



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp.No: 5942

ಪುಟ ಸಂಖ್ಯೆ -10-

ವಿಷಯ K. N. Chandrashekhara

Mantri Serenity

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP- 5942

16.12.2022

As per the request of the complainant and Authorised person for the respondent the execution proceeding in this case is taken-up for settlement, in the Lok Adalat.

Complainant has joined through phone call and Authorised person for the respondent are present, in the pre Lok - Adalat held on 16.12.2022. The complainant has already filed a memo reporting settlement dated:02.11.2022 settling the matter in connection with execution proceedings, stating that the claim of the complainant in this complaint is fully satisfied as stated in said memo reporting settlement and complainant has no further claim in this case against the respondent whatsoever. The settlement entered between the parties is voluntary and legal one. The settlement is accepted and consequently the execution proceedings in the above case have been closed as settled between the parties as per the above memo reporting settlement. Consequently the revenue recovery certificate issued against the respondent (developer) is hereby recalled. Issue intimation about the recall of the revenue recovery certificate to the concerned DC. The conciliator to pass award.


Judicial Conciliator.


Advocate Conciliator.

CMP - 5942

16.12.2022

Before the Lok-Adalath

The case in connection with execution proceedings in the above case taken up before the Lok-Adalat. The memo reporting settlement dated: 02.11.2022 already filed in the case is hereby accepted and the said memo reporting settlement shall be part and parcel of the award. Hence, the execution proceedings in the above case settled before the Lok-Adalat as per memo reporting settlement.

The execution proceedings in the above case stands disposed off as settled and closed accordingly.


16/12/22
Judicial Conciliator.


16/12/2022
Advocate Conciliator.

KARNATAKA STATE LEGAL SERVICES AUTHORITY
BEFORE THE LOK ADALAT
IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU

DATED: 16TH DECEMBER 2022

: CONCILIATORS PRESENT:

Sri. I. F. Bidari

..... Judicial Conciliator

AND

Ms. Jasleen Kaur

..... Advocate conciliator

COMPLAINT NO: CMP/200618/0005942

Between

Sri. K. N. Chandrashekar

..... Complainant

AND

M/s. Mantri Castles Pvt. Ltd.,
(By: Authorised person for respondent)

.....Respondent

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, as per memo reporting settlement dated: 02.11.2022, same is accepted. The settlement entered between the parties is voluntary and legal one.

The execution proceedings in the above case stands disposed off as per memo reporting settlement and memo reporting settlement is ordered to be treated as part and parcel of the award.


Judicial conciliator


Advocate conciliator

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority, Bengaluru

ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI K PALAKSHAPPA

Dated: 26th NOVEMBER 2020

Complaint No.	CMR/200619/0005942
Complainant :	K N Chandrashekhar No.42, Ground Floor, Tejas Apartment 14 th Main, RBI Layout, J P Nagar 7 th Phase Bengaluru Urban – 560078 Rep. by Srin Mohan Kumar Advocate
Opponent :	1. Mantri Castles Pvt Ltd. MantriHouse, #41, VittalMallyaRoad, Bengaluru Urban – 560001. 2. M/S Gokulam Shelters Private Limited Gokulam Complex, 8 th Mile, Doddakallasandra Post, Vasanthapura Village, Kanakapura Main Road, Bengaluru Urban - 560062 Rep. by Sri Sunil Prasad Advocate

J U D G E 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:

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I state that due to the various representation and sale promotion of the Respondents, I looked for purchasing apartment bearing Number L 204 in the year 2013. It is submitted that the total cost of the apartment was agreed at Rs. _____ - and possession was agreed to be handed over by 31.12.2015.

