

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

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BEFORE ADJUDICATING OFFICER

PRESIDED BY SRI I.F. BIDARI

DATE: 09th April 2021

Complaint No.	CMP/191230/0005092
Complainant:	Sri. Muthanna Thammaiah Allaranda Shriram Sameeksha, #16.1.7, Kuvempunagar, Abbigere, Bengaluru - 560 013 (By: Sri.Mohammed Sadiqh B.A.)
Respondent:	Shriram Properties Private Limited No.40/43, 8th Main 4th Cross Sadashivnagar, Bengaluru- 560080 (By: JSM Law Partners & Associates Advocates)

J U D G M E N T

Sri. Muthanna Thammaiah Allaranda (here-in-after referred as complainant) has filed this complaint bearing no. CMP/191230/0005092, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent M/s Shriram Properties Private Limited (here-in-after referred as respondent) seeking relief of delay compensation and car parking space in tower 15.

2. The brief facts of the case are as under:

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The respondent M/s Shriram Properties Private Limited is developing a Real Estate Project Sriram Sameeksha (here-in-after referred as project) in converted immovable property in all measuring 12 acres 31.5 guntas in BBMP properties bearing khatha No.: 218/84, 65, 66, 68 and 109(132) comprised in various survey numbers of different extents described in sale deed dt: 06.10.2017 as "Schedule-A" property situated at Singapura Village, Bengaluru North Taluk. The complainant has entered into an agreement to sell and an agreement to build doth dated: 06.11.2014 (here-in-after referred as agreement to sell and an agreement to build respectively) with the respondent to purchase flat No.16.1.7, being constructed on 1st floor, in Block No. E2, in tower No.16, measuring 1,300, sq.ft. with a parking area together with undivided share of land measuring 547 sq.ft., in aforesaid "Schedule-A" property for consideration amount, subject to the terms and conditions enumerated in the agreement to sell and an agreement to build. The complainant alleged in the complaint that he had availed a housing loan from DHFL Bank to purchase the flat. As per the terms of the agreement to build and an agreement to sell the possession of the flat was to be handed over on or before March 2016 with a grace period of 6 months. The respondent hand over possession of the flat on 06.04.2017 but work of the builder was not completed on that day. The respondent again by the end of October 2017, handed over possession of the flat. Due to the respondent not meeting the time lines of the delivery of the possession

once complainant and his family members were forced to move out from rented apartment, which caused them lot of inconvenience and particularly to their aged parents. There-after complainant came to know that OC was not obtained, when questioned, respondent told that flat is handed over only for interior works and official communication would be made after receipt of OC. The respondent provided OC on 15.04.2019 and it was partial OC. The respondent marked car parking space at a distance of 300 meters away from tower No.16. The car space is available near tower No.16 at distance of 40 meters from tower No.15. The allotment of car parking is not in terms of the agreements. Therefore the complainant filed this complaint seeking relief as sought in the complaint. The memo dt: 07.10.2020 has been filed restricting the claim of the complainant in this complainant to the extent of delay compensation only.

3. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent has appeared through its Advocates. The respondent has filed reply to the complaint contending that the complaint is pre matured, false, unreasonable, with mala-fide intention to make profit through litigation. The respondent since many years engaged in real estate development, having good will and reputation. The respondent has not committed default of the terms of the agreements. The complainant is not entitled for relief sought. The complainant for entitlement of the relief sought shall have to plead and



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prove the factors contemplated U/Sec. 72 of RERA Act. These main grounds among others urged in the statement objections, prayer to dismiss the complaint.

4. I have heard Sri. M.S. Advocate for the complainant, through skype. The argument of the respondent taken as heard. The written argument is filed on behalf the complainant. Perused the records, materials and the written argument.

5. The points that would arise for consideration are:

- (1) Whether the complainant is entitled for compensation ? If so, to what amount ?
- (2) What order?

6. My finding on the above points is as under:

Point No.1: Yes, to extent as shown in final order.

