

**IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL,  
BENGALURU**

**DATED THIS THE 12<sup>th</sup> DAY OF NOVEMBER 2020**

**PRESENT**

**HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN**

**AND**

**HON'BLE SRI K P DINESH, JUDICIAL MEMBER**

**AND**

**HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER**

**APPEAL (K-REAT) NO.230/2020**

**(OLD RERA. APL No. 301 of 2019)**

**BETWEEN:**

- 1) Kavita Mangharam,  
Wife of Nandlal Mangharam,  
Aged about 72 years.
- 2) Dr. Rahul Mangharam,  
Son of Nandlal Mangharam,  
Aged about 42 years,  
Both R/o # 69/1,  
Nandidurga Road Crescent,  
Bengaluru-560 046.

**:APPELLANT**

(By Sri Nandlal Mangharam, GPA holder)

**AND**

- 1) The Karnataka Real Estate Regulatory Authority,  
Represented by its Secretary,  
1/14, Floor, Silver Jubilee Block,  
2<sup>nd</sup> floor, Unity Building, C.S.I Compound,  
3<sup>rd</sup> Cross, Mission Road,  
Bengaluru-560 027.  
Represented by its Secretary.

2) G.Corp Homes Private Limited,  
Represented by Managing Director,  
21/19, Craig park layout,  
Off M.G Road,  
Bengaluru- 560 001.

**:RESPONDENTS**

(Sri S.N Ashwathnarayan ., Adv for R1)

(M/s Sundaraswamy & Ramdas, Adv for R2)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before the Karnataka Appellate Tribunal, Bengaluru, to set aside the order dated 10.01.2019 and 06.09.2019 in CMP/181011/0001445 passed by the Adjudicating Officer RERA- Respondent. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT)230/2020.

This appeal having been heard and reserved, coming up for pronouncement of Judgment this day, the Judicial Member, pronounced the following:

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

This appeal is filed under Sec 44 of the Real Estate (Regulation and Development) Act, 2016 read with Rule, 33 of Karnataka Real Estate (Regulation and Development) Rules, 2017 (herein after referred in short as ("**The Act and The Rules**") against the impugned order dated 10.01.2019 and 06.09.2019 passed by the RERA Adjudicating officer. This appeal was transferred to this Tribunal on 02.01.2020 and renumbered as Appeal No.(K-REAT) 230/2020.

**2. The facts of the Appellant's case in brief are that:**

The Appellants jointly booked a 3 BHK apartment inclusive of one car park and an additional car park in the under construction project by name "THE ICON" to be developed by the second Respondent. The appellants have entered into two agreements one for sale and the other for construction on 19.12.2013 (herein after referred to as agreements) with respondent No.2/developer in respect of an apartment bearing No.1201 in block 'D', cluster 3 situated at 13/2, Thanisandra main road, Bangalore. As per the agreement for construction the Respondent No.2/developer should complete the construction of the apartment and delivery possession of the property in favour of the appellants on or before 2016. The appellants have paid 95% of the total value of the property by 10.02.2016 as per the terms of agreements and the remaining 5% of the consideration was to be payable at the time of handing over possession of the property. On 29.12.2017. Respondent no.2 conveyed to the appellants about the partial occupancy certificate for tower C, D & E but no copy of the same was furnished to the appellants. After repeated request and pursuance of the appellant a copy of the occupancy certificate was forwarded on 15.07.2018. It is contended that Respondent No.2

/Developer has refused inspection of the project by the appellants and physically restrained from entering into the premises of tower D to ascertain the stage of construction. On 09.01.2018 Respondent No. 2 through e-mail informed the appellants to make final payment before inspection of the apartment and take possession of the same. It is contended that as per the agreement for construction the second respondent agreed that photograph showing the progress of construction will be provided to the appellant at their request from time to time in order to ascertain the progress of the project. Emails were exchanged between the appellant and Respondent No. 2 regarding the balance payment of consideration amount and to take possession of the flat by executing the sale deed. The appellants have filed complaint No.CMP/181011/0001445 before the Adjudicating officer and the Respondent No.2 appeared before the Adjudicating officer after receipt of the notice. The appellant have sought for the reliefs of delay compensation and permission to visit the flat before final payment and execution of the sale deed. The Respondent No. 2 filed objection to the complaint contenting that the final payment is to be cleared before inspection and handing over possession of the apartment keys and execution and registration of sale deed. The

