

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. PALAKSHAPPA
DATED 10th December 2020

Complaint No.	CMP/200226/0005556
Complainant	Salu Thomas A-401, Vaishnavi Rathnam, SM Road, T.Dasarahalli Bengaluru- 560057 Rsp. By Sri Aswin prabhu Advocate
Opponent	Vasathi housing limited, Plot no. 41, h.no. 8-2-269/S/41, Sagar Society, Road no.2, Banjara Hills-500034. Hyderabad district, Telangana State Absent Local Address: S.No. 84/1, BBMP Khata No. 37/1/84/1, Rachenahalli Village K.R. Puram (Hobli), Bangalore Urban Absent

Devu
6/11/20

JUDGMENT

1. This Complaint is filed by the complainant against the developer seeking for the relief of delay compensation on account of delay in completing the project. His complaint reads as under:

As per sales agreement, various schedules agreed, signed executed, the builder obliged to handover the apartment by June 2016 with a grace period of six months, to live-in with full facilities agreed in various schedule described in. Though we advanced the full payment to promoter, registered the property with an interim handover document, the builder failed to complete the project for a quality society to live in.

Relief Sought from RERA : Project be fully completed as per committed sales agreement not later than May 2020 and payment done for delayed project.

2. After registering the complaint notice has been issued to the parties, the complainant has appeared through his advocate where as the respondent failed to appear.
3. In his absence I have heard the case and posted the matter for judgment on merits.
4. This case was to be called in the month of April 2020 but the same was not called on account of Covid-19 and it was 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 possible. Further as per office note, the personal hearing was deferred and as such the parties have been called for hearing through Skype. Complainant was present but the developer has not appeared.
5. The point that arise for my consideration is

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- a. Whether the complainant proves that he is entitled for delay compensation?
- b. If so, what is the order?

6. My answer is affirmatively for the following

REASONS

1. This complaint is filed for the relief of delay compensation. The developer has executed the agreement of sale on 22/8/2014 in respect of apartment bearing no: W1-A-705. The developer has agreed to complete the project on or before December-2016 including the grace period but he failed to complete the same. Therefore this complaint has been filed for the appropriate relief.
2. The complainant has filed his written arguments where he submitted that the execution of the sale deed was done on 08/03/2018. The developer has obtained the occupancy certificate on 16/7/2020. It means the project has not been completed with in due time. According to complainant there is some delay in completing the project from January -2017 till 16/7/2020. Further the sale deed was executed on 8/3/2018 again which is in violation of Section 19 of the Act. Therefore the Complainant has filed the complaint for his delay compensation.
3. The complainant has submitted in his written arguments to the effect that this authority has already granted compensation in one case bearing CMP. No. 180709/0001018 and the same principle may be adopted here. I would say that the project has not been completed as agreed. The sale deed was executed without obtaining the occupancy certificate.

Done
10/12/2020

4. Section 18 (1) of the RERA Act provides for payment of compensation/interest for every month of delay till the handing over of the possession. In the present case, the complainant has entered into sale deed and might have been taken the possession of the flat. The complainant has submitted that the project has not officially completed since there was no OC.
5. It is submitted that despite lapse of more than 8 months from the date of expected delivery of possession of Apartment and series of letters along with emails, the Respondents had failed to deliver it within the committed period of time. It is the say of the complainant that in view of the aforesaid facts, Respondents are liable to pay compensation for delay of possession, along with interest for every month of delay on a total Sale Consideration.
6. The present case is for delay compensation from the developer after the sale deed was executed and also the developer has already received the Occupancy Certificate. There is no any explanation from the developer as to why he could not able to complete the project within the due time. It is submitted that the project is now completed. The Complainant has got the sale deed registered vide Sale Deed dated 08/03/2018 and is in peaceful possession and enjoyment of the apartment.
7. In this case the present complaint has been filed after the complainant has taken the sale deed from the developer. Here in this case the agreement of sale was executed on 08/03/2018 where the developer has agreed to complete the project on or before 31/12/2016 including the grace period but he delivered the possession of the flat on 08/03/2018 by executing the sale deed which is against to Section 17 and 19(10) of the Act. The

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developer shall not put the buyer into to possession of the flat without obtaining the OC. In case the sale deed was executed prior to OC then it is not lawful possession. As per observations made by the Hon'ble High Court of Karnataka in Writ petition No.11522/2012 clubbed with 739/2013. Wherein it is observed that:

The construction of buildings is governed by the Bengaluru Mahanagara Palike Building Bye-Laws 2003. Bye-law 5.6 is with reference to grant of an occupancy certificate, which reads as follows:

"5.6 Occupancy certificate-5.6.1(a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of the erection of a building shall send intimation to the Commissioner in writing of such completion accompanied by a certificate in Scheme VIII certified by a Registered Architect/Engineer/ Supervisor and shall apply for permission to occupy the building. The authority shall decide after due physical inspection of the building (including whether the owner had obtained commencement certificate as per section 300 of the Karnataka Municipal Corporations Act, 1976 and compliance regarding production of all required documents including clearance from the Fire Service Department in the case of high-rise buildings at the time of submitting application) and intimate the applicant within thirty days of receipt of the intimation whether the application for occupancy certificate

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is accepted or rejected. In case, the application is accepted, the occupancy certificate shall be issued in the form given in Schedule IX provided the building is in accordance with the sanctioned plan.

