

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by: Shri K .PALAKSHAPPA

Adjudicating Officer

Date: 30th MAY 2019

Complainant:

1. CMP/171230/0000360
SUDHAMANINAN NGARAJAN
Flat no. 304 Srinilaya Apartments No. 22
Church Street, Murgesh Palaya
Bengaluru -560017
2. CMP/171230/0000361
SUDARSHAN T N
Flat no. 203, Abhirami Enclave ,
5th Cross Manjunath
Layout, Murugeshpalya
Bengaluru - 560017
3. CMP/180102/0000369
ARULSELVAN P K
112 Durgashree Tanishq Arena
Immadihalli main road, whitefield
Bengaluru -560066
4. CMP/180105/0000376
G. PRAVEEN KUMAR
G-11, A block, SLS Sapphire Apartments
Boganahalli road, Panathur
Bengaluru -560087

Denu
30/05/19

5. CMP/180107/0000382
MADHU GORLE
F202, Balaji Elegance,
Swami Vivekananda
Road Prashanti Layout,
Whitefield,
Bengaluru -560066

6. CMP/180125/0000422
SACHIN MODI
409, Malibu Paloma,
Borewell Road
Whitefield
Bengaluru -560066

AND

Respondent : Chennam Rangaswamy
and
Lakshmi Rangaswamy
"CMRS Courtyard"
#573, AECS Layout, C Block,
Main Road Opp ICICI Bank,
Bengaluru -560037

J U D G E M E N T

1. Subramaninan Nagarajan and Others under complaint
CMP/171230/0000360, CMP/171230/0000360,
CMP/180102/0000369, CMP/180105/0000376,
CMP/180107/0000382, CMP/180125/0000422 have filed these
complaints under Section 31 of RERA Act against the project
"CMRS Courtyard" developed by BRL Ventures Private Limited as
the Complainant is the consumer in the said project. I had taken
the fact of first case which is similar to other case which reads as
under;

 2

I had booked the Row House Number 22 in CMRS Courtyard Project and the sale agreement was completed by 8-Sep-14. Possession agreed by the builder was February 2015 with the grace period of 3 months as per the sale agreement. He has not completed the Project so far and not handed over to me. Now I am suffering with the delay of 2 Years 7 Months. I have taken the loan from State Bank of India for this property and paying the EMI of Rs 79,624/- per month for the last 3 years 1 Month. There is a interest loss of 15 Lacs so far due to this long delay. Builder has given various promises and not handed over the unit so far. He has also not registered this Project under RERA so far. Even after getting receipts of the amounts builder did not fulfill my part of contract as per the agreement and have not kept up the assurances and failed to give the possession of the Row house before May 2015. whenever I ask for the possession, builder kept postponing the same by giving one or other excuses, but with hope that builder will give the possession of the apartment I had made all the payments, even though builder have not fulfilled his part of obligation as per the agreement. Till today he has not completed the construction of the Row house as per the agreement. I have paid more than 90% of the agreed sale consideration of the Row House. Work is also completely stopped at the site and there are quality issues too. As per the agreement, builder has agreed to pay Rs.20,000 per month as compensation and I have not received any compensation also so far. Request you to review this complaint and take appropriate steps on this as soon as possible.

Relief Sought from RERA : REFUND OR POSSESSION
WITH INTEREST COMPENSATION

2. The above complainants have filed their respective complaint against the same project court yard. Chennam Rangaswamy was the developer in which all the complainants have agreed to purchase the Row H/no 22, 26, 11, 19, 38, and 14 respectively.

Done
30/05/19

The definition of the project provided in section 2 (ZJ) is as under:-

"Project" means real estate project as defined in clause 2 (Zn) under this Act.

Accordingly, project means real estate project as defined in clause 2 (ZN).

In this definition, it is not mentioned that real estate project means registered real estate project. There is requirement of registration of real estate projects unless exempted and also restriction on certain activities without registering the projects. Registrations of real estate projects for certain categories have been exempted from registration but not from the provisions of the Real Estate (Regulation and Development) Act, 2016. Otherwise, it would have been mentioned in the applicability part by saying that this Act is applicable only to registered real estate project.

