

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/180322/0000612

Dated: 7th December 2019

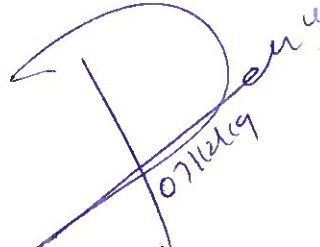
Complainant : Arunkumar S K
Flat 1212, Dr. Rajkumar Road,
Rajaji Nagar,
Bengaluru-560010.
Rep. By: Aruna Shyam, Advocate.

AND

Opponent : TOWNSVILLE NEO TOWN
Amol Warke,
Patel Realty(India) Ltd.,
No.5, ONYX Centre, 5th Floor,
Museum Road,
Bengaluru - 560001
Registered Project in RERA is
M/s GM Infinite Dwelling (India) Pvt. Ltd.,
44/1, Azeem Pearl, Dickenson Road,
Yellappa Garden, Yellappa Chetty Layout,
Bengaluru Urban - 560042.
The project Name is Townsville,
Rep. By : Gauthami S. Bhandary, Advocate.

J U D G M E N T

1. This Complaint is filed by the Complainant against the Developer seeking for the relief of delay compensation. The facts of the complaint is as follows:

1 

*I have bought a villament in the above project situated at Hulimangla Villaage, Jigani Hobli, Near Electronic city, Bangalore - 562106, Karnataka, Promoted by M/s Patel Realty (India). They have been delaying teh project and also are dodging the process of registration with RERA. Project has been delayed for mote than 5 Years and with out any sight of completion and they have collected hugs sums from us towards this project
Relief Sought from RERA: Force Them to register the project with RERA*

2. But during the course of trial he has filed physical copy of the complaint where he sought the delay compensation and also to take action for violation of Section 15 of the Act.
3. The Complainant has entered into agreement with the Developer towards purchase of a Villa bearing No. 62B. The Developer has constructed Villas in the land bearing No. 325 measuring 4.38 acres wherein he has constructed a Villa bearing No. 62B measuring 3.5 BHK. It is a project known as TOWNSVILLEE NEO TOWN which is situated at Hulimangala, Bengaluru.
4. On 04/03/2014 the Agreement was entered into. On that day the Complainant had made the first instalment and over a period of time totally he has paid Rs. 1,90,68,978/-. As per the Agreement the developer was expected to complete the project on or before June 2016 including grace period but till today he has not delivered the possession. Therefore this Complaint is filed seeking the relief of interest @ 24% p.a.
5. After registration of the case notices have been issued to the parties. Accordingly the Complainant has appeared through his Advocate. Later the Respondent/Developer has also appeared through his Advocate and filed objections.
6. Heard the arguments.

Peru
07/11/19

7. The point that arisen for my consideration was:
a. Is the complainant entitled for the relief as prayed in the complaint?
8. My answer is affirmative for the following;

REASONS

9. Before going to discuss on merits of the case it is necessary to say some facts. This complaint has been filed against the project Towns Ville. The complainant has entered into agreement with Patel Realty (India) Limited. But later the respondent had entered into sale / joint development agreement with Patel Engineering Limited. The respondent has give some explanation as under:

The respondent (erstwhile patel realty (India)ltd) has been amalgamated with patel engineering Ltd, vide order dated 06/07/2017 passed in CP No. 499 of 2019 by the NCLT Mumbai Bench, Approving and sanctioning the scheme of amalgamation, where by rights and liabilities of (erstwhile patel realty (India)ltd) now stan transferred in faver of Patel Engineering limited, including but not limited to the rights and obligations under the ownership of the properties offerstwhile patel realty (India), being the subject matter of this complaint. Thus, (erstwhile patel realty (India) is not a legal entity in existence today and hence the respondent ought to be replaced by the complainant with Patel Engineering Limited.

10. Under this background the name of the respondent is mentioned as above. However in order to complete the project the Patel Engineering Limited has entered into agreement with G.M. Infinite Dwelling Private Limited. It means the complainant has entered into agreement with respondent for Towns Ville project in the year 2014 where the developer has agreed to complete the project on or before June 2016 including the grace period. But now the project is still under development with new developer. Who has given the completion date to RERA as 10/10/2019. But however the agreement entered into the original developer is still in force. Since as per Section 15 of the RERA Act any project is transferred or assigned to a new developer the intending promoter shall comply

with all the pending obligations under the provisions of this Act as if it was entered with the same developer.

