

BEFORE ADJUDICATING OFFICER, RERA  
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/181126/0001672

Date: 06<sup>th</sup> June 2019

Complainant : M. Wenkatesh Sawanth Patri  
Flat No. 503, Durga Flute Apartments,  
Mahalakshmi Layout, Yeshwanthpur  
Industrial Suburban, Bengaluru -560022  
Rep. by Sri H.M. Sudheer Advocate

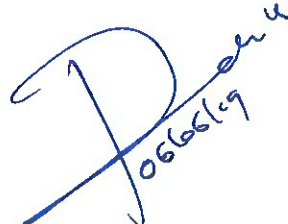
AND

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

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**J U D G E M E N T**

1. M. Wenkatesh Sawanth Patri, complainant under complaint no. CMP/181126/0001672 has filed this complaint 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 summary of the complaint is that, he has entered into agreement in the year 2014 with respect to flat no. F -201. The developer has agreed to complete the project on or before 31/7/2017, but he failed to complete the same. The

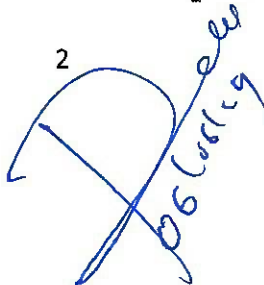
  
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complainant has paid sufficient amount towards the said flat. Therefore it is his prayer that he is eligible for delay compensation.

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 undertook to file vakalath on behalf of the developer. Later the developer has filed Objection for which the complainant filed their reply.
3. In the month of August 2014, both the parties have entered into Agreement with respondent to flat no. F-201 wherein it was agreed to handover possession on 31<sup>st</sup> July 2017. The complainant has paid Rs. 1,30,90,448/- towards consideration for the purchase. It is alleged by the complainant 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.
4. At the time of argument he drawn by attention towards the stand taken by the developer in his written Objections wherein he referred the statement passed by Mumbai High Court in NeelKamal Realtors Suburban Pvt. Ltd., and another Vs. Union of India and others.

*"it was submitted that in any event no contractual rights are affected by RERA since its provision operate so as to regulate the existing contracts and facilitates the construction in accordance with their terms. The date of contract entered into by the petitioner with the purchaser relevant and that is to be seen whether completion certificate has been issued"*

5. The said judgment referred by him to state that the present complaint is pre mature as the new completion date given to RERA

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is 1/07/2019 which is accepted by the statutory body. But I would like to say that this aspect has already been decided in many cases stating that the date mentioned in the agreement is the criteria to decide the date of completion of the project. Therefore, the stand taken by the developer cannot be accepted.

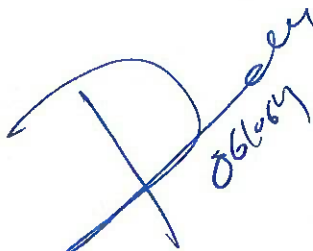
6. The developer has given some reasons for non completion of the project in stipulated period in

*"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 non-payment 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 project was a big one, laborers were large in number. Laborers at the*



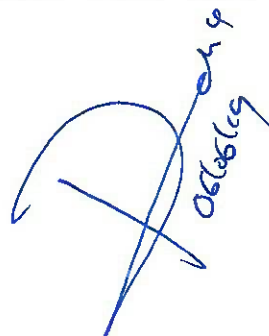
*construction site were to be paid their daily wages for their work. Since the laborers did not possess bank accounts, the respondent could not deposit/transfer the money to their respective accounts."*

7. The developer calls these reasons as Force Majeure. But I am not going to accept these reasons because the developer has collected the amount from the complainant from the year 2014. 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 mentioned in the agreement. In this regard I would refer the wordings of judgment which is as follows.

*"only defence taken by the opposite party for failure to deliver possession of respective apartments to the complainants is the plea of Force Majeure. On careful perusal of written statements filed in response to the respective complaints as also the affidavit evidence by the opposite party, the opposite party has tried to justify plea of Force Majeure on four counts: (a) restriction imposed by the order of Punjab and Haryana High court on user of underground water for construction activity and scarcity of the sewerage treated water; (b) shortage of labour due to various reasons; (c) shortage of bricks due to restriction imposed by the Ministry on brick kilns and; (d) shortage of sand due to suspension of mining activities aravali range.*

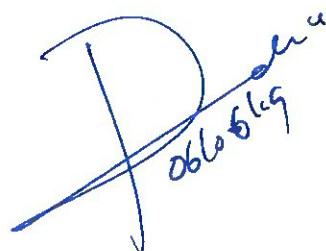
*In our considered view the opposite party has failed to substantiate the pleas in supports of the plea of force majeure"*

8. 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. However the payment of delay compensation from which day 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.

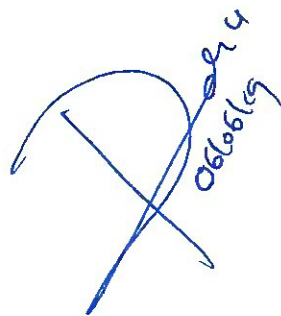
9. At the time of argument the Learned Counsel for the complainant submits that the developer cannot say that he is ready to pay delay compensation as mentioned in the agreement because he will impose interest @18% to us. Therefore, there should be parity in payment of interest. I find some force because 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.
10. 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.
11. The advocate for the complainant has given the decision of Haryana RERA authority where it is said 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.
12. Also referred one more decision given by the Haryana RERA where it is observed that the interest shall be paid from the due date as mentioned in the agreement.
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 a 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 various 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. This complaint was filed on 26/11/2018. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the parties were present on 11/01/2019. Hence there is a little delay in closing this complaint.



## ORDER

The complaint no. CMP/181126/0001672 is hereby allowed by directing the developer to pay delay compensation @10.75 p.a. on the amount received from the complainant towards 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 this order.

(Typed as per dictation Corrected, Verified and pronounced on 06/06/2019)

K.PALAKSHAPPA  
Adjudicating Officer