I state that even after lapse of considerable amount of time, the Respondent failed to complete the project. I state due to my failing health condition, the Respondent requested me to get Sale Deed executed and registered, as such I got Sale Deed executed and registered on 19.09.2015 vide Sale deed registered as Document No.BMH-1-04156-2015-16, stored in CD No BMHD716, in the Officer of Sub-Registrar Bommanahalli by paying all the payments. I state that I have totally paid a sum of Rs. 62,73,597/- as on 19.09.2015. I state that the Sale Deed was executed with handing over the possession of the Apartment and without even completing the Apartment.

I state that since the Respondents failed to complete the project on time and deliver possession on time, I am suffering financially as I am unable to gain anything. I state that I am entitled to an interest @ 12% per annum for the delayed period for all our money paid to them. I state that I was badly treated by the Respondents causing immense mental pain and agony. I state that the Respondents has indulged in unfair trade practice and enriched themselves at our cost. Due to the delay in completion and handing over of the Apartment, I state that I am put into immense mental pain and agony as such entitled for compensation and damages as per various provisions of RERA Act. I state that due this our savings and earnings on my savings have been completely wiped off, as such the Respondents are liable to make good

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for the said losses. I request to file detailed claim statement and additional documents during the course of hearing if required. Hence for the brief facts mentioned above we are seeking for following Reliefs:-

1. Direct the Respondents to handover the possession of the Apartment L20-1 in residential building known as "Mantri Serevity" along with all amenities and Occupancy Certificate. 2. Direct the Respondents to pay delayed compensation on the entire Sale Consideration of Rs. 62,73,597/- @ rate of 12% per annum from 31.12.2015 till handing over the Occupancy Certificate and amenities. 3. Compensation for the Mental Agony and pain and Damages to an extent of Rs.5,00,000/- 4. Compensation for unfair Trade practice to an Extent of Rs.3,00,000/- 5. Cost of litigation and expense to an Extent of Rs.50,000/-. We kindly request RERA to look at our case with compassion and allow our complaint.

Relief Sought from RERA:

As prayed in the Facts of Complaint

2. After registration of the case notice has been issued to the Respondents. The Developer has appeared through his Counsel Sri. Sunil Prasad who has filed the objections.
3. This case was filed in the month of June 2020. Notice has been issued to the developer to file objections but he did not file it. Hence, the case has been called through Skype. Advocate for complainant and respondents have appeared and submitted the arguments. The learned counsel Sri Sunil Prasad has filed the objections and submitted his arguments.

Done
26/11/2020

4. The point that arisen for my consideration was:
 - a. Is the complainant entitled for Delay Compensation?
5. My answer is affirmatively for the following;

REASONS

6. It is the case of the complainant that he has entered into agreement with the respondents on 22/03/2013 in respect of unit bearing No.L-204. It is submitted that, the agreement entered into between the Respondents and the complainant stipulates that, the respondent was required to hand over possession of the subject Apartment on 31.12.2015. It is his case that the developer has executed the sale deed on 19/09/2015 but failed to complete the project and deliver of possession is not yet happened.
7. The developer has filed his objection statement as against the case made out by the complainant. The Complainant has currently approached this Hon'ble Forum seeking compensation from the Respondent for alleged delay in handing over of possession of apartment in the Project. It is stated that the present complaint is not maintainable in law or in facts.
8. It is further relevant to mention here that the delay in completion of the project was also due to numerous unforeseen circumstances like:

The State under Karnataka Industrial Area Development Board, had issued a preliminary notification Dt.09.01.2013 proposing to aquire the land measuring 4259.88 sq.mtrs. comprising in sy.no.56,60 situated at Doodakalasandra village, Uttarahalli Hobli, off, Kanakapura Road, Bangalore South Taluk, belonging to

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26/11/2015

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority, Bengaluru
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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

the Respondent, for the benefit of Bangalore Metro Rail Corporation Limited. Thereafter, final notification Dt.16.06.2015 was passed. The same was challenged by the respondent before the Hon'ble High Court and ultimately, the said issues came to be resolved on 13.10.2015. In view of the pendency of the said proceedings, the respondent could not execute the project during such time. Immediately, upon resolution of the dispute with regard to the acquisition proceedings, the respondent could commence the project. It took more than two years to arrive at a resolution with respect to the said acquisition proceedings, as such the said period of two years is required to be excluded. Therefore, the delay has caused not due to the default on the part of the respondent but for the bonafide reasons stated above and the same was beyond the control of the respondent.