Adjudicating officer after considering the contention of the appellant and the Respondent No. 2 passed the Impugned order dated 10.01.2019 allowing the complaint with a direction to the appellant/complainant to pay the balance consideration amount to the Respondent No. 2 within two months and the Respondent No. 2/developer has to handover possession of the apartment in favour of the appellant. The Adjudicating officer has further ordered that the appellant/complainant can have recourse under the RERA Act, if there are any defects in the apartment handed over to the appellants. The appellants on 16.04.2019 filed a memo for reconsideration of the complaint and review the impugned order dated 10.01.2019 and the same was rejected by the Adjudicating officer as per the order dated 06.09.2019.

Feeling aggrieved by the impugned orders dated 10.01.2019 and 06.09.2019 of the Respondent No.1/Authority, Appellant preferred the present appeal on the following.

**1. Grounds of appeals:**

1. The impugned order dated 10.01.2019 and 06.09.2019 passed by the respondent No. 1 are wholly arbitrary, capricious, contrary to law, procedure and evidence on record against known principles of law and nature justice.

2. Respondent No.1 /Adjudicating officer erroneously held that Section 17(10) of the RERA Act is applicable without considering the fact that the apartment block “D” that was not fully ready for occupation as construction and infrastructure was still in progress even in the month of June, 2018.
3. R1 erred to appreciate the appellants diligence to seek possession of the property in accordance with the order dated 10.01.2019 and their willingness to pay the balance on possession. Respondent No. 2 disobeyed the RERA order. It is contended that nowhere in the agreements it is contemplated that the inspection will be provided only after receiving full payment of consideration amount.
4. It is contended that the Respondent No.1 fail to consider the refusal and denial of possession of the apartment within stipulated period i.e on or before December, 2016 as per the terms of agreement of construction.

5. It is contended that Respondent No.1 erred in passing the impugned orders contrary to the contents of the agreement for sale and agreement for construction.
6. It is contended that the Respondent No.1 erred and failed to consider the evidence placed by the appellants. The Respondent No. 2 has also fail to note the default in providing the copy of occupancy certificate.
7. Respondent No.1 erred and failed to consider that the Respondent No. 2 has not placed any proof or documentary evidence to establish the completion of the apartment 1201/D.
8. Respondent No.1 erred and failed to consider that the Respondent No. 2 drafted one sided agreement with a molofide intention
9. It is contended that the Respondent No.1 has failed to appreciate the contention of the appellant raised in the complaint and also the memo dated 26.04.2019.
10. The R1 fails to appreciate the contentions of the appellant regarding delay compensation contrary to the provisions of RERA Act.

Hence prayed to set aside the impugned order of the Adjudicating officer by allowing the appeal.

2. After hearing the argument of the party-in-person for Appellant and learned counsel for the respondent, perusal of the appeal Memo, impugned order, written arguments and the document produced following points arise for our consideration.

**Point No. 1: Whether the impugned orders dated 10.01.2019 and 06.09.2019 passed by the Respondent No.1/Adjudicating officer suffers from infirmity which warrants interference from this Tribunal?**

**Point No. 2: Whether the appeal filed by the appellants is barred by law of limitation?**

**Point No.3: What order?**

3. Our answer to the above are as under:

**Point No. 1: Partly Affirmative**

**Point No. 2: Negative**



**REASONS****4. Point No. (1):-**

The case of the appellant is that they have booked a 3 BHK apartment inclusive of one car park in the project known as the "ICON" developed by Respondent No. 2 G.corp Homes private limited under two agreements one for sale and other for construction dated 19.12.2013 for a consideration of Rs. 1,08,65,963/- and paid 95% of the said amount as earnest. As per the agreements Respondent No. 2 shall complete the construction by the end of December 2016 with an outer time limit of 12 months for "D" tower in which the appellant's flat is housed as per the agreements stated supra. The contention of the appellant is that Respondent No. 2 has not completed the construction within time stipulated in the agreements and denied inspection of the flat when demanded by the appellants. The Respondent No. 2 on the contrary contended that it has completed the construction and obtained occupancy certificate within the time stipulated in the agreements. It is the further contention of the Respondent No.2 that they have also communicated the completion of the flat to the appellant with a request to pay the balance amount of 5% of the sale consideration and thereafter inspect the project. Both appellants