(b) Physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and requirement of building bye-laws, and includes inspections by the Fire Service Department wherever necessary.

(c) If the construction or reconstruction of a building is not completed within five years from the date of issue of licence for such a construction, the owner shall intimate the Authority, the stage of work at the expiry of five years. The work shall not be continued after the expiry of five years without obtaining prior permission from the Authority. Such continuation shall be permitted, if the construction or reconstruction is carried out according to the licensed plan and if the Authority is satisfied that at least 75% of the permitted floor area of the building is completed before the expiry of five years. If not, the work shall be continued according to a fresh licence to be obtained from the Authority.

5.6.2. For all high-rise building, the work shall also be subject to inspection by the officers of the Karnataka State Fire Service Department and the occupancy certificate shall be issued only after obtaining a clearance certificate from the Director of Fire Services."

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11. *Bye-law 5.7 postulates various requirements. The first is that no person shall occupy or let-in any other person to the building or part thereof, until an occupancy certificate to such a building or part thereof has been granted. Therefore, until and unless an occupancy certificate is granted, no building or part of it, can be occupied. Secondly, the grant of occupancy certificate shall be only after the opinion of the officer is to the effect that in every respect, the building or part thereof is complete, according to the plan sanction and that it is fit for use for which it was erected.*

12(a). *The first part of Bye-law 5.7 clearly narrates that no person can occupy the building or part thereof without an occupancy certificate. Admittedly persons have been induced prior to grant of POC. It is contrary to law. The occupation of the building or part thereof is opposed to law. No person can be inducted in any manner whatsoever, without an occupancy certificate by the corporation. Therefore, all such persons who have been inducted prior to the grant of POC, are in illegal occupation.*

8. It is observed that the developer cannot put the allottee into possession of the flat in the absence of occupancy certificate. In view of the same and also as per observation made by the Hon'ble High Court the developer shall pay the compensation till the date of receipt of OC.
9. Generally when once the OC is received and the sale deed was executed then the complainant has no cause of action to file any complaint so far as delay compensation is concerned. But as per

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the recent decision of the Hon'ble Apex Court the scenario is changed. In this regard I am relying upon a recent decision of the Hon'ble Supreme Court of the India's 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 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

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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."

25. On behalf of the flat purchasers it has been urged by Mr. R. Balasubramanian (a submission which has not been controverted in rejoinder) that 95 per cent of the purchase price was paid during the course of the first two and a half to three years. The agreement did not stipulate that the developer would pay any interest on the amount which had already been received. A large chunk of the purchase price was thus available to the developer to complete construction. 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

Done by
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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 unreasonable construction of the rights and obligations of the parties. Where there is a delay of the nature that has taken place in the present case ranging between periods of two years and four years, the jurisdiction of the consumer forum to award reasonable compensation cannot be foreclosed by a term of the agreement. The expression deficiency of services is defined in Section 2(1) (g) of the CP Act 1986 as :

"(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service"

"26. The court observed that the award of compensation has to be based on a finding loss or injury and must correlate to it. The court observed that no "hard and fast rule" could be prescribed:

10. Court it is clear that the authority has to take into consideration of circumstances as to why the developer has executed the sale deed. 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. Further in the present case there is no explanation from the side of the developer and hence, I allow this complaint. Further the complainant has said that the

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developer has given the possession without amenities. But the competent authority has given the occupancy certificate after verifying the project. Despite of it, the complainant is making allegations in respect of lack of amenities. I would say that except allegations absolutely no evidence has been placed to prove the extent of lack of amenities. Further it is needless to say that an expert report is very much required to know as to the completion of the project with all amenities or not. Hence, I say that the complainant may take the separate steps and report of the expert and then claim the compensation.

11. 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 26/02/2020. Originally the case was handled by the Secretary and afterwards it was transmitted to Adjudicating Officer. After issuance of notice the complainant alone has appeared. When the case was posted for hearing 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.

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ORDER

- a. The complaint CMP/200226/0005556 is allowed.
- b. The developer is hereby directed to pay simple interest on the amount paid by the complainant @ 9% above the MCLR of SBI commencing from January 2017 till the 30/04/2017 and @ 2% above the MCLR of SBI commencing from May 2017 till the date of sale deed.
- c. Further the developer is directed to pay simple interest @ 2% above the MCLR on the principal amount paid on the sale deed from the date of sale deed till 16/07/2020.
- d. In case any delay compensation has been paid by the developer under the sale deed or before execution of sale deed the same may be deducted in the delay compensation as ordered.
- e. The developer is also liable to pay cost of Rs.5,000/- to the complainant.
- f. 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.
- g. Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 10/12/2020)

K.PALAKSHAPPA
Adjudicating officer