11. The Respondent has filed his objections and also produced some photos showing the progress in the project. It is the case of the respondent that the delay is not willful but it is having its own reasons. According to his argument he has undertaken to deliver the possession on or before 10/10/2019. Further it is the contention that as per the terms of the Agreement itself the Complainant has agreed to take the possession depending upon circumstances.
12. Further it is the case of the Respondent that due to heavy rain, sand strike, disruption of supply of cement, transporters strike, bandh are all some of the events caused the delay to the Developer to undertake the construction work.
13. I would like to say that as per the Agreement of Sale it was the responsibility of the developer to complete the project on or before 30/06/2016 but the developer has produced the RERA Certificate, wherein he has mentioned the date of completion as 10/10/2019. But the developer has submitted in a different way:

For the reasons discussed above, handing over of the unit in Townsville is delayed for reasons attributable to force majeure events, Government Orders/ Restriction/ Controls and other reasons beyond control of Respondent, more particularly cited as above.

We have already agreed in the Sale Agreement that we would hand over the respective units on the agreed date subject to above events as per clause 18 of the Sale Agreement which clarifies that the date stipulated for delivery of the Unit is subject to variation on account of force majeure or acts of God or Government Orders / Restriction / Controls and any other reasons which are beyond the control of the Vendor i.e., (Respondent).

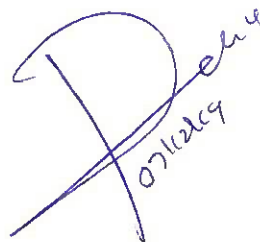
It will be not out of place to mention that, though only 47 number of Units / Villas have been sold, the Opposite Party

Deva
07/12/19

No.1 has completed the Civil works along with internal and external plastering for all the 124 Units, just without thinking about its expenses/profits. Even opposite Party No.1 has entered into the Joint Development Agreement by assigning a minority share (61 units Out of 124 Units), keeping in mind the interest of the project and the purchaser/s including the Complainant without looking into their own profits or gains so that the purchaser/s including the complainant shall not be deprived of their homes and with an intent to deliver the promises to the Unit purchaser/s including the Complainant. As minority share in the project is assigned to the M/s. G.M. Infinite Dwelling (India) Pvt. Ltd., no permission from Authority or consent of 2/ 3rd of Allottees is required to be obtained as per the RERA Act, hence question of violation of Section 15 and Section 17 of RERA Act does not arise at all.

Further, as the Respondents committed to deliver the units to the customers, and as to complete the project it entered into sale /joint development of various parcels of land including Joint Development of the Townsville project by assigning minority share with a local and reputed developer, M/s. G.M. Infinite Dwelling (India) Pvt. Ltd., in November 2017. As per the said Agreement, they have committed to complete the construction, development and completion of the project Townsville comprising of 124 Units along with all promised Infrastructure, amenities and facilities in another 24 months period from the date of the execution of the said Joint Development Agreement.

Further it would also have been difficult for GM to market and sell the Units to which GM is entitled to hence, as per the Clause 12.3 of Joint Development Agreement, the responsibility of registration of the project with your Hon'ble Authority is mutually agreed and accepted by M/s. G.M. Infinite Dwelling (India) Pvt. Ltd., and pursuant thereto, M/s. G.M. Infinite Dwelling (India) Pvt. Ltd., has registered the project with your Hon'ble Authority vide registration bearing No. PRM/KA/RERA/1251/308/PR/180611/001885.

A handwritten signature in blue ink, appearing to be 'D. S. S. S.', with the date '07/12/19' written below it.

14. Here there are two parts. Firstly the Complainant has entered into agreement with Patel Realty India Ltd., but now it is Patel Engineering Ltd. Of course it is said by the developer that the erstwhile project was merged with the present project by an order of NCLT in the year July 2017. As per the above pleadings it is very much clear that complainant who has entered into with Patel Realty (India) Ltd. Is deemed to be with the present developer GM Infinite deliver this project Townsville.
15. Whatever it may be, as per Section 18 the developer who has failed to deliver the unit by completing the same within the time mentioned in the Agreement he is bound to pay the delay compensation. The date mentioned in the RERA is only a date given by the statutory authority to enable him to complete the project which was not completed as on the date of enactment of this Act. The allotment letter was given on 22/11/2013. Of course the developer has produced number of documents to prove that the Bengaluru City was suffered with heavy rain. Under the same I would say that the developer cannot take shelter to deny the claim of the complainant because as per section 18 the developer is bound to pay the delay compensation when he failed to complete the project within the time as mentioned in the agreement. The complainant has submitted that the agreement executed by the developer is one sided and he failed to deliver the possession within reasonable time even from the date mentioned in the agreement and hence it is his case that the developer has no In this regard the complainant has given the decision.

