

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, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Date 17th December 2020

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| Complaint No. | CMP/191202/0004654 |
| Complainant | Sasisekar Nagarajan C-1/1, Silvergate Estate, Near Forest Department Office, Aquem, Madgaon-403601 In person |
| Opponent | 1) Aswani Properties India Ptv. Ltd., No 50/7, 3 rd Floor, 16th Main 39th Cross, Jayanagar 4 th T- Block, Bengaluru - 560041, Karnataka Sri Lakshmisha G. Advocate Represented By ITS C. Anand Reddy Managing Director Anand Reddy/Prathima Reddy No 50/7, 3 rd Floor, 16th Main, 39th Cross Jayanagar 4 th T Block, Bengaluru - 560041 |

J U D G M E N T

1. The complainant has filed this complaint no. CMP/191202/0004654 under Section 31 of RERA Act against

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17/12/2020

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the project "Aswani Sunshine" developed by 'Aswani Properties India Pvt. Ltd.,' seeking for the relief for delay compensation on the ground that the developer has failed to complete the project.

2. In pursuance of the notice issued by this authority the complainant has appeared where as the developer has appeared though his advocate. The case was posted to 19/03/2020 but in the meanwhile the Government has declared lock down from 24/03/2020 till 17/05/2020. Further in order to maintain the social distance the personal hearing was stopped and the parties have been called through Skype. Accordingly when the case was called through Skype the complainant has appeared and submitted his arguments but the developer did not even though he was represented by his advocate.
3. I have heard the arguments of the complainant and posted the matter for judgement on its merits.
4. The points that arise for my consideration are:
 - a. Whether the complainant is entitled for delay compensation as prayed in the complaint?
 - b. If so, what is the order?
5. My answer is affirmatively for the following

REASONS

6. This complaint has been filed seeking for the relief of delay compensation on the following allegations.

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1) The Developer has failed in their commitment to deliver the flat fully completed with all Common Amenities Operational including lift& all rectifications as per the snag list given in 2 PDI's which were carried out initially on October,2018 and later on October,2019. The flat was supposed to be handed over on 5/8/2016 including the grace period of 6 months, however it is more than 3 years over and till date the Developer has failed to deliver the flat fully complete. REFER ENCLOSED WORK PROGRESS IN AUG 2016.

2) The Developer has been giving false commitments on futuristic dates for completion of the project and handover of the flat, but has been unable honour his assurances till date. REFER ENCLOSED E-MAILS.

3) After repeated follow-ups with the Developer till date, the incomplete flat along with the incomplete common amenities is unfit for occupancy and there is no commitment whatsoever on part of the Developer to complete the entire project. REFER ENCLSD FACTS OF COMPLAINT.

Relief Sought from RERA : 1) DEVELOPER TO COMPLETE UDS REGISTRATION AT EARLIEST FOR BUYER. 2) PENDING WORKS AS PER SNAG LIST IN THE APARTMENT TO BE COMPLETED & INCOMPLETE COMMON AMENITIES WORK TO BE FINISHED.. REFER ATTACHED FILE.

3) The above allegations have not been denied by the other side. The complainant has produced the agreement of sale dated 18/12/2015 where the developer has agreed to complete the project on or before 05/08/2016. The terms of agreement proves the failure on the part of the developer to complete the project.

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17/12/2020

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- 4) As per the clause the maximum period for the completion of the project was said above and from that period now 3 years has been completed. But till today it is not possible to complete the project and hence the complainant has filed this complaint for the appropriate relief. As per the observation made by the Hon'ble Apex court a buyer cannot be made to wait for indefinite period for the performance of the contract. Here after the lapse of the due date the developer has not taken any steps either to complete the project or to compensate the complainant.
- 5) When once the project has not been completed within the due time then a right is accrued to the complainant which cannot be defeated by taking some kind of defense.
- 6) The complainant has filed the documents showing the payment which has not been denied by the other side. I have no any good reasons to dismiss the complaint on any other ground and hence, as per S.18 of the Act, the complaint has to be allowed.
- 7) 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. This complaint was filed on 02/12/2019. The parties have been to asked to appear on 19/03/2020, in the meanwhile on account of natural calamity COVID 19 whole nation was locked down completely from 24/03/2020 till 17/05/2010. After lifting the lock down the case has been called through Skype and the developer has failed to appear and hence judgement is being passed on merits of the case and

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as such this judgment is being passed with some delay. With this observation, I proceed to pass the following.

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/121202/0004654 is hereby allowed.
- b. The developer is hereby directed to pay delay compensation in the form of simple interest on the total amount paid by the complainant as on 5th of August 2016 @ 2% above the MCLR of SBI till the completion of the project by obtaining the Occupancy Certificate with all amenities.
- c. The developer is also hereby directed to pay Rs.5,000/- as cost of the petition.
- d. 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.
- e. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 17/12/2020).

(**K. PALAKSHAPPA**)
Adjudicating Officer

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