

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K. PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190223/0002259

Dated: 16th November 2019

Complainant : Mr. B T Shetty, & Narayan Shetty,
No. 371, 1st Floor, 8th Main Road,
Sadashivanagar,
Bengaluru-560080.
Rep. by Sri E. Suhail Ahamed Advocate


AND

Opponent : Dr. K Balaraman,
559, RMV 2nd Stage, New BEL Road,
Bengaluru – 560094
Rep. by Sri Dhiraj Advocate

JUDGMENT

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:

The Complainants Mr. Bhojaraj T Shetty and Mrs. Nayana Shetty are filing this complaint against Dr. K. Balaraman (Respondent herein) who executed the Agreement to Sell dated 24.08.2015 in favour of Complainants with respect to apartment No. B10 situated in a portion of Municipal No. 559, RMV 2nd Stage, Dollars Colony, Sanjaynagar, Ward No. 100 ? Bengaluru) carved out of erstwhile Sy. No. 24/5 of Chikkamarenahalli Village, Kasaba Hobli, Bangalore North Taluk. The Complainants also applied for a loan and the same was sanctioned. However, when the Complainants' bank verified the documents before releasing payments, the sanction plans were for 8 floors only. Thus, under the Respondent's scheme for development of a luxury residential apartment complex, the Complainants chose to shift to 5th floor



125

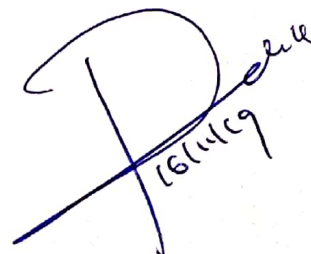
and buy apartment No. B5 instead of B10. The Complainants till date, have paid an amount of Rs.2,23,12,500/- (Rupees Two Crores Twenty-Three Lakhs Twelve Thousand Five Hundred Only). Under the Agreement to Sell dated 24.08.2015, the Respondent had agreed to allot, construct and convey the apartment hereinafter referred to as Schedule C Residential Apartment along with undivided share, rights, title and interest therein referred to as the Schedule B Property on or before April 2017 (inclusive of the grace period of six months). However, the Respondent failed to deliver the completed Schedule C Residential Apartment to Complainants and that the Complainants have been continuously following up with the Respondent for the completion and handing over of the Schedule C Residential Apartment. The Respondent has failed to obtain the modified sanction plans and to deliver the said Apartment to the Complainants even after the expiry of grace period of six months stipulated under the aforesaid Agreement to Sell. The non-delivery of the Schedule C Residential Apartment amounts to an offence under the Real Estate (Regulation and Development) Act, 2016.

Relief Sought from RERA :Handing over possession & interest for delay per m

2. After registration of the case notice has been issued to the Respondent and he has appeared through his counsel.
3. Heard the arguments after developer has filed his objections.
4. The point that arisen for my consideration was:
Is the complainant entitled for delay compensation?
5. My answer is affirmative for the following;

REASONS

6. The complainant has entered into an agreement with the developer on 24/08/2015 agreed to purchase Apartment No. B-10 which was formed in the land bearing municipal No. 28/7 (PID No. 100-521-559) measuring 30,081 square feet carved out of erstwhile survey number 24/5 of Chikkamarenahlli kasaba hobli Bengaluru north taluk. The developer has agreed to complete the project and to deliver the possession on or before the end of October 2016 with grace period of 6 months. Of course till this day the project is not completed. Therefore the complainant has filed this complaint for the appropriate relief of delay compensation.
7. The developer has filed his objections and also filed his written arguments. According to his argument he has obtained the first



124 1

sanctioned plan on 10/05/2015 for construction of ground and upper 10 floors. Further he has approached the BBMP for additional floors and on 12/04/2018 he has taken the plan sanctioned. He further submits that the same was also completed and therefore he has applied for grant of Occupancy Certificate but it is not yet granted. The developer has produced the copy of the letter addressed to BBMP seeking the grant of occupancy certificate. The letter was addressed to BBMP was on 25/03/2019 which has been produced by the developer to show that he has completed the project but awaiting the grant of occupancy certificate.

8. The developer is also having one more defense explaining the cause for delay which reads as under:

It is pertinent to mention here that the respondent had already represented to the purchaser the possibility of purchasing TDR for the construction of additional built up area in the said project in his agreement with the complainants. It is further submitted that in para No. 6 of the Agreement the respondent had made it clear to the complainant that the respondent shall be vested with the sole right to cause modifications to the said project. It is read as follows:

"whereas, in view of above the owner/vendor represents that he shall be vested with the sole right to cause modifications to the plan even after sanction. If such modification is to comply with the requirement of the BBMP or any other statutory body/agencies or if such modification, in the opinion if the owner/vendor is in the interest of the project even if means erection of certain additional floors at later date if allowed by the concerned statutory authorities on account of purchase of TDR in resulting in change of percentage and area of undivided share, right, title and interest in favor of prospective purchasers of apartments in KRSNA LABURNAM".