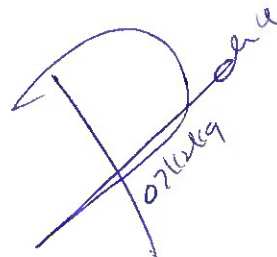
*IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No. 12238/2018,
Pioneer Urban Land & Infrastructure Ltd.
V/s
Govindan Raghavan*

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 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.

16. By taking the shelter of the above decision it is the argument of the complainant that whenever it proves that there is delay automatically the consumer is entitled for compensation. There is no quarrel with the same but the developer has said that he was prevented from so many genuine reasons from completing the project. I would say that in the above said decision it is observed that even obtaining the occupancy certificate also will not absolve the liability of the developer in case there is a delay. It is said that if the developer has received the delayed occupancy certificate then also the liability to give compensation will not absolve and hence the reasons now given by the developer will not certainly absolve him from the liability. It is his case that there was no any intention in causing delay. He has narrated so many grounds to support his delay. He has also referred to some decisions in his written argument:

A handwritten signature in blue ink, followed by the date '07/11/19' written below it.

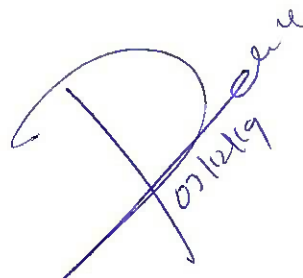
Hon'ble State Commission, West Bengal, though not binding on this Authority, yet to have persuasive value, in the case of Mr. Tapash Roy v/s Havelock Properties Ltd., (Complaint Case No. CC/247/2014), wherein the Hon'ble State Commission has observed as follows:

"xxxxxxx Needles to say, the parties are bound by the terms of the agreement. Both the parties have signed the agreement with open eyes evaluating its pros and cons and therefore, nothing can be added or detracted from the terms and conditions of the contract."

The Hon'ble Commission for recording afore said finding relied on a Judgment of the Hon'ble Supreme Court of India reported in AIR 1996 SC 2508 titled as Bharti Knitting Co. v/s DHL Worldwide Express Courier Division of Air freight Limited, wherein the Supreme Court has observed thus,

"In an appropriate Case where there is acute dispute of facts necessarily Tribunal has to refer the parties to original Civil Court establish under CPC or appropriate State Law, to have the claim decided between the parties. But when there is the specific term in the contract, the parties are bound by the Contract."

17. I would say that the above decision is also applicable to developer with a strict direction to him to adhere to the terms of the agreement. S.18 will come to aid of the consumers when there is a fault on the part of the developer who fails to adhere to the date mentioned in the agreement for completion. Therefore reasons for delay as given by the developer may be accepted only in case the delay has been caused for the reason of Force Majeure. But I would say that the reasons offered by the developer are only to satisfy himself but not to the spirit of S.18 of the Act. When once it is proved that there is delay it is the responsibility of the developer to compensate the consumer as prescribed in S.18 read with rule 16. I find no reason to dismiss the complaint based upon the grounds urged by the developer. The developer had agreed to complete the project in the year June 2016 in his written agreement where as now the date of completion given in the RERA is not matching at all.

A handwritten signature in blue ink, followed by the date 07/12/19.

It has been held in so many decisions that the date given in the agreement is the date for completion. If it is violated then automatically he is bound to compensate the consumer. Hence, the complaint is to be allowed by ignoring the submission made on behalf of the developer.

18. The complainant has produced the mail copies and some photos. The mail copy dated 22/08/2019 is produced in CMP. No. 594 where it is said as under:

Received your below demand letter. As you are aware that there is a case pending at RERA for inordinate delay of possession of the unit.

You are aware that we have already paid Rs. 1,39,09,833/- and only two installments are left to get the possession. During the last RERA hearing the Adjudicating officer had conveyed to Mr. Viswa Prasad, who was representing M/s. Patel Engineering that sending a demand note for further payments is unacceptable since this is under dispute and arguments have just began. Until a directive is given by RERA, we do not have to pay any installments.

Also in our case even the minimum compensation as per the Sale Agreement would exceed our outstanding payments and hence it is not wise to raise demand letters at this juncture. Hence we may not be able to honor this payment as per your demand for the above mentioned reasons.

We also bring to your notice that we are not at all updated about the project status including the handing over schedule which is of serious concern to us. We are disappointed with your approach of keeping us in dark about the project status but for the prompt communication for payments.

19. The photo reveals that the project is not completed in full sense. Further I would like to say that when the project has not been completed within the time as mentioned in the Agreement barring legal impediments even then it is the responsibility of the developer to pay the delay compensation. In the Judgment of the Apex Court it is also observed that in case there is an inordinate delay in completing the project the consumer is entitled for necessary reliefs.

