BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K PALAKSHAPPA
Adjudicating Officer
Date: 2nd MARCH 2020

Complaint No.	**CMP/170927/0000086**
Complainant	Jacob John Andathethu, 4, 1st Floor, 3rd Main, 2nd Cross, Anjanappa Layout, Bengaluru-560084 Rep.by Sri S.Y.Shivalli, Advocate
Opponent	Avinash Prabhu M/s Skyline Constructions & Housing Pvt.Ltd.,No.2/2, Casa Monica, Off Hayes Road, Bengaluru-560025. Rep.by Smt.Sujatha H.H, Advocate

"J U D G E M E N T"

1. Jacob John, Complainant has filed this complaint bearing complaint no. CMP/170927/0000086 under Section 31 of RERA Act against the developer Avinash Prabhu who was developing the project "Skyline Project'. At the first instance this complaint was filed against unregistered project, the authority had taken so many steps by issuing notices to the developer for registration of the project. Ultimately it was noticed that Skyline Retreat and Skyline Acacia two projects have been registered under RARA Act, therefore, the complaint has been sent to the Adjudicating officer from the office of Secretary for consideration of the plea made by the complainant.

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2. After receipt of the complaint from the Secretary, notice has been issued to the parties. The learned counsel Sri.S.Y.Shivalli has filed vakalath on behalf of the complainant. In the same way, Smt.H.H.Sujatha, Advocate has appeared on behalf of the developer. The advocate represented on behalf of the developer submitted her objection statement in the form of written arguments. The learned counsel for the complainant has filed a memo U/s 18 of the RERA Act describing his case. Further, the learned counsel for the developer has filed her additional written arguments. However, on 20/08/2019 the learned counsel for the developer has filed a memo stating that the complainant Christopher Regal had filed a criminal case No.1/2019. Further the learned counsel for the developer has also filed a memo stating that one S.Vishwanathan has been appointed as Interim Resolution Professional by the NCLT and moratorium has been declared. Originally, the complainant has filed his complaint for delay compensation, but during the course of the trial he has filed a memo stating that refund of amount may be ordered with interest mainly on the ground that the developer has stalled the project work since 2014.

3. On the above background, I have heard arguments on both sides. The learned counsel for the complainant has given a chart stating that the complainant has entered into agreement with the developer on 04/06/2012 wherein the developer has agreed to complete the project on or before 04/07/2015 with respect to flat No.1. The total consideration amount was Rs.40,59,600/- against which the complainant had paid Rs.36,88,212/-. Under this background the following points arisen for my consideration.

a. Whether the complainant is entitled for refund of the amount paid by him to the developer?

b. If so, what is the order?

4. My answer to the above point is in partly affirmative for the following

REASONS

5. I would say that the relationship between the complainant and the developer is not in dispute. The developer has admitted that the complainant has paid Rs.36,88,212/-. By reading the objection-cum-written argument filed on behalf of the developer, it is clear that the developer had admitted the delay in completion of the project. It is also his submission that the project has not been completed because of some excuses. He states as para-2 and para-11 of the objection and written arguments as under:

> ***Para-2**: It is true to suggest that, in the said agreement of sale, the respondent had promised to hand over the possession of the said flat within 30 months from the date of obtaining the commencement certificate from the concerned authority subject to further extension/grace period of (6) months thereafter. The respondent/promoter shall not be liable for delay caused in completion of construction and delivery of the said flat on account of any of the following:*
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> *A. Non-availability of steel, cement, other building materials water or electric supply or labour OR*
>
> *B. War, civil commotion, strikes of workmen or laborers or other persons or Act of God, irresistible force or reasons beyond the control of or unforeseen by the Developer OR*
>
> *C. Any legislation, order, rules, notice, notification of the Govt. and/or other public or competent body or authority or injunction or injunctions stay or prohibitory orders or directions passed by any court, tribunal body or authority OR*

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D. Delay in issuing any permission, NOC, sanction and/or building occupation certificate by the concerned authorities OR

E. Force majeure or any other reason (not limited to the reasons mentioned above) beyond of or unforeseen by the Developer which may present, restrict, interrupt or interfere with or delay the construction of building on the said land OR

F. Delay in securing necessary permissions or completion/Occupancy certificate from the competent authorities or water, electricity, drainage and sewerage connections from the appropriate authorities, for reasons beyond the control of the Developer.

***Para-11**: It is submitted that some questions were raised by the consumers with the Ministry of Housing &Urban Poverty Alleviation, Government of India. Under Frequently Asking (FAQ) at 86, it has been observed as under:*

"86.Can a complaint approach both the Regulatory Authority/Adjudicating officer and the consumer forums for the same disputes?

The laws of the country do not permit forum shopping, an aggrieved can only approach one of the two for disputes over the same matter"

5. In addition to it, the learned counsel for the developer has said that the complainant has approached the Consumer forum and therefore, the present complaint is not maintainable. It is a true fact that the complainant had approached the Consumer forum after filing of this complaint, but however the learned counsel for the complainant has produced memo stating that the complaint pending before the consumer forum has been withdrawn by the complainant. It means two objections raised by the learned counsel for the developer has been properly met by the complainant

by withdrawing the complaint filed before the Consumer forum subsequent to this complaint. As per Sec.71 provision prohibits the complainant to file complaint to the RERA authority when there is a petition before any other forum. But here the complainant has approached the Consumer forum subsequent to this petition and however it was withdrawn and therefore, there is no legal hurdle in considering the present complaint.

