

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/190213/0002123

Presided by Sri K Palakshappa

Adjudicating Officer

Date: 08/07/2019

Complainant : Sachdeepak Arora & Shashikala Arora
No. A/2-403, Purva Atria, MV 2ND Stage
1st Block,
Bengaluru - 560094
Rep. by Sri H.M. Sudheer, Advocate

AND

Opponent : Mantri Manyata Lithos
Mantri Technology Constellations Pvt.
Ltd., No. 41, Vittal Mallya Road
Mantri House, Bengaluru- 560001-
Rep. by Sri G.V.Chandrashekhar,
Advocate.

"J U D G E M E N T"

1. Sachdeepak Arora & Shashikala Arora, Complainants jointly filed this complaint bearing No. CMP/190213/0002123 under Section 31 of RERA Act against the project "Mantri Manyata Lithos" developed by Mantri Technology Constellations Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

The Complainants entered into an Agreement for Sale of undivided interest dated 07.12.2013 with the Respondent (Developer) and M/s. Manyata Realty (Owner) agreeing to purchase an undivided share in the project by the name ?Mantri Manyata Lithos? (?said Project?), situated at Rachenahalli, K R Puram Hobli, Bangalore South Taluk, Bangalore. The said Project has been registered under Real Estate (Regulation and

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Development) Act, 2016 (?RERA Act?) and the Karnataka Real Estate (Regulation and Development) Rules, 2017 (?RERA Rules?) bearing registration number PRN/KA/RERA/1251/309/PR/171201/000444. The copies of the Agreement for Sale of undivided interest and the RERA registration certificate are enclosed herewith as Annexure A & B. 2. Simultaneously the Complainants also entered into an Agreement of Construction dated 07.12.2013 with the Respondent to get the apartment No. B-304 constructed in the said project.

Relief Sought from RERA : Possession, delay interest, compensation and other

2. In pursuance of the notice issued by this authority, Shri H.M. Sudheer Advocate filed Vakalath on behalf of the complainant. Anup shah Law firm filed vakalath on behalf of the developer. Later the developer has filed Objection for which the complainant filed his reply.
3. The point that arise for my consideration is
4. Whether the complainants are entitled for the relief of Delay Compensation?
5. My answer is affirmatively for the following

REASONS

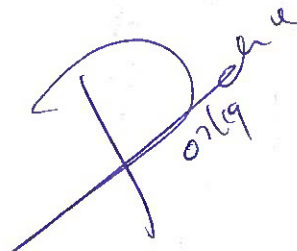
6. In the month of December 2013, the complainant has entered into Agreement with the respondent in respect of flat no. B-304 wherein it was agreed to handover the possession on or before 1st July 2017. The complainant till date had been paid Rs. 79,88,146/- towards sale consideration. It is alleged by the complainants that the developer has failed to complete the project/apartment as per the commitment given to the complainant under the agreement of construction. Further the respondent has unilaterally extended the time line to hand over the said apartment to the complainant from July 2017 to December 2018 which is contrary to the provisions of RERA Act and Rules. It is also surprising that the respondent is now demanding additional amount towards stamp duty and registration fee.
7. The developer has given some reasons for non-completion of the project in stipulated period. He says as

It is hereby submitted that the schedule flat could not be delivered on the date as mentioned in the said construction agreement due to various reasons such as

- a. Firstly, there is no availability of sand due to strike by sand suppliers and lorry drivers;
- b. Secondly, the Hon'ble High Court of Karnataka had imposed restriction on the working hours of construction by the builders. Subsequently, the pace at which construction work should have proceeded declined further adding to delay in handing over possession of the apartment.
- c. The formulated plan of construction was delayed and also for force and other reasons such as non - availability of raw materials, work force and other Force majeure events which are beyond the control of the respondent. As per the construction agreement, it is specifically mentioned and agreed upon that the date of delivery of possession with regard to apartment is subject to payment of all dues by complainant and issuance of the occupancy certificate.

