

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 F. BIDARI
DATED 19th APRIL 2021

Complaint No.	CMP/200127/0005274
Complainants:	Smt.M S Sushruta and Smt. Anuradha Shankar 21/1, 13 th Main Road, 'A' Block, Subramanyanagar, Bengaluru – 560021 (By Sri.Manjunath .A. Advocate)
Respondent:	Smart Value Homes (Peenya Project) Private Limited 2 nd Floor, Trade World Office, Kamala Mills Compound Senapati Bapat Marg, Lower Parel, Mumbai – 400013 (By Sri.Deepak Poonamiya, Advocate)

J U D G M E N T

Smt.M S Sushruta and Smt. Anuradha Shankar (here-in-after referred as complainants) have filed this complaint bearing no. CMP/200127/0005274, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as RERA Act) against the respondent Smart Value Homes (Peenya Project) Private Limited (here-in-after referred as respondent), praying to direct the respondent, to refund amount with interest and compensation.



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

The respondent Smart Value Homes (Peenya Project) Private Limited is developing a Real Estate project New Heaven Bengaluru Phase-II (here-in-after referred as project) in converted immovable lands, comprised in various survey numbers, in all measuring 25 acres 21 guntas, described in agreement of sale and construction agreement both dated:17-05-2014 as "Schedule-A" property situated at Sheshagiri Rao Palya Village, Bengaluru North Taluk, Bengaluru Rural District. The complainants Smt.M S Sushruta and Smt. Anuradha Shankar have entered into an agreement of sale and construction agreement both dated: 17-05-2014 (here-in-after referred as agreement of sale and construction agreement respectively) with the respondent to purchase the apartment No. 31082, in part of tower No.31, New Heaven, on 8th floor, being constructed, measuring 1,163 sq.ft. saleable area, with a parking area together with undivided, right title and interest in Schedule 'A' immovable property to the extent of 432 sq.ft., for consideration amount of Rs.59,77,536/- subject to the terms and conditions enumerated in the agreements. The complainants alleged in the complaint that the respondent ought to have been handed over possession of the apartment on or before 31-12-2016 but till date of filing complaint it was not delivered. The respondent even after expiry of due date has not executed sale deed along with related documents. The complainants have paid totally a sum of Rs.56,96,119/- (including tax) in instalments basis by availing home loan to purchase aforesaid apartment. The



respondent has issued cancellation letter without any cogent reason. The respondent has committed breach of contract and trust. Therefore, the complainants have filed this complaint seeking relief of refund of amount with interest and compensation. The complainants through their Advocate have filed separate detailed complaint.

3. Pursuant to service of notice, respondent appeared through its Advocate and filed objections to the complaint, contending that complaint is vexatious, false, only with an intention to harass the respondent. The respondent admits the fact that the complainants have entered into an agreements with respondent to purchase the apartment in question being developed by the respondent in the project, subject to terms and conditions of the agreements. The respondent is contending that because of force majeure reasons, mentioned in the objections, completion of construction of the project including apartment in question has been delayed. Therefore delay for completion of the project and the apartment cannot be attributable to the respondent. The respondent is liable to pay compensation for delay only when delay is attributable to the respondent. The respondent has received occupation certificate (here-in-after referred as OC) on 28-02-2018 from Huskuru Grama Panchayath Office. Thereafter completion of construction and after receipt of OC, respondent had offered possession of the apartment to the complainants through letter dated: 11-05-2018 and after making the balance payment. The respondent was following up with Huskuru Grama Panchayath for issuance of 'E-Khata' for individual