7. The developer has given his own reasons for delay. The agreement was entered into in the month of June 2012 and the promised date including the grace period was 04/07/2015 but till today the project has not been completed. I would say that observation made by the Hon'ble Apex Court in Pioneer case the very much relevant here, which are:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No. 12238/2018,
Pioneer Urban Land & Infrastructure Ltd.
V/s
Govindan Raghavan

which reads as under:
Para 6.1:In the present case admittedly, the appellant builder obtained the occupancy certificate almost two years after the date stipulated in the apartment buyer's agreement. As a consequence, there was failure to handover possession of the flat to the respondent flat purchaser within a reasonable period. The occupancy certificate was obtained after a delay of more than 2 years on 28/08/2018 during the pendency of the proceedings before the National Commission. In LDA v. M.K.Gupta, this court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for consideration, it is a "service" as defined by Section 2(1)(o) of the Consumer Protection

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Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

In Fortune Infrastructure v. Trevor D'Lima, this court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with the compensation.

2. Further it is said that:

2018 (5) SCC 442

Fortunate Infrastructure and another

v

Trevor D'Lima and others

This court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him, along with compensation.

Two years is maximum period to wait for completion of a project from the due date. Here the due date was July 2015 and now we are in the year 2020. Hence, any length of argument made on behalf of the developer is not well founded and he is liable to refund the amount with interest.

8. In view of the above observation made by the Hon'ble Apex court defense taken by the developer that he was prevented from the above reasons holds no water. Therefore, the complainant is entitled for refund of amount. Of course in his complaint he has sought for delay compensation but later he changed his relief for refund of the amount with interest. Sec.18 makes it very clear that in case of failure on the part of the developer to complete the project, then from the due date the complainant is entitled either to

compensate to purchaser or to refund the amount. Here, the amount has been paid is more than eight years ago and therefore, the question of denying the case of the complainant holds no water.

9. However, during the course of the trial, the learned counsel for the developer has filed a memo stating that NCLT has passed moratorium order and therefore, it is her submission that this authority cannot pass any order. But I would say that this authority is an independent forum and the same was upheld by some other RERA authorities. The judgment passed by the Rajasthan RERA Reads as under:

Rajasthan RERA Authority in

Complaint No. RAJ-RERA-C 2018-2127

Where in it is discussed as under.

> *Furthermore, even if a winding up order had been made or were to be made, the present proceedings are pending under the RERA act, which is a special Act of the parliament, made with the special purpose of regulating and promoting the real estate sector, of protecting the interest of consumers in the real estate sector and of establishing an adjudicating mechanism for speedy dispute redressal. That the RERA Act is a special Act is also borne out by the fact that Section 79 of the RERA act has barred the jurisdiction of all Civil Courts in respect of all matters to be determined under the RERA Act. Thus, the RERA Act is a special Act; and it has been made in 2016, i.e., much after the Companies Act, 2013 was made. Moreover, the RERA Act has an overriding provision under its S. 89, which reads as under:-*
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> > *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

As such, even if the RERA Act were not a special Act, it being a later Act and an Act having overriding provisions, its provisions will prevail over all earlier laws and over all general laws, including the Companies Act, 2013. More specifically, provisions of S.31 of the RERA Act will prevail over the provisions of S. 279 of the Companies Act, 2013.

10. In support of the same I would like to rely upon the recent decision of the Hon'ble Supreme Court of India passed in:

2019(8) Supreme Court Cases 416

Pioneer Urban Land and Infrastructure Ltd. And another

Vs.

Union Of India and others

Where the Hon'ble Supreme Court held that :

It is clear, therefore, that even by a process of harmonious construction, RERA and the Code must be held to co-exist, and , in the event of a clash, RERA must give way to the Code. RERA, therefore, cannot be held to be a special statute which, in the case of a conflict, would override the general statute viz. the code.

11. In view of the above observation it is very clear that the Adjudication Officer can go ahead with the decision. But in order to take the fruit of the decree the complainant has to approached the NCLT since as per the Code one S. Vishwanathan has been appointed as Interim Resolution Professional in respect of the developer project carries out the functions. Therefore, it is the duty of the authority to give findings and by directing the complainant to approach NCLT for realization of the amount. With this observation, I allow this complaint in part.

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12. Before passing the final order I would like to say that 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. The said 60 days to be computed from the date of appearance of the parties. This complaint was filed on 27/09/2017. In this case the parties were present on 23/07/2019. The present case came for trial only in the month of July 2019 since it was filed originally against unregistered project. Later two projects were registered and this case came up for hearing. After hearing arguments of the parties, the matter came up for judgment. With this observation, I proceed to pass the following.

ORDER

a. The Complaint filed by the complainant bearing No. CMP/170927/0000086 is hereby allowed in part.

b. The developer is hereby directed to pay Rs.14,25,460/- together with interest @ 9% p.a. on the respective amount paid on the respect date till 30/04/2017 and @ 2% above the MCLR of SBI till realisation of entire amount.

c. The developer also hereby directed to discharge the loan amount drawn from LIC Housing Finance Ltd., in the loan account No.4115000001583 with all its interest and any other statutory charges.

d. Further the complainant is directed to approach the NCLT for realisation of said amount.

e. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 02/03/2020).

(K.Palakshappa)
Adjudicating Officer