to purchase a 3 Bedrooms Flat bearing No. A-305, on the Third Floor, with 1815 Sq. Ft of Super Built up Area along with 1 Covered Car Parking space in the Basement Floor and 686 Sq. Ft of (UDS) undivided right, title and share in the land. In firm commitment of the Complainants? desire to purchase a flat, they paid an advance of Rs. 1,00,000/- [Rupees One Lakh only] by ICICI Bank Cheque bearing No. 263401 dated 29-8-2014 and submitted the builder?s booking form duly filled. Subsequently, the Complainants entered into an Agreement of Sale dated 11th September 2014 with the builder for purchase of 686 Sq. Ft., of UDS in the land for a total sale consideration of Rs.18,15,000/-. They also entered into a Construction Agreement dated 1st November 2014 for the 3 bedrooms apartment bearing Flat No. A-305 with super built up area of 1815 Sq. Ft., along with 1 covered car parking space in the basement being constructed at a total cost of Rs. 27,22,500/- which includes cost of construction and One covered car parking space. The total sale consideration payable under the aforesaid Agreements is Rs. 45,37,500/-. However, the Complainants have paid a total sum of Rs. 54,61,000/- by Cheque and online transfer to the account of builder. Thus, an excess sum of Rs. 9,23,500/- was paid to the builder.

The builders were so confident of completing construction, delivering possession and registering the flat in the Complainants? favour within May 2016 and in the event of delay they also agreed to compensate the Complainants at the rate of Rs. 7/- per Sq.Ft. of the SBA monthly from June 2016 onwards till the date of delivering possession of the apartment.

2. In pursuance of the notice issued by this authority the Complainant was present through his advocate on 18/09/2018. I would say that the developer remained absent for the whole trial. Originally the Complainant has filed the Complaint seeking relief of possession of his flat. Later on 22/10/2018 he has filed a memo seeking the relief of delay compensation. Authority has directed the Complainant to send soft copy of the memo dated 22/10/2018 to the developer since the developer was not appearing. The developer was not present for the earlier notice as well as to this memo. Therefore on 14/11/2018 the case is reserved for judgement after hearing the Complainant.



3. The relief of Complainant is based upon the agreement which was executed by the parties on 11/09/2014. According to this document the Developer was to handover the possession of the flat on or before May 2016, including the grace period. But now the Developer has given the completion date to this RERA as 31/12/2017. It means there is an inordinate delay in completion of the project. Therefore the Complainant is entitled for delay compensation. In the same agreement the Developer has agreed to pay Rs. 7/- per sft., per month as delay compensation. But I would say that this agreement was executed prior to 01/05/2017. By the induction of this Act the rate of compensation shall be enhanced because the Developer has developed the project with the financial assistance of the consumer like Complainant.
4. As per Section 18 (1) proviso the consumer who is not going to withdraw the project shall be paid by the promoter with interest including. During the course of calculating the delay compensation the Authority has to look into Section 72 of the RERA Act. The Developer has failed to complete the project on or before May 2016 but however the project is going on and will be completed as per the schedule given to the RERA. No allegation regarding the deviation of the amount to other project. As per sec.18 by the Act Delay Compensation has to be paid @interest prescribed as per rule 16. But in this case the developer was expected to deliver the possession or before May 2016 including the grace period. In view of the same the developer has to pay the delay compensation as per Karnataka Apartment Ownership Act, 1972.

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5. 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 30/08/2018. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the developer was not at all appeared hence there is no delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

- i. The Complaint No. CMP/180830/0001199 is allowed.
- ii. The developer is directed to pay the interest by way of compensation on the sum paid by the complainant @ 9% p.m. commencing from June 2016 till the April 2017.
- iii. The developer also directed to pay the interest by way compensation @ 10.25% on the sum paid by the complainant commencing from 01/05/2017 till the notice for possession is issued.
- iv. The developer is directed to handover the possession of the flat to the complainant along with O/C immediately after getting the same from concerned Authority.

Intimate the parties regarding this order.
(Typed as per dictation Corrected, Verified and pronounced on 30/11/2018)

(K.PALAKSHAPPA)
Adjudicating Officer