

BEFORE ADJUDICATING OFFICER RERA**BENGALURU, KARNATAKA****Complaint No. CMP/180827/0001188****Presided by:- Sri K.PALAKSHAPPA****Adjudicating Officer.****Date: 15 December 2018**

Complainant : RAJAT GARG
E -1204, Icon North, Thanisandra,
Main Road, Near Elements Mall,
Bengaluru – 560077.

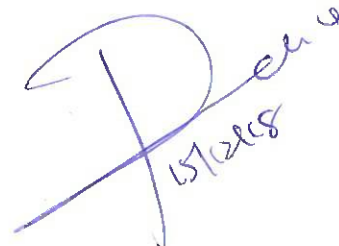
AND

Opponent : P.V.Ravindra Kumar
VASATHI AVANTE,
Vasathi Housing Ltd,
No. 37/1 Rachenahalli,
Near Mesthri Palya,
Church Gate - No – 5,
Bengaluru – 56004.

J U D G E M E N T

1. This Complaint has been filed by the consumer against the developer under section 31 of RERA Act claiming the payment of full amount with interest. His complaint reads as:

As per the construction agreement dated, 11 August 2016, the builder Vasathi housing ltd was to complete construction and hand over of the flat W3-B-603 by Dec 2016 as per schedule I of the agreement. However, the flat is yet to be handed over as on date. This delay of more than 14



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months (after the grace period of 6 months) causing inconvenience . Hence it is requested to get necessary compensation towards inordinate delay caused by the builder. The compensation may be calculated @ 12% PA from 01 Jul 2017 to till the date of handover (with all work completed) on the total paid amount to the builder till date. Builder may also be directed to complete the construction and handover the apartment at the earliest along with Occupation Certificate and other essential documents authorizing me to occupy and use the apartment in future.

Relief Sought from RERA : Monetary compensation@12% on paid amount till date

2. After registration of the case notice has been issued the parties. In pursuance of the same the Complainant was present and also through his advocate where as the Respondent – Developer also has appeared through his counsel.
3. The Complainant has filed this Complaint seeking the relief of delay compensation. In this regard the complainant has sought the delay compensation because the developer has failed to complete the project on or before June 2017 it is proved that the developer not obtained O/C. Per contra it is submitted that the Complainant is not entitled for relief as sought in the Complaint. According to him the present complaint is premature one. Further the developer has submitted that the flat is ready for occupation and the complainant may take the possession by tendering the amount payable to him and he makes a prayer to this Authority to direct the Complainant to pay remaining amount of Rs. 11,523/-.

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4. Further the developer has said as under :

It is further submitted that the complainant had, with full and free consent entered into the Agreement for construction with the Respondent on 11.08.2016, on understanding all the terms mentioned thereto and with knowledge of delay in the project. The Clause 5.4 of the construction Agreement specifies the procedure for rescinding the contract between the complainant and the Respondent. The relevant portion of clause 5.4 is reproduced hereunder:

5.4 In the event there is delay in completion of construction of schedule D Apartment and is delayed by more than six month beyond the period of 6 months from the end of the grace period as mentioned above, then, in that event, the apartment Owner/s, subject to the condition that no further penalty or damaged will be payable by the Builder to Apartment Owner/s including the aforesaid penalty of Rs.6/- per square feet of Super Built-up Area per month the Apartment Owner/s may thereafter viz., after 12 month from the date of expiry of time for completion as stated in Schedule 'T' at his/her discretion, shall rescind from this Agreement and the Agreement for sale, by causing a notice to the Builder''

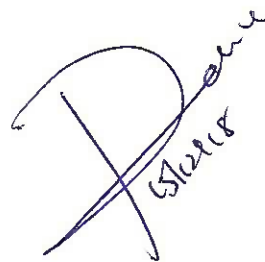
5. Project was ought to be completed in the month of June 2017 but on account of induction of RERA and on account of provision available in RERA the completion date was shown as 31/12/2018. The counsel for the Developer submitted that the Developer will be able to give possession of the flat with OC before the time line as mentioned in the RERA.

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6. He further submits that he is ready to pay the delay compensation at the rate of Rs. 6/- per sq.ft, from the due date. It is his case that the complainant never sent any demand notice for cancellation.

7. From the position of law it is clear that the Authority will have to take the notice of Section 72 along with Section 18. The Developer is going to complete the project by the end of this year. Further it is his case that the flat is ready for occupation. The developer has submitted in his objection statement to the effect that the complainant can occupy the same by tendering the rest of the sale consideration. It means the amount given by the consumer has not been mis-utilised. The section 18 of the Act says that interest to be paid as prescribed which is as per rule 16 and as such the clause made in the agreement for delay compensation has no place here. At the same time the claim made by the complainant to give compensation by granting interest @12% is also not acceptable.

8. AS per S.71 (2) RERA, the complaint shall be closed within 60 days from the date of filing. This case filling on 27/08/2018. In this case the parties were present on 7/09/2018. As per the SOP the 60 days be computed from the date of appearance of parties. After filing objections and hearing the parties, the case is reserved for orders. Hence, there is no delay in closing the complaint. With this observation I proceed to pass the order.

A handwritten signature in blue ink, appearing to be 'D. S. S. S.', written diagonally across the page.

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ORDER

- a) The Complaint No. **CMP/180827/0001188** is allowed.
- b) The developer is hereby directed to pay the delay compensation commencing from July 2017 @ Rs.10.25% P.A as per RERA on the amount paid by him till the developer gives notice developer for taking possession.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 15/12/2018)


(K.PALAKSHAPPA)
Adjudicating Officer