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apartments but said panchayath had issued 'E-Khata for only 11 apartments and not issued 'E-Khata' for balance apartments. Under the circumstances respondent had approached the Hon'ble High Court of Karnataka in W.P.No.52988/2017 against Panchayath Development officer and others, prying for a writ of mandamus. The Panchyath PDO and others did agree to consider representation filed by the respondent for issuance of 'E-Khata' within a reasonable time and the said writ has been disposed off on 23-04-2019. Thereafter several customers have taken possession of their respective apartments and are occupying the same. The complainants have paid Rs.50,12,682/- towards sale price of apartment in question and a sum of Rs.06,83,437/- towards the taxes as on 05-12-2017. The complainants did not heed to several remainders directing them to pay Rs.03,33,566/- and to take possession of the apartment, as such, respondent has issued cancellation letter dated:14-05-2019. The respondent contends that he has not received the legal notice dated:16-12-2019 alleged have been got issued by the complainants through their Advocate to the respondent. It is pleaded that through e-mail dated:03-03-2020 respondent informed the complainants that respondent has received 'E-Khata' in respect of apartment and requested the complainants to come forward for the sale deed registration. The respondent is ready to execute sale deed in respect of apartment in favour of the complainants and ready to pay compensation for delay, if any, which is attributable to the respondent as per the terms of the agreements. Therefore prays to direct the complainants to comply with the formalities



of the registration of sale deed and take possession of the apartment. Under the aforesaid circumstances respondent is contending that complaint is not maintainable, hence prays to dismiss the complaint with exemplary cost.

4. I have heard Sri.M.A.Advocate for the complainants and heard Sri.D.P.Advocate for the respondent, through skype. The written arguments have been held on behalf of complainant and respondent. Perused the records, and materials, also the written arguments.

5. The points that would arise for my consideration are:

- (1) Whether the complainants are entitled for the refund of amount with interest and compensation as prayed?
- (2) What order?

6. My findings on the above points are as under:

Point No.1: Partly in the affirmative.

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

REASONS

7. **Point No. 1:** Sri.M.A.learned Advocate for the complainants during argument drawn the attention of the Adjudicating Officer to the agreements entered between the parties and the documents produced on their behalf. There is no

dispute that the complainants Smt.M S Sushruta and Smt. Anuradha Shankar have entered into an agreement of sale and construction agreement both dated: 17-05-2014 with the respondent to purchase the apartment No. 31082, in part of tower No.31, New Heaven, on 8th floor, being constructed, measuring 1,163 sq.ft. Saleable area, with a parking area together with undivided, right title and interest in Schedule 'A' immovable property to the extent of 432 sq.ft., for consideration amount of Rs.59,77,536/- subject to the terms and conditions enumerated in the agreements. As per the terms of the construction agreement the apartment was to be handed over to the purchasers/complainants on or before 31-12-2016 with a grace period of 6 months. The complainants claim that they have paid more than 95% of the consideration amount to the respondent. The complainants have produced the copies receipts, letters, e-mails and communications exchanged between the parties, which evidences that there is a delay in handing over of apartment in question and completion of construction of the project including the apartment in question. These receipts, communications, e-mails, evidences that the complainants have paid more than 90% of consideration amount to the respondent. At the best the respondent ought to have handed over possession of the apartment with OC to the complainants on or before June 2017, including grace period of 6 months.

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8. The copy of registration certificate of project issued by the Real Estate Regulatory Authority Karnataka discloses that respondent's project has been registered as an ongoing project. The respondent has produced a copy of OC dated: 28-02-2018 with regard to the buildings and apartments being constructed in the project and this is a partial OC. The letter of offer of possession dated:11-05-2018 addressed to the complainants by the respondent disclose that for the reasons mentioned in the said letter that complainants were called upon to take possession of the apartment in question, and co-operate for execution of sale deed, complying terms of agreements etc. The respondent has produced the copy of order dated:23-04-2019 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P.No.52988/2017 and W.P.No.52989/2017 and W.P.Nos.56443-56445/2017 (LB-RES) in the case between 1. Smart Value Homes (Peenya Project) Pvt.Ltd., and another V/S the Panchayath Development Officer and others. These writ petitions were filed with regard to consideration of the representation of the respondent for issuance of 'E-Khatas' in respect of apartments in the project. The materials on records prove that there in an ordinate delay in handing over possession of the apartment to the complainants as due date for handing over possession of the apartment was on or before 30-06-2017 with grace period of 6 months. Sri.D.P.the learned Advocate for the complainants during argument as also in the objection statement it is being contended that the force majeure reasons i.e. (i) Restrictions in sale of

