

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

CMP - 1806

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI K. PALAKSHAPPA
DATED 18th December 2020

Complaint No.	CMP/181229/0001806
Complainant	Sri K Raju No.55/B, 4 th Cross, Gokulam Park Road, Devaraja Mohalla, Mysuru- 570002.
Opponent	Srihari pathak and M/s Pathak Developers Pvt Ltd., 2997/2 Rukma Complex , Kalidasa Road, Mysuru- 570002. Rep. by Smt. H.H. Sujatha Advocate

JUDGEMENT

1. This Complaint is filed by the complainant against the developer seeking for the possession of Flat.
2. After registering the complaint notice has been issued to the parties, the complainant has appeared along with his son where as the respondent has appeared through his advocate.
3. This case was called on 21/01/2020 and subsequently posted to 27/03/2020 but on that day it was not called on account Covid-19 and it was

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18/12/2020

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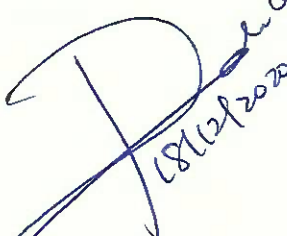
ordered to stop the hearing in open court. Further from 24/03/2020 till 17/05/2020 lock down was declared and as such hearing was not done. Further as per office note, the personal hearing was deferred and as such the parties have been called for hearing through Skype. Complainant has submitted his argument and also on 16/12/2020 he has given a representation.

4. On going through the case paper it is noticed that the Secretary has called the parties where the developer has appeared and filed a memo on 11/07/2018 admitting the relationship with the complainant. Again on 26/10/2018 he has given one representation admitting the transaction. However the complaint has been transferred to this authority for trial. On account of Covid-19 the case was heard through Skype. The developer though he was appeared and filed the objections previously remained absent when the case was called by this authority. In view of the same I posted the matter for judgment on merits.

5. The point that arise for my consideration is

- a. Whether the complainant proves that he is entitled for the relief as sought in his complaint?
- b. If so, what is the order?

6. My answer is affirmatively for the following.


18/12/2020

REASONS

7. This Complaint is filed by the Complainant seeking for the delay compensation. In this regard the complainant has appeared before the authority on 16/12/2020 and gave a representation which reads as under:

1) Sale deed registered on 25/11/2015 Pathak Developers is not given possession till 30/07/2019. On 30/07/2019 given possession so delay of possession 3 years and 9 months (45 months) compensation has to pay for us.

2) It has not completed lift work as he has not paid. Rs.84,400/- to lift company. So lift work is pending.

3) He has not paid old tax agreement of the House Tax from 2009 to till 25.11.2015

4) He has not given occupation certificate to us.

5) We have paid full amount Rs.33,000/-

I request you to consider the above request that is compensation and pending work. Kindly order for compensation to us.

8. This is the gist of his case. The developer who had appeared before the Secretary during interrogation regarding Section (3) of the Act, the developer has appeared and filed his reply dated:11/07/2018 and

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18/12/2020

26/10/2018 with respect to the claim made by the complainant which is as under:

Customer had booked an apartment in Pratham Lakshmi paid us Rs.30,00,000/- (Rupees Thirty Lakhs only) towards flat. He had paid Rs.3,00,000/- (Rupees Three Lakhs Only) towards underground water sewage, KEB. He has agreed in the year 2016 to pay escalation of Rs.3,00,000/- (Rupees Three Lakhs Only) after completion of work. We have completed all the work. Lift work is in progress please finding the photos of your reference. As customer has not paid us the amount we request him to clear the amount of Rs.3,00,000/- (Rupees Three Lakhs Only) we will do the bathroom fitting and then he can collect that flat keys. We have enclosed the photos for your reference. Please find the enclosed copy of sale deed for your reference.

9. However during the course of hearing the developer has admitted the transaction. It is the case of the developer that the complainant had to pay Rs.3 Lakh as escalation amount. But at the time of argument the complainant submitted that he has taken the sale deed on 25-11-2015 and possession was given in the year 2019 therefore the complainant is seeking delay compensation for the said period.
10. I would say that the developer has not all received the occupancy certificate however the complainant had admitted the possession and requested the authority to grant the compensation till the date of possession. I would say that the evidence placed by

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18/10/2020

the complainant has not been disproved by the developer. In other words he has admitted the transaction. It is better to say an important aspect that though the developer has executed the sale deed but failed to give possession and as such he is liable to pay the compensation on two grounds. Firstly he has not obtained the occupancy certificate even till this day. Secondly as per the observation made by the Hon'ble Apex Court.