The completion of project named MANTRI MANYATA LITHOS is burdened due to nonpayment of installments on time by other purchasers in the project.

I state that, while the construction work was under progress, during November 2016, our country faced demonetization, due to which there was major financial crises. The respondent was also affected financially and faced various issues to continue with the construction work in a smooth manner. As stated supra and coupled with the fact that the respondent's


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project was a big one, laborers were large in number. Laborers at the construction site were to be paid their daily wages for their work. Since the laborers did not possess bank accounts, the respondent could not deposit/transfer the money to their respective accounts."

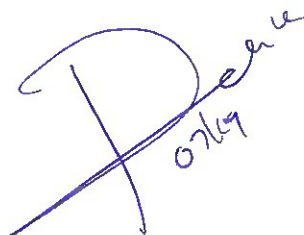
8. The developer calls those reasons as Force Majeure. But I am not going to accept these reasons because the developer has collected the amount from the complainant since 2013. There is a clause in the agreement for delay compensation in case of delay in completion of the project. Admittedly the delay has been caused and the developer has not completed the project within the time as mentioned in the agreement.
9. When the agreement shows the clause for the payment of delay compensation, the developer has to pay the same. Of course he submits that he is liable to pay compensation only from the month July 2019 but not from the month of July 2017. It means the delay is proved and eligibility to get the compensation is also proved. Now the only point is from which date the complainant is entitled for Delay Compensation has to be ascertained. This point is already made clear and accordingly the developer has to pay the delay compensation from the date mentioned in the agreement.
10. At the time of argument the Learned Counsel for the complainant submits that the developer cannot say that he is ready to pay delay compensation as mentioned in the agreement because he will impose interest @18% to him. Therefore, there should be parity in payment of interest. I find some force because as per Sec. 19(7) the liability to pay interest is prescribed. Therefore, the submission made on behalf of complainant is having force. The developer has no voice against the same.
11. The learned counsel for the complainant has given some decisions given by different authorities including the consumer

forum. The main submission made on behalf of the complainant is that the developer who had agreed to deliver the flat in favour of the complainant has failed to comply with the same. According to him Section 18 mandates the developer to give compensation for the delay in completing the project. In support of the same he has relied on some decisions given by this authority itself along with the decisions given by Consumer Redressal forum New Delhi.

12. The advocate for the complainant has submitted that the developer who is collecting the interest @ 18% for the delayed payment and giving a meagre amount to the Consumer as delay compensation is nothing but an unfair practice.

13. I would like to say that there is no quarrel on this point because Section 12, 14, 18 and 19 of RERA act is applicable as per the clauses mentioned in the agreement since it is said that the disputes pending before the consumer forum either before the commencement of the Act or after the commencement of the act may be transferred to the RERA authority for disposal. This principle goes to show that the delay compensation has to be paid only from the date mentioned in the agreement of sale as due date. When that being the case the argument canvassed on behalf of the developer that the delay compensation has to be paid by the developer only in case he fails to deliver the possession from the date as mentioned in the RERA application falls on the ground. Therefore I say that the argument submitted on behalf of the Complainant is supported with the varieties of decisions and I say that the complainant is entitled for the delay compensation from the due date as mentioned in the agreement of sale which was duly executed between the parties. In addition to it the developer shall not call the complainant to get the sale registered until the developer gets the Occupation Certificate.

14. 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.


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This complaint was filed on 13/02/2019. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the parties were present on 12/03/2019. Hence there is a little delay in closing this complaint.

ORDER

The Complaint filed by the complainant bearing No. CMP/190213/0002123 is allowed by directing the developer to pay delay compensation @10.75% p.a on the amount received from the complainant for purchase of the flat commencing from August 2017 till the developer executes the Sale deed after obtaining Occupancy Certificate by providing all the amenities.

Further the developer shall also pay Rs. 5000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 08/07/2019).

(K.PALAKSHAPPA)

Adjudicating Officer