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detonators at quarries between 15-04-2014 and 12-05-2014 due to election. (ii) Delay due to cyclonic effect between 02-11-2015 to 30-11-2015. (iii) Delay in supply of materials from Chennai due to heavy rain between 11-11-2015 and 21-11-2015. (iv) Delay due to Cauvery water strike in Bengaluru between 09-09-2016 and 12-09-2016. (v) Demonetization between 08-11-2016 and 10-12-2016. (vi) Around 190 trained labourers left the site in October 2014 for about 3 months. (vii) Strike of transporters and sand suppliers around 3 months. (viii) Heavy rainfall in September 2017, are responsible for some delay and same is not attributable to the respondent as because of such reasons there was delay in construction of the project which were beyond the control of the respondent. These reasons given by the respondent as force majeure for delay in handing over possession of the apartment and same being submitted by the learned counsel for the respondent are not acceptable one as these reasons are not the force majeure reasons, much less as contended by the respondent. The complainants along with copy of legal notice dated: 16-12-2019 have produced copy of postal receipt and copy of acknowledgment receipt having sent the said legal notice through RPAD and served on the respondent. Therefore there is no substance in the contention of the respondent that the said legal notice has not received by it. The respondent has sent the second reminder letter dated: 30-06-2020 to the complainants wherein among others it is asking the complainants to pay the balance amount. Admittedly the instant complaint has

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been filed by the complainant on 27-01-2020, but whereas the said second notice is being issued subsequent to filing of the instant complaint and the complainants answered the same through their counsel. The records discloses that letter of offer of possession dated:11-05-2018 was issued to the complainants pending adjudication of aforesaid W.P.No.52988/2017 and W.P.No.52989/2017 and W.P.Nos.56443-56445/2017 (LB-RES) and as on 11-05-2018 'E-Khata' of the apartment in question was not ready. The OC dated:28-02-2018 was also a partial OC. Therefore it is made clear that there was no force and substance in the letter of offer of possession dated:11-05-2018 as on that date all the legal documents which require for execution of the sale deed in respect of the apartment in question were not kept ready, hence the cancellation letter dated:16-05-2019 has no consequences. Therefore at any rate there was no possibility of handing over possession of the apartment to the complainants much less as contended by the respondent. Sri.M.A. learned counsel for the complainants in support of the argument that there shall not be postponement of handing over of possession of the apartment to the home buyer for indefinite period and in such event home buyer is entitled for refund of amount with interest has placed reliance on the judgment in civil appeal No.12238/2018 in the case of Pioneer Urban Land and Infrastructure Limited V/S Govindan Raghavan with civil appeal No.1677/2019 in the case of Pioneer Urban Land and Infrastructure Limited V/S Geetu Gidwani Verma and another, passed by the Hon'ble

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Supreme Court of India. The ratio and the principles lead down by their lordships in this judgment are undisputed but the same will be of no much help to the complainants as facts of the said judgment and facts of the case on hand and are quite different.

9. The appreciation of materials and evidence on record leads to only probability that as on today the apartment in question has been kept ready and respondent has made all documents ready to execute sale deed and to handover possession of the apartment to the complainants under the circumstances if the refund of amount with interest is ordered then possibility of causing much more hardship to the respondent and also in-convince in completing the project causing difficulty to other home buyers in the project cannot be overruled. Therefore considering the facts and circumstances of the case it is just and proper to direct the respondent to pay delay compensation by way of interest to the complainants on the part consideration amounts paid by them in respect of the apartment as same would meet the ends of the justice. As per rule 16 of K-RERA rules 2017 interest payable is 2% above the MCLR of SBI from 01-05-2017. Thus I hold Point No.1 partly in the affirmative for consideration.
10. 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 27-01-2020, thereafter notices were 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.

11. 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/200127/0005274 is partly allowed.
- (ii) The respondent is hereby directed to pay delay compensation to the complainants by 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 payment of the entire amount, until handing over of the possession of the apartment to the complainants with OC issued by the competent authority.
- (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 the same 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 19.04.2021)


19/4/21
I.F. BIDARI

Adjudicating Officer-1

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