

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್,
ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್‌ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K.PALAKSHAPPA
Adjudicating Officer
Date 20th MAY 2020

Complaint No.	CMP/191001/0003396
Complainant	Shubod Dev and Shilpa Dev H3, Krishna Glade Apartment, Sheshadripuram first main, Bengaluru-560020 Rep. by Sri S. Ganesh Shenoy Advocate
Opponent	Unishire construction LLP 41/2, 3 rd floor, Castle Street, Ashok Nagar, Bengaluru - 560025 Rep. by Sri G. Venkata Subba Rao, Advocate

Amended as per order dt. 19/05/20
[Signature]

J U D G E M E N T

1. Sri Shubod Dev along with his wife jointly filed this complaint bearing no. CMP/191001/0003396 under Section 31 of RERA Act against the project "Unishire Laksmi Vilas developed by Unishire Constructions LLP., for the relief of grant of Rs. 25,000/- per month as delay compensation as per the terms of the agreement. His complaint reads as under:

I had on January 30th 2016 by paying sum of Rs 25 lakhs agreed to purchase apartment unit number 304, third floor for rupees one core four lakhs with the respondent. A further sum of Rs 25 lakhs has also been received by the respondent, the balance being payable stage wise based on progress. Respondent assured completion and

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handing over the apartment by conveying title within 24 months and a six months grace period was allowed. However even after 3 years 9 months no progress except for raising few columns. The compensation as provided in the agreement for the delay period is also not paid till date. Recently M/s Altico Capital India Ltd sort to lay a claim of procession under SARFEASI Act alleging respondent as an NPA. Respondent had no authority to encumber the project lands for any loans. I demanded Altico to provide proof of its assertions, which is not furnished. Respondent also failed to give any explanation and failed to pay delay compensation amount, intimate date of probable completion and give any assurance of early completion despite legal notice and a reminder till now hence this complaint, I being wholly disappointed left with feeling of been deceived and cheated. I have attached relevant documents. I reserve right to give further written detailed brief with further documents during the proceeding. Relief A (Direct respondent to complete and handover the apartment within such time as may be fixed) B (Direct respondent to pay accumulate delay compensation amount and also to continue to pay the delay compensation every month until handing over procession) C (Award such compensation for the inordinate delay, mental agony and harassment) D (Declare that apartment to be conveyed is free from any claims of M/S Altico Capital E (Direct respondent to execute and register sale deed within such time as may be stipulated) F (Award cost of proceeding)

Relief Sought from RERA : Relief for possession and compensation as prayed.

2. In pursuance of the notice issued by the authority, the complainants have appeared through their advocate Sri Ganesh Shenoy where the respondent has appeared through his advocate Sri G.S. Ventakta Subba Rao.
3. Respondent/promoter has filed his detailed objections. However at the time of argument it is submitted by filing Xerox copy of the agreement of sale and other documents.
4. Heard the arguments.

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5. The point that arise for my consideration is
- Whether the complainant is entitled for the relief as sought in the complaint?
 - If so, what is the order?
6. My answer to the above point is AFFIRMATIVE IN PART for the following

REASONS

7. This complaint is filed by the complainants against the respondent seeking for the relief of delay compensation. In this regard it is necessary to say that the complainants have sought for grant of Rs. 25,000/-per month as delay compensation as per the terms of the agreement. It is needless to say that the developer has agreed to give the same in case of delay. Now only the point that arise for my consideration is as the grant of the same, but as per the stand taken by the developer it appears that the complainants are not entitled because according to developer there is no cause for the same. Therefore I feel that it is necessary to say some facts in detail.
8. The developer has admitted the execution of sale agreement and payment made by the complainant. It was executed on 30/01/2016 where the developer has agreed to complete the project by delivering possession within 24 months from the date of issuance of commencement certificate from BBMP. In case of failure to the said clause it was agreed by the developer to compensate the complainants with rent of Rs.25,000/-per month by way of damages. But now the developer has taken a contention that he is not liable to pay the same because he is not yet issued

Done
20/01/2016

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the commencement certificate from the concerned authority. According to him since the BBMP has not issued CC means the question of delay does not arise. Technically he may be right but is it acceptable is the only question to be answered by me.