Further the developer has also said that his project was not completed within the due time on account of arbitral dispute between the contractor and the developer, due to heavy and continuous rainfall, due to curb on illegal sand mining mafia, demonetization and now covid epidemic.

9. These are the grounds urged by the developer explaining the delay in completing the project. Further the developer submitted that, it is by now well settled that Sec.18 of the RERA Act,2016 operates only prospectively i.e. on antecedent facts, and as such, delay compensation under section 18 can be awarded only when the fresh time line of completion as per section 4(2) (1) (C) of the Act is violated, and cannot be made applicable to date of completion as stipulated in the Agreement to Sell.
10. Thus, the relevant provisions of RERA Act which prescribe compensation to the allottees in the event of the developer failing to handover possession of Agreement are applicable only if the

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developer fails to complete the project within the extended time period.

11. I would say that the reasons given by the developer will not attract the provision of force majeure and therefore exemption cannot be given to the developer from the liability. The stand taken by the developer has no force at all. The complainant has booked the flat bearing no.L-204 by entering into agreement on 22/03/2012 and a paid a sum of Rs.62,73,597/-. In this regarding the learned counsel for the complainant has submitted that the complainant has given the above said amount in the month of September 2015. The developer was expected to complete the project and hand over the possession of the unit on or before 31.12.2015. However the complainant has been given sale deed on 19/09/2015. In this regard the learned counsel for the complainant submits that the developer is liable to pay the compensation from the due date till the possession is delivered by obtaining the occupancy certificate.
12. It is important to note that the Occupancy Certificate is not yet obtained by the developer. As per Section 19(10) of the Real Estate Regulation and Development Act, 2016, every allottee is entitled to take physical possession of the apartment within 2 months from the date of issuance of Occupancy Certificate. In this regard it is alleged by the complainant that despite continuous demands and requests, the respondents had failed to respond and handover the possession of the apartment causing loss of income and mental agony.

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13. Further it is said that despite series of enquires there was no active response from the Respondents which clearly shows their negligence. At different stages and timelines despite the undue delay and hardship caused by the Respondents, the Respondents have on one or the other pretext taken further time to perform their part of contractual obligations and had not fulfilled the conditions of the said agreement and have committed default. The quality and amenities of the apartment were not as promised under the Agreements. The Respondents executed Sale Deed dated 19.09.2015 in favour of the Complainant as against the date of completion as mentioned in the agreement.
14. It is submitted that despite lapse of nearly 5 years from the date of expected delivery of possession of Apartment and series of letters along with emails, the Respondents had failed to deliver it within the committed period of time. It is the say of the complainant that in view of the aforesaid facts, Respondents are liable to pay compensation for delay of possession, along with interest on a total Sale Consideration of Rs. 62,73,597/- paid by the Complainant.
15. In this regard the counsel for the complainant has relied upon a recent decision of the Hon'ble Supreme Court of the India's Judgment dated 24.08.2020 in Civil Appeal No.6239/2013, Wg.Cdr.Arifur Rahman Khan and Aleya Sultana and Ors Versus DLF Southern Homes Pvt Ltd(now Known as Begur Homes Pvt.Ltd.) and Ors.

