BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K.PALAKSHAPPA
Adjudicating Officer
Date 25th JUNE 2020

Complaint No.	**CMP/190917/0003608**
Complainant	Mrs. M P Geetha 141 Sindhoora, 7th C Main Road, R P C Layout, Hampinagara Vijayanagara 2nd Stage, Bengaluru Urban – 560104. Rep. by: Sunil P. Prasad, Advocate.
Opponent	Dr. K. Balaraman No. 28/7 (earlier municipal No. 559), RMV II Stage, New BEL Road, Bengaluru Urban – 560094. Rep.by: Sanjay H. Sethiya, Advocate.

J U D G M E N T

1. The complainant has filed this complaint no.CMP/190917/0003608 under Section 31 of RERA Act against the project "KRSNA LABURNUM" developed by Dr. K. Balaraman seeking for the relief of Compensation.

2. After registering the case, notice has been issued to the parties. The complainant has appeared through his advocate Sri. Sunil P. Prasad Advocate and the respondent has appeared through his advocate Sri Sanjay H. Sethiya and filed his objection statement.

3. I have heard the arguments.

4. The points that arise for my consideration are:
   a. Whether the complainant is entitled for the relief of delay compensation as sought in the complaint?
   b. If so, what is the order?

5. My answer is affirmatively for the following

REASONS

6. The complainant has entered into agreement of sale with the developer in respect of flat bearing No. D4 measuring 2561 sq. ft., for a total consideration amount of Rs. 1,71,58,700/-. It is the case of the complainant that the developer has agreed to complete the project on or before June 2018 including the grace period. But he failed to give the completed unit as said above to him in spite of his request and demand. Therefore he has filed this complaint seeking for delay compensation.

7. As against the same it is submitted on behalf of developer to the effect that he has obtained the sanction plan in the year 2015 however revised sanctioned plan was issued on 31.07.2018. It is his further submitted that he had completed the works and applied for issuance of O.C. on 25.03.2019 itself. Therefore it is his submission that there is no delay as alleged by the complainant. He further submitted that as per clause 19(iii) there is no delay in case the Occupancy Certificate is issued by the competent authority with delay. I would say that the developer shall complete the project by obtaining the Occupancy Certificate. Of course the developer has produced Xerox copy of letter given to BBMP dated 25.03.2019 wherein he claims his project is completed but it is not the case of the developer that he has obtained Occupancy Certificate even at the time of argument also.

When that being the case the question of other arguments are not relevant in view of the wordings used in Section 18 of the RERA Act. The terms and conditions of the agreement of sale is binding upon the developer. However clause 19(iii) cannot over ride the spirit of section 18 of the Act. Therefore the prayer made by the developer that the complainant is not entitled for the relief holds no water. Till the receipt of OC with all amenities the developer is liable to compensate the complainant.

8. More over it is his submission that the BBMP has not issued OC and I would say that the condition imposed by the developer as per clause 19(iii) has no relevance here since the case has to be disposed of as per S.18 where a right will accrue to the allottee to claim the refund/delay compensation whenever the developer has failed to complete the project as per terms of agreement. The clause 19(iii) will lose its importance in view of S.18. However advocate submits that as per S.18 itself the question of refunding the amount or giving delay compensation does arise only in case the developer is unable to complete the project or unable to deliver the possession. He has completed the project and applied for grant of OC. I would say that the argument canvassed on behalf of the developer has no force for the simple reason that the delay in completion of the project gets force when it is not possible to complete the project within the time as assured to the allottee. No scope is given in S.18 as to wilful delay or any other kind of reasons. No discretionary is given to the authority. Hence, I say that completion of project means getting OC from the competent authority after completing the development internally as well as externally. If it is not so, then the developer shall pay the delay compensation and hence, allow this complaint.

9. At the time of argument it is submitted on behalf of the developer that it was intimated about the TDR at the time of agreement itself. Further it is submitted that possession was also given to some of the allottees. It was highlighted that the possession was given interior decoration which is not as per Section 19(10) of the Act. Hon'ble High Court of Karnataka has said in writ petition No.11522/2012 clubbed with 739/2013 that the possession is given by the developer earlier to obtaining the O.C. is illegal. Therefore the stand taken by the developer holds no water.

10. 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 17/09/2019. In this case the parties have appeared on 13/11/2019. After hearing arguments of the complainant, the matter came up for judgment. In the meanwhile on account of natural calamity COVID-19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2010 and as such this judgment could not be passed. With this observation, I proceed to pass the following.

ORDER

a. The Complaint filed by the complainant bearing No. CMP/190917/0003608 is hereby allowed.

b. The developer is hereby directed to pay delay compensation in the form of simple interest @2% above the MCLR of SBI on the total amount paid by the complainant with effect from July 2018 till possession is delivered after obtaining OC with All amenities. (MCLR be calculated @ prevailing As on Today) on the total amount paid by the complainant.

c. The developer is also hereby directed to pay Rs.5,000/- as cost of the petition.

d. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 25/06/2020).

(K. PALAKSHAPPA)
Adjudicating Officer