9. Further it is said by the developer to the effect that he was restrained from developing the project by way of Temporary Injunction granted by the Civil Court in O.S. No. 835/2019. In this regard the learned counsel for the complainants has rightly submitted in his rejoinder it is better to reproduce here:

The contentions raised in the statement of objection are wholly untenable besides a deliberate falsehood. The Complainants do not admit the correctness of the stand taken by the respondent in its defence in its entirety and including as to the contention with reference to the proceedings in the suit OS. No. 835/2019 and MFA No. 7735/2019. It is stated that the receipt of the sum of Rs, 25,00,000/ by case has been dishonestly concealed, .

The suit referred in the statement of objections came to be filed owing to the irresponsible execution of works in relation to laying the foot concrete and excavation in the property by the respondent and its workman. The respondent and its workmen had not taken adequate safety measures to avert possible damage to the property of the adjacent owners.

10. This factum goes to reveal that the suit came to be filed only because of negligent act shown by the developer while executing the work. When that being the why the present complaints shall suffer. For what reason the suit came to be filed and still it is pending. Now the developer has obtained a conditional permission from the High Court to go ahead with the construction by leaving the portion which is abutting to the said plaintiff. It further means the developer has already commenced the work and now also going

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ahead with the work. Even then he has not made any attempt to get the CC from the competent authority. Why? Not known. Absolutely the objection statement is silent as to the attempt made by the developer to obtain the same. Is he not had any role in obtaining the same? Did he think that the CC will be issued by the authority automatically.

11. Has he not had any responsibility in getting the same? When he has entered the agreement with the allottees by making the CC as an important document for commencement of his liability then it was his duty to take the same at the appropriate time. Now the Hon'ble High Court also has given permission him to go ahead with the work means he cannot go ahead with the work without obtaining the CC. This attitude of the developer proves that he is very negligent in execution of work as well to the terms of the agreement. Now he is taking a defence stating that the present complaint is not maintainable since the authority has not issued the CC which cannot be accepted.
12. Further the developer has failed to explain as to why he is not able to get the CC till today. Generally the competent authority will issue the CC immediately after laying the preliminary works. When that being the case the defence taken by the developer has no meaning.
13. The Hon'ble Apex court has observed that the developer cannot make the consumer to wait for the completion of the project indefinitely. The principle is that there must be a definite date for completion and it further means the allottee shall not be kept in dark.

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14. When that being the observation of the Apex Court the developer is prohibited from taking such kind of defence. The agreement was executed in the year 2016 and now we are in the year 2020. Even then the developer has no sign of completion of his project. Even then it is the case of the developer that he has still time to complete the project till 2021 since he has obtained the RERA certificate till the said date. The date given to the RERA is unilateral but the agreement was executed by both parties which is binding on them.
15. Hence, the defence taken by the developer has no meaning. Further it is alleged by the complainant that there is a legal issue regarding mortgage of the properties. It is also admitted by the developer indirectly and tried to give some explanation. From the above discussion it is clear that the defence taken by the developer cannot be restrained the complainant from claiming the compensation as per the terms of the agreement. Therefore I hold that the present complaint is to be allowed.
16. Now the question is from which date the clause 13 of the agreement has to be commenced? As per S.18 the developer has to start in giving the delay compensation from the date of violation of terms of agreement. In this case as per clause 4.2 (a) he has agreed to complete the project within 24 months with 6 month grace period from the date of issuance of CC. This agreement was executed in the month of January 2016, but till today the developer has not obtained the CC. The objection statement was filed in the month of February 2020. It is not his case that he has obtained CC and even it is not his case he has put his best efforts to get the same. When that being the same, I hold that the developer is showing one kind of negligent act towards protection of interest of allottees. The Hon'ble Apex court has said that maximum 3 years is the time to

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ORDER

- a. The Complaint filed by the complainant bearing No. CMP/191001/0003396 is hereby allowed in part.
- b. The developer is directed to pay R. 25,000/- as damages as agreed by him in clause 13 of agreement commenced from February 2019 till the possession is delivered after obtaining the Occupancy Certificate with all necessary amenities.
- c. The developer shall pay Rs.5,000/-cost of this petition.
- d. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 20/05 /2020).


(K.PALAKSHAPPA)
Adjudicating Officer