

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

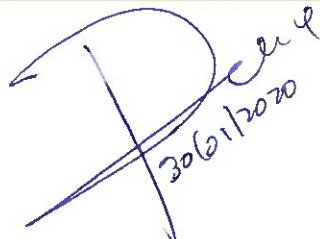
BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI K. PALAKSHAPPA
DATED 30th OF JANUARY 2020

Complaint No.	CMP/190831/0004092
Complainant	Mohammed Ruman Shareef A2, 2 nd Floor, #34 Sharadha Apartments, Coles Road Frazer Town, Bangalore-560005
Opponent	Pashmina Developers San Group (VSan city), Near Blue Bell Public School, Opposite San Palace (11/3) Sridevinagar, Bengaluru -560091. Rep. by Sri Veeresh R.Budiha, advocate

"JUDGEMENT"

1. Mohammed Ruman Shareef, Complainant has filed complaint bearing complaint No.CMP/190831/0004092 under Section 31 of RERA Act against the project 'Pashmina Brookhoods' developed by "Shashwati Realty Pvt.Ltd.," as the complainant is the consumer in the said project. The brief facts of the complaint is as follows:

I purchased the unit, B3G0106, in the Block 3 of Pashmina Brookhoods, in September 2015 with an agreement that the said unit will be delivered on March 2017 with a grace period of 6 months, meaning the unit will be delivered no later than October 2017. Subsequently, the work stopped somewhere during October 2015 for over a year. In the meantime we received the attached email from the CRM on 10th of September 2016 that the work will resume sometime in January 2017 and the block 3 would be ready within 15 months (Approximately March-April 2018) from the said date. Come March 2018, the progress of the construction was still way behind schedule. The respected CEO, Mr.Haresh Kumar, through the CRM,

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30/01/2020

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invited us to a meeting on March 2019 (attached email for reference) where we were told that our unit in block 3 would be ready for possession by July this year (2019). This is the same date registered with RERA too, as we saw on the RERA portal. With the assurance given in the meeting, we proceeded with fulfilling the demand note issued by Pashmina, only to know later that the pace of the work reduced drastically to almost standstill. The above commitment is already broken and we don't see any progress on the site (we are visiting the site every month at a minimum). It also appears that Simplex has moved out the materials and no work seems to be happening. When we meet the CRM on site they only speak about finishing blocks 1 and 2 by 2020 and very vaguely state that the block 3 would be complete by 2021. In light of 8/31/2019 preview complaint details Relief sought from RERA: Cancellation of the agreement and full refund.

2. In pursuance of the summons issued by this authority, the complainant has appeared in person, whereas the developer has appeared through his advocate Sri Veeresh R. Budihal and filed objection statement and submitted his arguments. I have heard the arguments of the learned counsel for the developer.
3. The points that arise for consideration is:
Whether the complainant is entitled for the relief of refund as prayed, if so, what is the order?
4. My answer is affirmative for the following

REASONS

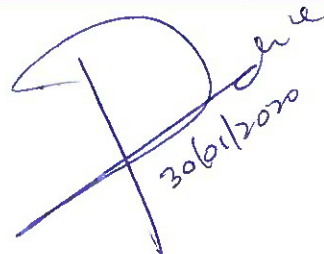
5. It is admitted that the complainant has entered into agreement with the developer on 15/09/2015. At the time of the argument, the complainant has submitted that the developer has agreed to complete the project on or before 30/09/2017 including grace period, but the developer has failed to keep up his words as agreed in the agreement, therefore, the complainant

Done
30/06/2020

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has failed this complaint for refund of the amount. At the time of argument the learned counsel for the developer has submitted that the present complaint is premature since he has given the completion date to RERA authority as 30/09/2021, but the same is not correct one, because the date given by the developer to the complainant in the agreement of sale is the date of completion of the project. The date given by the developer to the RERA authority for completion of the project is only a date given for completion of the project. It means the date given in the agreement of sale is the date for counting the delay compensation or if the customer wants to go out of the project it is the prime date for considering the prayer for refund. The same is also in so many cases that the date given in the agreement of sale shall prevail to consider the prayer under section 18 of the Act. Therefore, the argument submitted by the developer that complaint is premature holds no water. I would say that, the developer will have to absolve from the liability to pay delay compensation or refund of the amount only in case he gets the Occupancy certificate on or before the date mentioned in the agreement of sale or within reasonable time from the expiry of the said date. According to the agreement, the deadline was 30/09/2017, but till today it is not the case of the developer that he has obtained Occupancy certificate. When calculated from the date of agreement of sale it is already two years lapsed even though the developer is not complete the project to get the Occupancy certificate means his project is not yet completed. Even then the developer wanted to have his own defence for explanation of the delay in completion of the project, in this regard, the developer has said in Para 22, 23 and 26 in his statement of objections.