Point No.2: As per final order, for following:-

REASONS

7. Point No.1: The respondent is not disputing the fact that the complainant did enter into agreement to sell and an agreement to build both dt: 06.04.2014 to purchase undivided right, title and interest in the "Schedule-A" property described in agreement to sell and sale deed dt: 06.10.2017 and got construct flat No.16.1.7 through respondent for consideration mentioned in the agreements. The recitals in the agreement to build reflect that respondent had under taken to hand over flat in



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question to the complainant on or before March 2016 with grace period of 6 months. The complainant is contending that possession of the flat had been handed over in October 2017. The memo dt.10.07.2020 has been filed stating that the registered sale deed has been executed between the parties on 06.10.2017 in respect of the flat hence the instant complaint has become in-fructuous. In the written argument filed on the behalf of the complainant it is contended that in clause of 6 of the registered sale deed dt: 06.10.2017 it has been clearly mentioned that work in the flat in question was under progress on that day and after completion of the construction the complainant being a purchaser entitled to enjoy the flat as an absolute owner. This apart it is mentioned in written argument that on 13.05.2017 and on 05.10.2017 e-mails were forwarded on behalf of the respondent to the complainant and his wife stating that delay compensation will be settled in the line with RERA and as per the terms of the agreements. The registered sale deed dt: 06.10.2017 entered between the complainant and the respondent discloses that the transactions in agreement to sell, agreement to build and said sale deed in respect of a flat in question forms a single transaction. The copies of the e-mails dt:13.05.2017 and 05.10.2017 sent on behalf of the respondent to the complainant and his wife discloses that respondent had agreed to settle the delay compensation in line with RERA Act and

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as per the terms of the agreements. The complainant has filed the instant complaint on 30.12.2019 and registered sale deed has been executed on 06.10.2017. This fact makes it clear that subsequent to sale deed instant complaint has been filed, as such, respondent is contending that complaint has become in fructuous. Admittedly even one day prior to 06.10.2017 i.e., on 05.10.2017 and previously on 13.05.2017 e-mails were forwarded as discussed above on behalf of the respondent to the complainant and his wife stating that respondent would settle the delay compensation online with the RERA and agreements, under the circumstances there is substance in the submission of learned counsel for the complainant that under the impression of settling delay compensation as stated in e-mails the complainant has agreed and executed the sale deed. As rightly submitted by the learned counsel for the complainant and as mentioned in the written argument in clause 6 of the registered sale deed dt: 06.10.2017 on that day work of the flat in question was under progress and OC was not obtained. The above discussed materials and documents evidences that there is a delay in handing over the flat as possession was to be handed over earlier to September 2016, including 6 months grace period, but physical possession of the flat has been handed over to the complainant in October 2017. Therefore, though the sale deed is being executed on 06.10.2017 the respondent is

liable to pay delay compensation to the complainant under the RERA Act, from October 2016 to October 2017. Under the circumstances the contention of the respondent that after sale deed, instant complaint becomes in fructuous has no substance. Thus, I hold this point No.1 accordingly for consideration.

8. As per the provisions contemplated U/sec. 71(2) RERA Act the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 30.12.2019, thereafter notices issued directing the parties to appear through Skype for hearing as because of COVID-19 pandemic the personal hearing before the Adjudicating Officer not yet commenced. The parties given the reasonable opportunities to contest the case, as such, the judgment is being passed on merits, with some delay.

9. Point No.2: In view of my findings on point No.1, I proceed to pass the following:-

ORDER

- (i) The complaint filed by the complainant bearing No.: CMP/191230/0005092 is partly allowed.
- (ii) The respondent is hereby directed to pay delay compensation to the complainant by



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way of interest @ 9% per annum on respective amounts, from the dates of receipt of respective amounts till 30.04.2017 and from 01.05.2017 @ 2% above the MCLR of SBI till October 2017, until payment of entire amount.

(iii) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.

(iv) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with this order to enforce the order.

(v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 09.04.2021)


I.F. BIDARI

Adjudicating Officer-1