

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/181215/0001760

Presided by Sri K Palakshappa

Adjudicating Officer

Date: 27th May 2019

Complainant : Gurubux Arjan Ajwani
Villa 63, Akshaya Redstone, Whitefield-
Hoskote Road, HWY 35, Opposite to Shell
Petrol Bunk, Kadugudi,
Bengaluru - 560001
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.
Rep. by G.V.Chandrashekhar, Advocate.

"J U D G E M E N T"

1. Mr. Gurubux Arjan Ajwani, Complainant filed complaint bearing complaint no. CMP/181215/0001760 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 complaint is as follows:

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"The Complainants entered into an Agreement for Sale of undivided interest dated 17.12.2013 with the Respondent (Developer) and M/s. Manyata Realty (Owner) agreeing to purchase undivided share in the project by name ?Mantri Manyata Lithos? (?said Project?), situated at Rachenahalli, K R Puram Hobli, Bangalore South Taluk, Bangalore. 2. Simultaneously the Complainant also entered into an Agreement of Construction dated 17.12.2013 with the Respondent to get the apartment No. D-1201 constructed in the said project (?said Apartment?). As per clause 6.1 of the Agreement of Construction, the respondent is supposed to construct for the said apartment and handover the possession of the same as per Annexure B1. Annexure B1 to the Agreement of Construction which is a tabular sheet indicates that the date of possession is 1.07.2017. 3. Pursuant to the execution of the aforementioned Agreements the Complainant has been regularly making the payments towards Sale consideration and till date a sum of Rs. 1,65,23,679/- has been paid to the Respondent. Statement of account as on 17.09.2018 issued by the Respondent also confirms that a sum of Rs. 1,65,23,679/-. The balance payment has to be made at the time of handing over the possession of the said apartment. 4. Vide email dated 22.06.2017 the Respondent has informed that the timeline for completion and handing over the said Apartment is extended to end of December 2018 as against the earlier committed date of July 2017. This communication came as surprise to the Complainant as there was no proper explanation given for the delay apart from the vague reason of unforeseen circumstances which are beyond our control. 5. Representative of Respondent by name Ms. Divyashree wrote emails to the Complainant requesting the Complainant to get the Sale Deed of the said Apartment registered and also demanded the balance sale amount. 6. From the above documents it is clear that the Respondent has failed to complete the project/apartment as per the commitment given to the Complainant under the Agreement of Construction. Further the Respondent has

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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. 7. It is also surprising that the Respondent is now demanding additional amount of Rs. 2,000,00/- (Rupees Two Lac only) towards club house membership fee and Rs. 1,000,00 (Rupees One Lac only) for generator charges which was not at all informed to us at the time of signing the Agreement. All this while we were under the impression that these amounts were already included in the total Sale consideration to be paid by me as per the Agreement between Complainant and Respondent. We are not bound to pay this amount as this is a new tactics which has been adopted by the Respondent to extract more money from the Complainant.

Relief Sought from RERA : Hand over possession, interest and penalty"

2. In pursuance of the notice issued by this authority, Shri H.M. Sudeepeer 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 his reply.
3. In the month of December 2013, the complainant has entered into Agreement with the respondent in respect of flat no. D-1201 wherein it was agreed to handover the possession on or before 1st July 2017. The complainant till date had been paid Rs. 1,65,23,679/- towards sale consideration. 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.

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4. It is also surprising that the respondent is now demanding additional amount of Rs. 2,00,000/- towards club house membership fee and Rs. 1,00,000/- for generator charges which was not at all informed to us at the time of signing the agreement. All this while we were under the impression that these amounts were already included in the total sale consideration to be paid by me as per the agreement between complainant and respondent. We are not bound to pay this amount as this is a new tactics which has been adopted by the respondent to extract more money from the complainant.
5. At the time of argument the counsel for the complainant has drawn my attention towards the stand taken by the developer in his Written Objection. Wherein he referred the judgment passed by Mumbai High Court in NeelKamal Realtors Suburban Pvt. Ltd., and another Vs Union of India and others.
6. The said judgment referred by him to state that the present complaint is pre mature as the new completion date given to RERA is _____ which is accepted by the statutory body. But I would like to say that this aspect has already been decided in many cases by saying 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.
7. In this regard the learned counsel for complainant has given list of citation covering the defense taken by the respondent which I have referred in the end of this judgment.
8. The developer has given some reasons for non-completion of the project in stipulated period. He says as,


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"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. Consequently, 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 project was a big one, laborers were large in number.


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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."

9. 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 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 as mentioned in the agreement.
10. 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.
11. 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.

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12. 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.
13. 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.
14. 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.
15. 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 the varieties of decisions and I say

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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.

16. 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 15/12/2018. 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 filed by the complainant bearing No. CMP/181215/0001760 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 27/05/2019).


K.PALAKSHAPPA
Adjudicating Officer