It is pertinent to mention here that as already informed by the respondent the respondent has obtained the revised plan sanction and construction is completed and the respondent being the dutiful developer has handed over the flat to few of the purchasers for commencement of interior works of the flat to few of the purchasers for commencement of interior works of the flat order to keep up the promise made to the complainants. The occupancy certificate is also obtained and the copy of same is produced.

It is humbly submitted that clause 19 sub clause iii of the Agreement to sell states that if there is delay in issue of NOC/ permissions, occupancy certificate, sanction by government authorities/local bodies, the Vendor(Respondent) shall not be liable to pay any compensation to the purchaser(complainants). The complainants after agreeing to all terms and conditions laid by the respondent have entered into the agreement of sale.

It is further submitted that the respondent in connection to clause 19 of the agreement has already mentioned about the variations for delivery of possession in the agreement. The complainants have agreed and have duly signed the agreement with a promise to abide all the terms and conditions laid by the Respondent.

The respondent herein denies all the allegations made by the complainants as Respondent has not mentioned any fixed date for delivery of possession and respondent's delay to deliver the possession is unintentional and bonafide.

9. By taking the assistance of the above clauses the learned counsel for the developer submits that Section 18 cannot be invoked as prayed by the complainant. It is the case of the complainant that the project ought to be completed on or before April 2017. As per the say of the developer the project is completed in the month of November 2018 but awaiting for the Occupancy Certificate. It is

[Handwritten signature]
16/11/19

122

well settled principle that unless the developer takes the Occupancy Certificate he cannot claim that his project is completed.

10. As per section 18 of the RERA Act the liability to pay delay compensation does arise the moment when the date mentioned in the Agreement expires. As per section 15 of the Act, in order to take the additional floors the developer ought to have obtained the permission of the Authority. But here the developer has approached the BBMP in the year 2016 means question of application of Section 15 does not arise. In addition to it the learned counsel for the developer has drawn my attention that the said factum was already in the knowledge of the complainants. In this regard I would like to refer to Rule 4(2)(a) proviso where it says that though the consent of 2/3rd allottees is mandatory, but exemption is there in case implementation of the proposed plan has already been disclosed to the allottees under the Agreement. By highlighting this point the learned counsel for the developer submits that the question of taking the consent does not arise since the same was already intimated to the allottees in the agreement itself.
11. Now the question is regarding the delay compensation. It is the case of the developer that as per clause 19 (iii) of the agreement the consumer has agreed to waive the compensation in case delay is caused in taking the permission from any competent authority. Of course it is the case of the developer that the agreement was signed by the consumer and as such he cannot now claim the delay compensation. The case of the complainant is that as per S.18 of the act he is entitled for delay compensation. It is true that there is a clause in the agreement but as per S.18 the moment when the date mentioned in the agreement for completion of the project expires, then the right to claim the compensation for delay or refund depending upon the circumstance does arise. The clause cannot take the right accrued to the consumer as per S.18 of the Act and therefore, the arguments canvassed on behalf of the developer holds no water. In view of the same the developer is bound to pay the delay compensation.

- 122
12. The developer has contended in his written argument to the effect that which reads as under:

It is pertinent to mention here that as already informed by the respondent has obtained the revised plan sanction and construction is completed and the respondent being the dutiful developer has handed over the flat to few of the purchasers for commencement of interior works of the flat order to keep up the promise made to the complainants. The occupancy certificate is also obtained and the copy of the same is produced.

13. By reading the above para two important points are there. Firstly handing over the unit to the consumer for interior works is not an indication of completion of the project since the completion shall be in accordance with S.19(10). Further the developer has not produced the occupancy certificate but it is only a requisition to grant of occupancy certificate. Hence, there is no compliance of S. 17 and 19 (10) of the Act. In view of the same the argument canvassed on behalf of the developer holds no water and as such the complainant is entitled for relief of compensation.

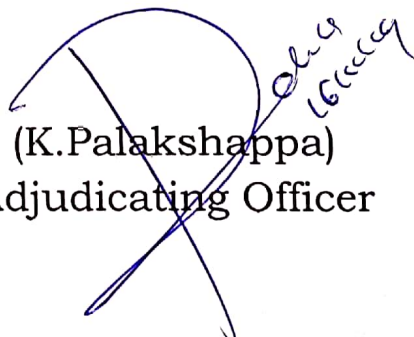
14. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 23/2/2019 but the same was forwarded from Secretary to Adjudicating Officer only in the first week of May 2019. Notice has been issued to the parties for which the parties have appeared on 31/05/2019. There are other cases in Complaint No. 2283, 2521, 2143 and 2149 where the authority has received the objection and after hearing the parties the case is reserved for judgment. In view of the same there is some delay in completing the complaint. Hence I proceed to pass the following;

ORDER

The Complaint No. CMP/190223/0002259
is allowed.

- a. The developer is hereby directed to pay interest @ 2% p.a. above the SBI marginal rate of interest on its home loan as on today commencing from May 2017 till the possession is delivered after obtaining the Occupancy Certificate.
- b. Further the developer shall pay Rs. 5000/- as cost.
- c. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 16/11/2019)


(K. Palakshappa)
Adjudicating Officer