

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು**  
**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**  
**PRESIDED BY SRI K. PAI AKSHAPPA**  
**DATED 16<sup>th</sup> SEPTEMBER 2020**

<b>Complaint No.</b>	<b>CMP/191108/0004568</b>
<b>Complainant</b>	Jitesh Mohani, Flat-4118, tower-4, prestige shantiniketan, ITPL main road, whitefield, Bengaluru-560048. Rep. by Sri Shivakumar Advocate.
<b>Opponent</b>	Lily Realty Pvt.limited No. 19/1, Doddamane Building, 2 <sup>nd</sup> floor, Vittal Mallya Road, Bengaluru-560001 Rep. by Sri Veeresh R Budihal, Advocate.

**J U D G M E N T**

1. The complainant has filed this complaint no. CMP/191108/0004568 under Section 31 of RERA Act against the respondent seeking delay compensation. His complaint is as under:

*In case of delay in delivery of the apartment for reasons other than what stated above, the Builder is entitled to a grace period of six months and if the delay persists, the Builder shall pay the Buyer /client damages at Rs.10/- (Rupees ten only) per square feet of the saleable area per month of delay of the Apartment provided the Buyer/client have paid all the amounts payable as per this Agreement and within the stipulated period and has not violated any of this agreement and Agreement to sell.*

*Relief Sought from RERA : Rs.9,59,960 towards damages from the promoter*

*Done*  
*16/09/2020*

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2. After registering the complaint notice has been issued to the parties. The complainant has appeared through his advocate Sri Shivakumar and the developer has appeared through his advocate Sri. Veersh R Budihal who filed his objection statement.
3. During the course of argument the counsel for the complainant has filed an interim application under S.36 of RERA act to direct the developer to deliver the possession for which the developer has filed his objections.
4. This complaint was posted for arguments on 17/03/2020 and in the meanwhile on account of Covid-19 the hearing of cases was stopped and from 24/03/2020 till 17/05/2020 lock down was declared and as such this case was not taken up. After lifting the lock down the case was called through Skype and heard the matter.
5. The point thus arise for my consideration is as to
  - a. Whether the complainant is entitled for the relief as sought in the complaint?
  - b. If so, what is the order?
6. My answer is affirmatively for the following

**REASONS**

7. This Complaint is filed by the complainant seeking for damages from the developer according to complainant the project has not been completed. The respondent developer has said that the claim made by the complainant is not correct. In this regard the developer has taken sufficient certain contentions.

8. It is pertinent to note that the Complainant has entered into a supplemental agreement dated 17/01/2013 in which the respondent has agreed to pay the interest on behalf of the complainant towards the amount borrowed from the ICICI Bank under 'live lite' Scheme. Accordingly, the respondent has paid the pre EMI amount on behalf of the complainant amounting Rs.21,58,623/- till he is intimated that the OC is obtained and his unit is ready for registration and occupation. The complainant is aware this and he admitted the same in his complaint. Further, there is a delay in payments made by the Complainant. It is further submitted that the complainant has only made payment of Rs.89,72,749/- till date and was informed that the apartment is ready for registration and taking possession, on the condition that the balance amount of Rs.13,32,130/- including interest of Rs.2,71,088/- to be paid to the Respondent. Payments were not received by Respondent since 1/3/2015. In this regard and subsequently, the Complainant has approached the RERA to file a complaint to make unlawful gain against respondent and failed to register the unit which is ready for registration and occupation in all manners. Hence, on this ground also the said complaint is liable for dismissal.
9. Therefore, it is the case of the developer that the Complainant has no locus standi to file this present complaint seeking for compensation and/or other reliefs. It is well settled law that the Complainant cannot seek relief of delay compensation after delay of making the payments along with the interest to the Respondent on the part of the complainant, as clearly stated u/s.19 (6) of the RERA Act. As mentioned hereinabove, he filed this complaint belatedly after the respondent secured OC and keep the unit ready for registration and possession. At this point of time, the complainant instead of completing the registration process,

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16/09/2020

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approached this Authority with a mala fide intention to make unlawful gain from the respondent.