11. In this regard I am relying a recent decision of the Hon'ble Supreme Court judgment dated 24.08.2020 in Civil Appeal No.6239/2013, Wg.Cdr.Arifur Rahman Khan and Aleya Sultana and Ors Versus DLF Southern Homes Pvt Ltd(now Known as Begur Homes Pvt.Ltd.) and Ors.

"22. The only issue which then falls for determination is whether that flat buyers in these circumstances are constrained by the stipulation contained in clause 14 of APB providing compensation for delay at the rate of Rs 5 per square feet per month. In assessing the legal position, it is necessary to record that the ABA is clearly one-sided. Where a flat purchaser pays the installments that are due in terms of the agreement with a delay, clause 39(a) stipulates that the developer would "at its sole option and discretion" waive a breach by the allottee of failing to make payments in accordance with the interest at the rate of 15 per cent per month for the first ninety days and thereafter at an additional penal interest of 3 per cent per annum. In other words, a delay on the

Done
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ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,
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part of the flat buyer attracts interest at the rate of 18 per cent per annum beyond ninety days. On the other hand, where a developer delays in handing over possession the flat buyer is restricted to receiving interest at Rs. 5 per square foot per month under clause 14 (which in the submission of Mr. Prashant Bhushan works out of 1-1.5 per cent interest per annum). Would the condition which has been prescribed in clause 14 continue to bind the flat purchaser indefinitely irrespective of the length of the delay? The agreement stipulates thirty-six months as the date for the handing over of possession. Evidently, the terms of the agreement have been drafted by the developer. They do not maintain a level platform as between the developer and purchaser. The stringency of the terms which bind the purchaser are not mirrored by the obligations for meeting times lines by the developer. The agreement does not reflect an even bargain."

23. The court must take a robust and common-sense based approach by taking judicial notice of the fact that flat purchasers obtain loans and are required to pay EMIs to financial institutions for servicing their debt. Delays on the part of the developer in handing over possession postpone the date on which purchasers will obtain a home. Besides servicing their loans, purchasers have to finance the expenses of living elsewhere. To postulate that a clause in the agreement confining the right of the purchaser to receive compensation at the rate of Rs 5 per square foot per month (Rs 7,500/- per month for a flat of 1500 square feet) precludes any other claim would be a manifestly

*Per
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unreasonable construction of the rights and obligations of the parties.

12. Based upon the above observation made by the Hon'ble Apex Court it is clear that the authority has to take into consideration of circumstances as to why the developer has executed the sale deed. In order to evade to pay the delay compensation, such kind of trick might have been used. So, as per the observation made in the above judgment the developer even though he has executed the sale deed cannot escape from the said responsibility.
13. In view of the above judgment it is clear that the delay caused cannot be defeated just because sale deed has been executed. The execution of sale deed and giving possession without occupancy certificate is violation of Section 17 and 19(10) of the Act. The project will be completed by only after obtaining the occupancy certificate. Till this day the developer is not able to get the occupancy certificate means as on 01/05/2017 it was an ongoing project and thereby it attracts the provision of RERA Act. Hence, the complainant is entitled for delay compensation as per Section 18 of the Act as prayer made by the complainant.
14. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 29/12/2018. Originally the case handled by the Secretary and afterwards it was transmitted to Adjudicating Officer in the month of January 2020. After issuance of

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notice the parties have appeared on 21/01/2020. When the case was posted to 27/03/2020 physical hearing of the cases has been stopped in view of Covid-19 and from 24/03/2020 lock down was declared till 17/05/2020. Hence the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

ORDER

- The complaint no. CMP/181229/0001806/ is allowed in part.
- The developer is directed to pay delay compensation @ Rs.9% per annum on the principal amount paid by the complainant on the sale deed from 25/11/2015 till 30/04/2017 and @ 2% above the MCLR of SBI from May 2017 till 30/07/2019.
- The developer is also liable to pay cost of Rs.5, 000/- to the complainant.
- The complainant may file memo of calculation as per this order after 60 days in case the developer has failed to comply with the same to enforce the order. Intimate the parties regarding this order.
- Intimate the parties regarding this order.
(This Order is Typed, Verified, Corrected and pronounced on 18/12/2020)

K.PALAKSHAPPA
Adjudicating officer