Para 22. It is submitted that there is no delay or default on the part of the respondent in handing over the possession of complainant's flat. Since the respondents had been diligent in applying for grant of registration and extension and had been continuously making efforts to complete the project diligently, Respondent cannot be held responsible for the delay


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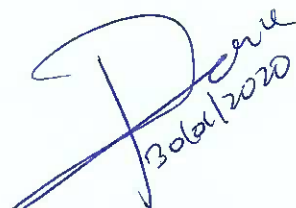
even after the new cut-off date sanctioned by the Real Estate Regulatory Authority as clause 5(c) of the agreement for construction which states that respondent/ builder shall not be held liable for any delay caused in completing construction of the apartments in question within the stipulated time for any reasons which were beyond the control of the respondent.

Para 23. It is submitted that the provisions of RERA does not supersede the provisions of the agreement entered into by the complainant and the respondents in September, 2015 were very much before RERA Act, 2016 came into force. Hence, terms and conditions as agreed between the parties cannot be superseded with the provisions of the RERA Act, 2016. Therefore, in case of any wilful delay on the part of the respondents herein, clause 4(i) of the Construction agreement would be made applicable and not the provision of RERA Act, 2016. However, in the present case, there is no delay or default on the part of the respondents and hence complainant is not entitled for any kind of full refund from the respondent. As agreed and contemplated in clause 5 of the Agreement of construction, there is no delay or default on the part of the respondents.

Para 26. The date of handing over of possession of apartment in terms of Clause 5(a) of the said agreement was subject to Clause 5(b) & (c) of the said agreement, and the respondents craves the leave of this Hon'ble Authority to reproduce herewith Clause 5(b) & (c) of the said agreement which was mutually agreed between the parties, for the ready reference of this Hon'ble Authority, which is as follows:

Clause 5(b): "The time stipulated above also does not include the time taken for securing Occupation certificate, water, electricity and sanitary connection and the Vendor/builder is not liable to pay any damages to the purchaser/s if the vendor/builder is unable to deliver the schedule 'C' Apartment within the aforesaid time due to delay in getting these amenities".

Clause 5(c) "The Vendor/builder shall not be held responsible for any delay caused in completing construction of the Schedule 'C' apartment within the aforesaid time for any of the following reasons:

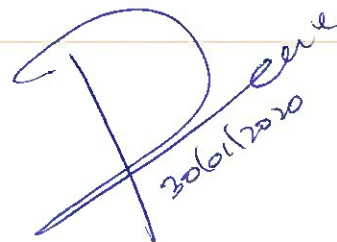

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- i) *Non-availability of steel, cement or any other building materials, water or electricity supply or any such building materials, which are essential for completion of the construction.*
- ii) *Any strikes including transport/labour strikes or any other public or civil unrest and other reasons, which are beyond the control of the builder.*
- iii) *War, civil commotion, or any other Act of God/force majeure event.*
- iv) *Any notice, court order, rules, restriction, injunction, Government order or notification of the Government of Competent authority.*
- v) *Delay or default by the Purchaser/s in payment of any instalment under Schedule 'E' or any such amount payable by the Purchaser/s to the builder under this agreement and the said sale agreement.*
- vi) *Any other delay, not attributable to the default of the builder or over which the builder has not claims or control."*

6. Further he has also said that he was prevented from completing the project with other measures. But, I would say that the reasons given by the developer will not absolve his liability. The Hon'ble Apex Court has observed in Pioneer case stating that the parties cannot be made to wait indefinitely. The objections have been filed by the developer on 05/12/2019 wherein, there is no reference with regard to obtaining of the Occupancy certificate. When that being the case, the reasons as stated above, will not absolve him the liability to refund amount. With this observation, I would say that the complaint has to be allowed.

7. Before passing the final order, I would say that as per Sec.71(2) of the Act, the complaint has to be disposed of within 60 days, but 60 days to be computed from the date of appearance of the parties. In this case, the complaint was presented on 31/08/2019 and the parties were appeared before authority on 03/10/2019. With this observation, I proceed to pass the following


20/6/2020

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ORDER

- The Complaint filed by the complainant bearing No.CMP/190831/0004092 is hereby allowed.
- The developer is hereby directed to return Rs.26,09,260/- with interest @ 9% p.a. on the respect amount paid on the respect date till 30/04/2017 and @ 2% above the MCLR of SBI commencing from 01/05/2017 till realization of the entire amount.
- The developer is hereby directed to discharge loan amount with its interest EMI if due, EMI if paid by the complainant and any other statutory charges.
- The complainant is hereby directed to execute cancellation deed after realization of the entire amount.
- The developer is hereby directed to pay Rs.5,000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 30/01/2020).

K. PALAKSHAPPA
Adjudicating Officer