*Done
07/09/19*

Further I would say to another point to the effect that the developer cannot change the date of completion from the date as mentioned in the Agreement just because he is invoking Section 15 of the Act. If we read Section 15 of the Act which reveals that the time assured in the original Agreement for completion of the project cannot be amended just because the new management has taken over the project. In Section 15(2) proviso it says as under:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made there under.

20. By looking into the case made out by the developer it is clear that the complainant has entered with the agreement with the respondent under the project name as Patel Realty (India) Limited but the same was changed to Patel Engineering Limited. Further the respondent has given minority share to one M/S G.M. Infinite Dwelling India Private Limited by executing the JDA. I would say that it is internal arrangement between the respondent and the other developer which is nothing to do with the complainant so far as his claim for delay compensation is concerned. Now the GM infinite has registered the project and as such question of violation of S.3 may not arise.
21. The complainant has sought for the relief as to direct the developer to register his project but while filing the physical complaint he has sought for the relief to take action against the developer for violation of Section 3 and also to grant compensation @ 24% p.a. As per the discussion made by me the complainant is entitled for delay compensation but not at the rate of interest claimed by him, because Rule 16 prescribes the rate of interest. The Adjudicating Officer is having the jurisdiction to decide the quantum of compensation.

Done
07/11/2017

22. In this case the complainant has alleged that the developer has violated Section 15 of the Act. for which the developer has given his own reasoning stating that the respondent has entered into the joint development agreement with M/s. G.M. Infinite Dwelling Pvt. Ltd. By assigning a minority share and that to after completion of all civil and construction work of 124 Units which has been undertaken by respondent themselves. As only minority share in the project has been entrusted for joint development, permission from the Allottees 2/3rd allottees to enter into joint development agreement is not required under the Law. But however the authority has to hear on this point and as such the file may be placed before the authority for taking action.

23. After the argument are completed the counsel for the developer has submitted a letter stating that schedule A covering 63 villas belongs to owners share and 61 villas covering the share of developers. In this regard:

We further submits that in view of the said allotment, our company shall be fully responsible for complying the norms of RERA pertaining to the Developer share as detailed above and likewise the same Patel Engineering Ltd., shall be responsible for the compliance of the RERA provisions pertaining to the Owner share more fully described on Schedule a herein have already been agreed to sold to same third party customers.

24. But it is not correct to say so since the question of districting between the developer and the land owner is not correct. As per S.2 (z)(k) of the Act the word Promoter is defined as under:

"promoter" means,-

- (i) a person who construct or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any other plots, for the purpose of selling to other persons all or*

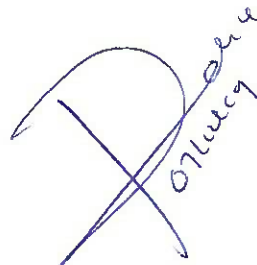
some of the plots in the said project, whether with or without structures thereon; or
(iii) any development authority or any other public body in respect of allottees of –

- (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
- (b) plots owned by such authority or body or placed at their disposal by the Government,

for the purpose of selling all or some of the apartments or plots; or

- (iv) an apex States level co-operative housing finance society and primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of the such apartments or buildings; or
- (v) any other person who act himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which of the building or apartment is constructed or plot is developed for sale; or
- (vi) such other person who constructs any building or apartment for sale to the general public.

In view of the same I say that the stand taken by the developer has no force and he is liable to answer to the claim of the complainant and equally liable to share the responsibility along with the land owner.



25. Before passing the final order I would say that 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 22/03/2018. As the project was not registered, the Authority has issued notices to get registration of his project commencing from 26/03/2018 till 15/05/2019. On that day Secretary has sent the file to this Authority for taking proceedings as the project was registered. There afterwards notice has been issued to parties.

The parties have appeared 07/06/2019 and after filing the objections the matter was heard and as such there is some delay in completing the complaint. Hence I proceed to pass the following;

ORDER

The Complaint No. CMP/180322/0000612 is allowed.

- a. The developer is hereby directed to pay interest @ 9% p.a. on the amount paid by the complainant up to July 2016 till April 2017.
- b. The Developer is also hereby directed to pay interest @ 2% p.a. above the MCLR of SBI commencing from 01/05/2017 till the possession is delivered after obtaining Occupancy Certificate.
- c. Further the developer shall pay Rs. 5000/- as cost.
- d. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 07/12/2019)

(K.Palakshappa)
Adjudicating Officer

NOT AN OFFICIAL COPY