and the respondents have placed on record the document before the Adjudicating officer regarding the mutual communication made by them. The material placed on record show that the Respondent No.2 has obtained occupancy certificate on 14.12.2017 within the time stipulated for completion of the project under the agreements and also communicated the same to the appellants with a request to pay the balance consideration amount and to get the sale deed executed in their favour. On the contrary the appellants have contended that unless they inspect the project and ascertain the status of their flat are not ready to make the final payment. From the above contentions of the parties it can be safely inferred that both appellants and the second respondent are litigating on a very simple issue of payment of balance consideration and to get possession of the flat by execution of the sale deed.

Admittedly the appellants have paid 95% of the sale consideration amount to the Respondent No.2 and the Respondent No.2 has obtained occupancy certificate on 14.12.2017 well within the time stipulated in the agreements stated supra. The contention of the appellants is that the project was not completed and flat allotted to them is not fit for inhabitation.

*As per Section 19(10) every allottee shall take possession of the apartment/plot or building as the case may be within a period of 2 months of the occupancy certificate issued for the said apartment, plot or building as the case may be.*

From the above it is clear that the Respondent No. 2 can handover physical possession of the apartment and the Appellants can take possession of the same only after obtaining the occupancy certificate within a period of 2 months. Section 18(1) of the Act contemplates that if the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, is liable to compensate the allottee. In the present case on hand the Respondent No. 2, promoter has complied with the proviso to Section 19(10) completing the project well within the stipulated period in the agreements as per occupancy certificate dated 14.12.2017 and communicated the said fact to the appellant by series of emails addressed to the appellant/allottee as evidenced from the material placed on record. However the appellants have stick on to their guns and contended that unless they are provided audience and inspection of the project are not ready to pay the

balance consideration amount. It may be noted that during the pendency of this appeal in compliance of this Tribunal order dated 08.07.2020 Respondent No.2 made arrangements for the visit of the appellants to inspect the project and on 10.08.2020, appellants have inspected the project and reported 11 item of pending works out of which developer has agreed to carry out 9 item of the work and has stated that they are unable to carry out remaining 2 items i.e., no.1. Fixing of kitchen utility door which is done as per the plan but fairly submitted that the allottee may alter it on his own cost for which developer has no objection. Learned counsel for Respondent No. 2 further submitted that defect No.2 is with regard to providing of additional car parking which is not the part of the agreement. However counsel for the developer fairly considered that he will put sincere efforts to provide additional car parking on the basis of seniority and availability of the parking space. This submission of the learned counsel for the second respondent is placed on the record. From the above it is clear that one of the claims of the appellant to inspect the project prior to final payment of the consideration amount is fulfilled.

As far as the other defect of fixing of kitchen utility door is concerned the same is outside the preview of the approved plan of

the said apartment and the Respondent No.2 cannot carry out the same. Further providing of additional car parking is also beyond the scope of the agreement entered into between appellant and respondent no.2. It may be noted that the Respondent No.2/developer has complied the provisions of Section 19(10) and has completed the project within the stipulated time and the Respondent No.2 has also communicated the completion of the project as per the terms of the agreement and obtain occupancy certificate accordingly.

The appellant has raised several defects which are not the subject matter of the agreements. It is pertinent to note that there is no covenant in the agreements regarding prior inspection of the project before final payment of the consideration amount. On the contrary it is specifically stipulated in the agreement that on completion of the project after obtaining the occupancy certificate the allottees have to pay the balance amount and take possession of the flat by execution of sale deed in their favour. The agreement also provides for minor repairs and finishing work seven after the execution of the sale deed. The appellant/complainant has filed complaint before RERA on 11.10.2018 and the project was completed much prior to the date of complaint, on 14.12.2017 and

hence the complaint doesn't fall within the ambit of proviso to Section 18 of the Act.