The only issue which then falls for determination is whether that flat buyers in

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these circumstances are constrained by the stipulation contained in clause 14 of APB providing compensation for delay at the rate of Rs 5 per square feet per month. In assessing the legal position, it is necessary to record that the ABA is clearly one-sided. Where a flat purchaser pays the installments that are due in terms of the agreement with a delay, clause 39(a) stipulates that the developer would "at its sole option and discretion" waive a breach by the allottee of failing to make payments in accordance with the interest at the rate of 15 per cent per month for the first ninety days and thereafter at an additional penal interest of 3 per cent per annum. In other words, a delay on the part of the flat buyer attracts interest at the rate of 18 per cent per annum beyond ninety days. On the other hand, where a developer delays in handing over possession the flat buyer is restricted to receiving interest at Rs. 5 per square foot per month under clause 14 (which in the submission of Mr. Prashant Bhushan works out of 1-1.5 per cent interest per annum). Would the condition which has been prescribed in clause 14 continue to bind the flat purchaser indefinitely irrespective of the length of the delay? The agreement stipulates thirty-six months as the date for the handing over of possession. Evidently, the terms of the agreement have been drafted by the developer. They do not maintain a level platform as between the developer and

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purchaser. The stringency of the terms which bind the purchaser are not mirrored by the obligations for meeting times lines by the developer. The agreement does not reflect an even bargain.

23. On behalf of the flat purchasers it has been urged by Mr. R. Balasubramanian (a submission which has not been controverted in rejoinder) that 95 per cent of the purchase price was paid during the course of the first two and a half to three years. The agreement did not stipulate that the developer would pay any interest on the amount which had already been received. A large chunk of the purchase price was thus available to the developer to complete construction. The court must take a robust and common-sense based approach by taking judicial notice of the fact that flat purchasers obtain loans and are required to pay EMIs to financial institutions for servicing their debt. Delays on the part of the developer in handing over possession postpone the date on which purchasers will obtain a home. Besides servicing their loans, purchasers have to finance the expenses of living elsewhere. To postulate that a clause in the agreement confining the right of the purchaser to receive compensation at the rate of Rs 5 per square foot per month (Rs 7,500/- per month for a flat of 1500 square feet) precludes any other claim would be a manifestly unreasonable

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construction of the rights and obligations of the parties. Where there is a delay of the nature that has taken place in the present case ranging between periods of two years and four years, the jurisdiction of the consumer forum to award reasonable compensation cannot be foreclosed by a term of the agreement. The expression deficiency of services is defined in Section 2(1) (g) of the CP Act 1986 as :

“(g) ‘deficiency’ means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service”

“26. The court observed that the award of compensation has to be based on a finding loss or injury and must correlate to it. The court observed that no “hard and fast rule” could be prescribed:

“8...No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss of rent which could have been earned if possession was given and the premises let out or if the

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consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical." Where possession has been given, one of the circumstances which must be factored in is that the purchaser has been compensated by the increase in the value of the property."

34. The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit it into a pattern. The developer does not state that is was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is

whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view."

"35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

*It has been urged by the learned counsel of the developer that a consequence of the execution of the Deed of Conveyance in the present case is that the same ceases to be a transaction in the nature of "supply of services" covered under the CP Act 1986 and becomes a mere sale of immovable property which is not amenable to the jurisdiction of Consumer Fora. In **Narne Construction (P) Ltd. v. Union of India** 21, this Court distinguished between a simple transfer of a piece of immovable property and housing construction or building activity carried out by a private or statutory body falling in the category of service" within the meaning of Section 2 (1) (o) of the CP Act 1986.*

This Court held that:

"8. Having regard to the nature of transaction between the appellant Company and its customers involved much more than a simple transfer of a piece of immovable property it is clear the same constitutes "service" within the meaning of the Act. It was not the case that the appellant Company was selling the given property with all its advantages and/or disadvantages on "as is where is" basis, as was the position in UT Chandigarh Admn v. Amarjeet Singh. It is a case where a clear-cut assurance was made to the purchasers as to the nature and extent of development that

would be carried out by the appellant Company as a part of package under which a sale of fully developed plots with assured facilities was made in favour of the purchasers for valuable consideration.