10. 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 30/6/2015, subject to time taken for securing Occupation Certificate, water, electricity and sanitary connections 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's 6.1 and 6.2* of the Construction Agreement dated 17/1/2013. However, due to factors which were not in 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 payments since 1/3/2015 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 of delayed payments which we refused. Hence, he filed this complaint belatedly which is against the spirit of RERA Act. Further, it is submitted that Occupancy Certificate to the Schedule property has been issued by the BBMP personnel on 26/6/2019. The same is uploaded in the website also. Further, as per the RERA certificate, the completion period is extended to 31/12/2018. We have applied OC on 11/9/2018. Hence, there is no delay from the respondent.

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16/09/2019



11. At the time of Arguments it was submitted that complainant has produced some photos showing the defects in the construction work. Per Contra on behalf of the developer it was submitted that in view of the execution of live lite document the complainant cannot claim any damages. Per contra it is the case of the complainant that so called live lite agreement is not binding upon him. The time period of handing over possession of Apartment in question to Complaint was initially agreed to be 30/6/2015. However, the said time period was subject to the clauses 6.1 and 6.2 of the Agreement for sale of undivided share of interest and agreement for Construction, such as *force majeure* etc., and not inclusive of time taken for procuring Occupation Certificate, water, electricity and sanitary connection, and the Complainant had agreed upon the same. The Complainant has not made the payments of Rs.12,61,042/- including the interest of Rs.2,78,497/- even after being intimated that the said Apartment is ready for possession on 30/8/2019. Hence the Respondent is not liable for making payment of nay compensation or interest for the customers who delayed in making payments which jeopardise the completion of the project on time. In this case, complainant is seeking a relief of compensation which the respondent has already paid the pre-Emi on behalf of the complainant under Live Lite Scheme mentioned hereinabove which amounts to compensation only. He is precluded to get the double benefits of compensation. One is through this Authority and the other is pre EMI paid by this respondent. Hence, the complaint is prima unit and the complainant is not ready to take the possession of the unit and instead approached this Authority to make unlawful gain against the respondent. Since, the pre-EMI has already been paid by the respondent till he gets OC and intimated the same to the complainant and he filed this complaint after obtaining OC, the said complaint is not entitled for any compensation, rather heavy

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16/04/2020

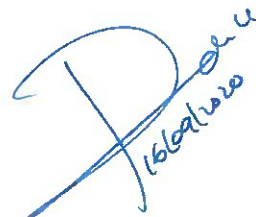
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costs may be imposed on such complainant who abused the process of this Authority without any just and equity and without any valid reasons. Hence, the complainant is not liable for any compensation.

12. There was no willful delay or default on the part of the Respondent in handing over the possession of Schedule Property. Since the Respondent had been diligent in applying for grant of registration and extension and had been continuously making efforts to complete the project diligently, Respondent cannot be held responsible for the delay even after the new cut-off date sanctioned by the Real Estate Regulatory Authority as per *clause 6.1* and *6.2* of the Construction Agreement, which states that the Respondent/Builder shall not be held liable for any delay caused in completing construction of the Apartment in question within the stipulated time for any reasons which were beyond the control of the Respondent.
13. It is pertinent to note that the provisions of RERA does not supersede the provisions of the agreement. The agreements entered into by the Complainant and the Respondent were very much prior to coming into force of RERA Act, 2016. Hence, terms and conditions as agreed between the parties cannot be superseded with the provisions of the RERA Act, 2016. Therefore, in case of any willful delay on the part of the Respondent herein. Clause 6.3 would be made applicable and not the provisions of RERA Act, 2016. However, in the present case, there is no willful delay on the part of the Respondent and hence Complainant is not entitled for any kind of delay compensation from the Respondent. As agreed, and contemplated in clause 6.1 and 6.2 of the Construction Agreement, there is no willful delay on the part of the Respondent.