As there is no default and delay on the part of the second respondent the question of granting delay compensation to the appellant does not arise at all. Hence the appellant is not entitled for the delay compensation and the point is answered partly in the affirmative. The Adjudicating officer has rejected the review petition filed by the appellant as per order dated 16.04.2019 on the ground that there is no such provision for review of the order. The finding of the Adjudicating officer in this regard is well founded. However the order of the adjudicating officer in the operative portion of the order that the complaint No. CMP/181011/0001445 is allowed runs contrary to his observation in the body of the order.

**Point No.(2):-**

The appellant has originally filed this appeal before interim Tribunal (KAT) Bangalore and the same came to be transferred to this Tribunal in January, 2020. The appellant has filed IA.I for condoning the delay in filing the appeal. The IA.I for condoning the delay in filing the appeal was kept open as no order was passed. The impugned order was passed by the Adjudicating officer on

10.01.2019 and the same was communicated to the appellant thorough email on 14.01.2019. The appellant has filed review petition on 26.04.2019 and the Adjudicating officer has passed the second Impugned order on 06.09.2019. The present appeal came to be filed before the interim Tribunal on 10.12.2019. The Registry has mentioned the delay of 280 days in filing the appeal calculating from 10.01.2019. The reason assigned by the appellant in the affidavit accompanying IA.I that the file containing the proceedings of the Respondent No.1 was misplaced and was traced while clearing the house for dipawali festival.

It is observed that there is a delay of more than three months in filing the appeal from the date of original order and the date of review petition. Further there was a delay of more than three months from the date of order on review petition till the date of filing the appeal. The appellant has assigned the reason for delay in filing the appeal by stating that his files was misplaced and was only traced during the cleaning work on dipawali festival. Proviso to Section 44(2) of the contemplates that appellant Tribunal may entertain any appeal after the expiry of the 60 days if its satisfied that there was sufficient cause for not filing within that period. In normal course when the party has got case on merit the question of

limitation takes a back seat and the explanation offered by the appellant for the delay if appears to be genuine and reasonable one, then the court can condone the delay in order to meet the ends of justice. Having regard to the above principles of law and the facts and circumstances placed before the court by the appellant, we are satisfied that the cause shown by the appellant is sufficient to condone the delay in filing the appeal and the delay is condoned and appeal is admitted accordingly. And the point is answered in the negative.

Before parting with the case we state that as per Section 44(5) of the Act, the appeal shall be disposed of within sixty days from the date of receipt of appeal. The appeal on hand originally filed before the interim Tribunal and same was transferred to this Tribunal in January, 2020. Thereafter secured the appearance of the parties and sufficient long time was taken by the parties for negotiating settlement. Further there was a lock down due to Covid-19 pandemic and for all forgoing reasons the appeal could not be disposed of within time prescribed under Section 44(5) of the Act.

**Point No. (3):-** For the reasons recorded above, we proceed to pass the following:



**ORDERS**

- i) The appeal is partly allowed. The order of the adjudicating officer to the extent of allowing the complaint No. CMP/181011/0001445 is modified.
- ii) The appellant is directed to pay the balance consideration amount to Respondent No.2 within one month from the date of receipt of this order and Respondent No.2 is directed to handover possession of the flat by executing a registered sale deed in favour of the appellant immediately on compliance of the order by the appellant.
- iii) The Respondent No.2 developer shall consider the request of the appellant for allotment of second car parking as per seniority and subject to availability of car parking space as submitted by them in the course of arguments;
- iv) The appellant is at liberty to get redressal of his grievances under the provisions of RERA Act, if there are any minor defects/repair left out in the apartment allotted to them.

- v) The Registrar of the Tribunal is directed to comply with section 44(4) of the Real estate (Regulation and Development) Act, 2016.
- vi) The office is directed to return the records.
- vii) No order as to cost.

**Sd/-**  
**HON'BLE CHAIRMAN**

**Sd/-**  
**HON'BLE JUDICIAL MEMBER**

**Sd/-**  
**HON'BLE ADMINISTRATIVE MEMBER**

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