



PROCEEDINGS OF THE AUTHORITY

DATED 12th MARCH 2020

<u>Ref. No.</u>	<u>CMP/171003/0000095</u>
<u>Complainant</u>	OSMOND DMELLO 107, Vishal Nest, Amruthahalli, Amruthahalli Talacauvery Layout, Bengaluru-560092. (Rep. by: Sri Rishabha Raj Thakur, Advocate)
<u>Opponent</u>	KSR Properties Pvt. Ltd., 23, Sankey Apartment, Square Sankey Cross Road, Sadashivanagar Bengaluru -560003 (Rep.by :Sri R.Muralidara, Advocate)

"J U D G E M E N T"

1. OSMOND DMELLO, Complainant has filed this complaint bearing complaint no.CMP/171003/0000095 under Section 31 of The Real Estate (Regulation and Development) Act 2016 (Act) against the project KSR CORDELIA developed by "KSR Properties Pvt. Ltd.," as the complainant is an Allottee in the said project. The complaint is as follows:

Project Name KSR CORDELIA was due for and handover as per agreement on 13th March 2017. Builder and its Representatives State that there are no funds to complete project.

Relief Sought from RERA: look into the matter for to relive flat buyers

2. This project is not registered with RERA, Karnataka. The present complainant has filed his complaint seeking for possession with delay compensation. Similar complaints are filed with the Authority for seeking Registration of the Project, seeking award of compensation for the delay and issue of directions to the Project Promoter to handover the possession of the apartment as required

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CS. Compound,
3rd Cross, Mission Road, Bengaluru-560027



and complete the Registration of the property as required under the Act. All such complaints seeking similar relief are heard by the Authority.

3. In response to the summons issued by this authority, the parties were present. The complainant is represented by his advocate Sri.Rishabha Raj Thakur and the developer is represented by his advocate Sri R. Muralidhar.
4. Issues raised by the Complainant and the objections and explanations submitted by the Respondent are taken into consideration.
5. The complainant has sought delay compensation from the developer. According to the complainant, the developer has executed agreement of sale on 13/03/2015 (the complainant has mentioned as 13/03/2017 but as per document it is 13/03/2015) wherein the developer has agreed to deliver the possession of his unit bearing No.CB-08-10 on or before 13/09/2017. It is alleged by the complainant that the project has not been completed till date, in all its aspects such as external and internal development works and the requisite amenities.
6. The developer has appeared through his counsel and filed detailed objection to the allegations made by the complainant. In para-5 of the objection statement he has admitted that there is delay, but he has given his excuses stating that there was a delay due to various reasons such as labour problem, demonetisation, implementation of GST and other reasons. It is said by the developer that he has more than 150 happy customers, but the complainant has not paid required amount as per agreement and showing hostile attitude. It is also alleged by the developer that the purchasers have formed a group and giving bad image to the others against the developer. Further he has submitted that it is a Joint Development Agreement where it was agreed to construct 272 units out of it 176 is belonging to the developer. He further submitted that he has agreed to pay Rs.6 per sq.ft, per month as delay compensation and the complainant has also taken that compensation. It is submitted that the complainant cannot seek more than Rs.6 per sq.ft., per month as it is agreed in the agreement.

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CGI Compound,
3rd Cross, Mission Road, Bengaluru-560027



7. Since the developer has submitted that he has paid delay compensation @ Rs.6 per sq.ft. per month, it proves that there is a delay. Therefore, the authority need not discuss much to give finding on finding on that aspect. We would say that, the developer is bound to compensate as per Sec.18 and 19 of the Act. Before the commencement of this Act, the developer was bound to give compensation as per Section 8 of Karnataka Apartment Ownership Act 1972 where the interest by way of delay compensation has to be paid on the total amount in the form of interest @ 9% p.a. After induction of the Act, the delay compensation is @ 2% above the MCLR of SBI commencing from 14.09.2017 on the total amount paid by the complainant. When that being the case, the compensation as mentioned in the agreement has no force at all. It is not correct on the part of the developer to say that he is obliged to pay Rs.6/-per sq. ft. per month. As per the agreement the developer has to complete the project within 30 months from the date of agreement including grace period. It means 13/09/2017 was the dead line. It is not correct on the part of the developer to say that the complainant who had taken the compensation @ Rs.6/-per sq. ft., per month is debarred from claiming the compensation as per the Act. As per the submission made by the complainant, the developer was expected to complete the project on or before 13/09/2017, but till today it is not completed. The developer who has paid the compensation admitting the delay is an important aspect to award compensation here because the developer has compensated the complainant at the rate of Rs.6/-per sq.ft., is very much low, since the complainant is entitled for delay compensation as per Rule 16. Hence, the complaint has to be allowed.

8. Hence the following order:

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[Signature]



ORDER

- a. The Complaint filed by the complainant bearing No.CMP/171106/0000095 is hereby allowed
- b. The developer is hereby directed to pay delay compensation @ 2% above the MCLR of SBI simple interest on the total amount commencing from 14.09.2017 till possession is delivered, with amenities, and after obtaining occupancy certificate.
- c. The compensation amount already paid by the developer shall be deducted from the amount payable by the developer as per this order.
- d. The promoter of the project is directed to deliver the possession of the apartment, after ensuring that all the internal and external development works are completed and the requisite amenities are provided, without further delay.
- e. The promoter is also directed to Register the apartment in favour of the Allottee Complainant, after obtaining Occupancy Certificate.
- f. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.
- g. As regards the Registration of the Project, a separate order is passed, a copy of which shall be sent to the Complainant as well as to the Respondent.

Intimate the parties regarding the order.


(D. Vishnuvardhana Reddy)
Member-1
K-RERA


(Adoni Syed Saleem)
Member-2
K-RERA


(M.R. Kamble)
Chairman
K-RERA