To the extent the transfer of site with developments in the manner and to the extent indicated earlier was a part of the 21 (2012) 5 SCC 359 37 transaction, the appellant Company has indeed undertaken to provide a service. Any deficiency or defect in such service would make it accountable before the competent Consumer Forum at the instance of consumers like the respondents." The developer in the present case has undertaken to provide a service in the nature of developing residential flats with certain amenities and remains amenable to the jurisdiction of the Consumer Fora. Consequently, we are unable to subscribe to the view of the NCDRC that flat purchasers who obtained possession or executed Deeds of Conveyance have lost their right to make a claim for compensation for the delayed handing over of the flats.

16. Based upon the above observation made by the Hon'ble Apex Court it is clear that the authority has to take into consideration of circumstances as to why the developer has executed the sale deed. In order to evade to pay the delay compensation, such kind of trick might have been used. So, as per the observation made in the above judgment the developer

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even though he has executed the sale deed cannot escape from the said responsibility and hence, I allow this complaint.

17. In this case the complainant is seeking delay compensation from the developer by saying that the developer has failed to complete the project as agreed in the agreement. The Honorable Apex Court has said that the buyer shall not be made to wait for in definite period. It is also observed that a buyer may be asked to wait for 2 years from the due date irrespective of obtaining the Occupancy Certificate. Here the developer was accepted to deliver the possession on before 01.01.2016 and now more than 4 years has been completed and still the developer is not able to Occupancy Certificate. Therefore the developer is liable to compensate the complainant of course the developer has given some excuses for his delay. I would say that those excuses are not sustainable in view of in ordinate delay in non completion of the project.
18. The developer had executed the sale deed in favour of the complainant on 19.09.2015 which is 3 months earlier to due date. In the said document in column 10(2) the developer has referred to delivery of possession. I would say that theory of delivery of possession through that sale deed has no legal sanctity. As per section 19(10) of RERA Act. The developer has to deliver the possession only after taking the Occupancy certificate. In case any developer claims that he has already put in possession of the flat plot, building or villa without obtaining Occupancy Certificate means it is without jurisdiction.
19. In support of my discussion I would like to refer to the decision of the Hon'ble High Court of Karnataka as per observations made by the Hon'ble High Court of Karnataka in Writ petition

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Karnataka Real Estate Regulatory Authority, Bengaluru
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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560021.

No.11522/2012 clubbed with 739/2013. Wherein it is observed that:

The construction of buildings is governed by the Bengaluru Mahanagara Palike Building Bye-Laws 2003. Bye-law 5.6 is with reference to grant of an occupancy certificate, which reads as follows:

"5.6. Occupancy certificate-5.6.1(a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of the erection of a building shall send intimation to the Commissioner in writing of such completion accompanied by a certificate in Scheme VIII certified by a Registered Architect/Engineer/Supervisor and shall apply for permission to occupy the building. The authority shall decide after due physical inspection of the building (including whether the owner had obtained commencement certificate as per section 300 of the Karnataka Municipal Corporations Act, 1976 and compliance regarding production of all required documents including clearance from the Fire Service Department in the case of high-rise buildings at the time of submitting application) and intimate the applicant within thirty days of receipt of the intimation whether the application for occupancy certificate is accepted or rejected. In case, the application is accepted, the occupancy certificate shall be issued in the form given in Schedule IX provided the building is in accordance with the sanctioned plan.

(b) Physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and

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requirement of building bye-laws, and includes inspections by the Fire Service Department wherever necessary.

(c) If the construction or reconstruction of a building is not completed within five years from the date of issue of licence for such a construction, the owner shall intimate the Authority, the stage of work at the expiry of five years. The work shall not be continued after the expiry of five years without obtaining prior permission from the Authority. Such continuation shall be permitted, if the construction or reconstruction is carried out according to the licensed plan and if the Authority is satisfied that at least 75% of the permitted floor area of the building is completed before the expiry of five years. If not, the work shall be continued according to a fresh licence to be obtained from the Authority.