4. The above observation gives an impression that the complaint filed against any kind of project be heard by the Authority.
5. The complainants of respective cases have submitted that they may be awarded with delay compensation. As per Section 18 the delay compensation has to be awarded upon the sale agreement but in this case all the complainants had taken sale deeds from the hands of developers. The complainant has given chart showing the deficiency of personal amenities and common amenities.

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30/05/19

Details For RERA	
Items details	cost
Each Villa	
Villa External Painting Material + Labour per Villa	53,000
Villa External Cladding Material + Labour per Villa	39,800
Video Door Phone per Villa	12,000
Solar Water Heater 100 LPH	20,000
Total	1,24,800
Amenities & Common work	
Intercom	35,000
Rain water Drain	1,80,000
Entrance Pergola	70,000
Name and Villa No	35,000
DG	15,00,000
Amenities - Club House Civil Work	35,00,000
Amenities - Swimming Pool	10,00,000
Amenities - Kids Play Area Equipment & Sand	5,00,000
Amenities - Games Area	2,50,000
Amenities - Steam & Sauna	2,50,000
Amenities - Gym Area	7,00,000
BESCOM permanent power	1,00,000
External Compound wall painting	40,000
Landscaping & Garden AREA	2,00,000
CCTV	3,00,000
Occupancy Certificate as per builder ask from BBMP	45,00,000
TOTAL	1,31,60,000

Done
30/05/19

6. The consumer submits that they have taken the sale deed but the developer fails to give above amenities which have been shown in the tabular column with approximate cost. It is submitted that the developer has to give the personal amenities which costs Rs.1,24,800/- to each consumer and about Rs. 1,31,60,000/- worth of other kind of amenities. It means the complainants wanted to say that though the developer has executed the sale deed but he has committed grave error in executing the sale deed for two reasons.
7. Firstly, the sale deed has been executed by the developer in contravention of Section 17 of the Act. Secondly, question of taking occupancy certificate by him does not arise because his project itself is rejected by this authority on 01/06/2018 and till today the developer has not made any attempt to get cancellation of the said order.
8. As per Section 19 (10) the Developer was expected to call the allottee for taking possession within 2 months from the date of receipt of occupancy certificate. Therefore the developer who had executed sale deed in violation and which is not in compliance of Section 17&19(10) of the Act. Further the allegation made by Complainants that the possession has not been delivered according to Law. Therefore it is the duty of developer to get the occupancy certificate at the first instance otherwise it will attract Section 18(3) for violation of the obligation and the Developer has to pay compensation but not with terms and condition of agreement of sale.

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9. Hence by taking into consideration of above facts and circumstances the compensation cannot be granted as per the guideline of Section 18 (1) because as on today or as on the date of complaint, the Agreement of Sale was not in existence. Therefore grant of compensation as per Section 18 (1) is not possible. However there is clear violation of Section 18 (3) for violation of obligation on the part of the Developer. Hence all the Complainants are entitled for reasonable amount of compensation.
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. As per SOP, 60 days shall be computed from the date of appearance of the parties. The developer has not at all appeared means the question of delay does not arise. Hence, I proceed to pass the following


20/05/2019

ORDER

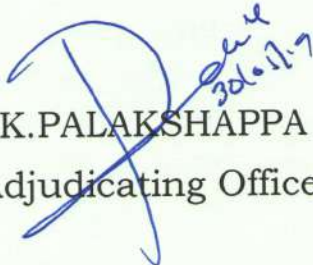
The Complaint filed by the complainant bearing No CMP/171230/0000360 and other 5 cases are allowed by directing the developer to pay delay compensation of Rs.10,000/- per month to each of the complainant till the possession is given in accordance with Law commencing from the month of March 2018.

The developer is here by directed to give facilities/amenities as mentioned in the above tabular.

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

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 30/05/2019).


(K.PALAKSHAPPA)
Adjudicating Officer