14. The rights and the liabilities between the Complainant and Respondent are governed by the terms of the agreements inter-se and further that, even if the Respondent is liable to pay interest for delayed possession, it has to be as per the terms of the Agreements and from the revised date as per the registration of the project under RERA and not from the time-line consequent to execution of private Agreement to Sell entered between the parties.
15. The provisions of RERA do not rewrite the clauses of the mutually agreed terms of agreement between the parties inter-se and more so in the case of a concluded contract, lest, it would not only erode accrued rights, but also would tamper with the justified expectations of persons who, in acting reasonably, believed that the legal consequences of their actions will be determined by the known state of the law established at the time of their actions.
16. Assuming but not conceding that there is any delay in handing over possession of the apartment in question, the compensation payable under such circumstances, by the Respondent to Complainant is Rs.10/- per Sq.ft., per month, as per clause 6.3 of the Agreement for Construction. The Agreement for Construction and Agreement for Sale of Undivided Share of Land dated 17/1/2013 being pre-RERA Act period agreements, the Compensation that may be payable, if any, shall be Rs.10/-per sq.ft., per months as agreed upon mutually between the parties from the date of delay.
17. I would like to say that whatever the contention taken by the developer which is against to the spirit of the RERA Act cannot be accepted. As per S. 17 of the act the developer has to execute the sale deed within 3 months from the date of receipt of Occupancy



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Certificate. As per Sec. 19(10) of the act the developer shall take steps to give possession of flat, plot or building as the case may be to the buyer within 2 months. For any violation of these provisions the complainants is entitled for the Reliefs.

18. I failed to understand the stand taken by the developer who breathes hot and cold at the same time. In one breath he say that the agreement executed by him was prior to the commencement of act and therefore provisions of RERA will not supersede the terms of agreement. In other breath he submits that the complainant has not made payment and failed to adhere from making payment as per Section 19(10) of the act. I would say that he developer has agreed to complete the project on or before 30/6/2015. It is also his case that he has received Occupancy Certificate in the month of June 2019. Therefore, it is clear that the developer has not delivered the possession even after the expiry of 2015. There is a delay of nearly 4 years. It is true that complainant cannot file any claim after receipt of occupancy certificate. Further it is true that the present complaint is filed after the receipt of occupancy certificate by the developer, but the developer has not delivered the possession of the unit in accordance with law. In other words I would like to say that the complainant has not taken the possession of the unit since, it was not actually completed to go and to occupy. Occupancy Certificate means the project shall be completed both internally and externally. In the month of June 2020 the developer had called upon the complainant to take possession on the ground that other unit holders have taken possession of their respective units. I would say that as per Sec 19(10) of the act the developer shall call upon the complainant to take possession but after the lapse of 1 year the developer had called the complainant to take the possession. It means even though occupancy certificate was taken in the month of June 2019



the unit was not fit for occupation. Otherwise the developer could have invited the complainant within 2 months from the date of occupancy certificate. I would say that the photos produced by the complainant proves that the unit was not fit for occupation and therefore the complaint filed by the complainant subsequent the occupancy certificate development has not been Completed in all speeds.

19. Further the stand taken by the developer to the effect that as per clause 8 of the live lite document the developer has no liability to pay the compensation does not arise since the complainant has got a statutory right to claim the compensation Sec. 18 of the act.
20. Another contention taken by the developer that the developer has paid EMI to the bank and thereby he is not liable also no force in view of statutory right to claim under sec 18 of the act. As per sec 18 when there is a failure on the part of the developer to complete the project within the scheduled date he is bound to give the delay compensation till the completion of the project. Completion means development of project in all sense. It is absence in the present case and therefore the developer shall pay delay compensation till the delivery of possession. In view of the same the present complaint deserved to be allowed and hence, I proceed to pass the following.

*[Handwritten signature]*  
16/07/2016

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**ORDER**

- a. The Complaint filed by the complainant bearing No. CMP/191108/0004568 is hereby allowed.
- b. The developer is hereby directed to execute the sale deed as per S.17 of the Act within 60 days from today.
- c. The complainant shall make the payment duly payable to the developer towards purchase of flat as agreed and to co-operate with the developer in executing the sale deed by delivery of possession.
- d. The developer shall either pay or adjust the delay compensation amount @ 2% above the MCLR of SBI on the total amount from July 2015 till the execution of sale with possession.
- e. The developer shall comply with S.17 and 19(10) by completing all the amenities as agreed in the agreement.
- f. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 16/09/2020).

  
**K. PALAKSHAPPA**  
**Adjudicating Officer**