5.6.2. For all high-rise building, the work shall also be subject to inspection by the officers of the Karnataka State Fire Service Department and the occupancy certificate shall be issued only after obtaining a clearance certificate from the Director of Fire Services."

11. Bye-law 5.7 postulates various requirements. The first is that no person shall occupy or let-in any other person to the building or part thereof, until an occupancy certificate to such a building or part thereof has been granted. Therefore, until and unless an occupancy certificate is granted, no building or part of it, can be occupied. Secondly, the grant of occupancy certificate shall be only after the opinion of the officer is to the effect that in every respect, the building or part thereof is complete, according to the plan sanction and that it is fit for use for which it was erected.

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12(a). The first part of Bye-law 5.7 clearly narrates that no person can occupy the building or part thereof without an occupancy certificate. Admittedly persons have been induced prior to grant of POC. It is contrary to law. The occupation of the building or part thereof is opposed to law. No person can be inducted in any manner whatsoever, without an occupancy certificate by the corporation. Therefore, all such persons who have been inducted prior to the grant of POC, are in illegal occupation.

20. In view of the above position of law the argument submitted by the counsel so far as deliver of possession is concerned falls on the ground. Therefore the developer is bound to compensate the complainant.
21. However the developer has taken some more contentions that the Respondent has completed the majority of the works and the balance work for completion is minimal. The work for the same will achieve full speed since the documentation for the proposed funding by Government Real Estate Stress Fund is completed and received the fund from the Government.
22. It is submitted that now the funds are released under the SWAMIH Fund Scheme and the work has already commenced in full swing, the project will be completed at the earliest and as per the declaration provided to the Investment Committee of SWAMIH Investment Fund, the funds disbursed by the Committee shall strictly be utilized only for completion of the project and it cannot be diverted or utilized for refund of the amount/payment of delay compensation, etc., and therefore this Hon'ble Authority can take a lenient view in awarding the

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delay compensation or defer the matter till completion of the project.

23. Further it is the case of the developer that as per the extension given by the authority on his application his project completion date would be 29.01.2021 and therefore according to developer there is no delay at all. I would say that this argument is not correct. Since it is well settled that the date of completion as mentioned in the agreement of sale would be the dead line for computing the delay compensation. Whatever the exercise made by the developer so far as his project and his completion is concerned where the buyer is not the party.
24. The complainant has also sought for grant of Rs. 5,00,000/- towards mental agony. I would say that as per the observation made by the Hon'ble Apex Court the question of grant of compensation of mental agony doesn't arise. In this regard I am referring to the Apex Court decision which reads as under:

*When compensation for mental agony can be granted:
- in the case of Ghaziabad Development Authority v. Union of India, (2000)6 SCC 113 wherein whilst considering a case of breach of contract under Section 73 of contract Act, it has been held that no damages are payable for mental agony in case of breach of ordinary commercial contract.*

25. With this observation and for reasons discussed as above I allowed this complaint in part.
26. 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 19.06.2020. The parties have been called for hearing through Skype on 09.11.2020. Again on 17.11.2020 the case was called through Skype and heard the arguments.

Done
26/11/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority, Bengaluru
ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

Hence the complaint is being disposed of with some delay.
With this observation I proceed to pass following order.

ORDER

- a. The complaint no. CMP/200618/0005942 is allowed in part.
- b. The developer is hereby directed to pay delay compensation @ of 9% per annum on the principal sum paid on the sale deed commencing from 01.01.2016 till 30.04.2017 and @ 2% above the MCLR of SBI commencing from 01.05.2017 till the possession is delivered after obtaining the Occupancy Certificate.
- 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 in case the award is not honoured by the developer within 60 days from today.
- e. Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 26/11/2020)

K.PALAKSHAPPA
Adjudicating officer