

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/190222/0002125

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Date: 3rd December 2019

Complainant : Oswal Sunil Mendonca
B306, B Block, 3rd Floor, Sai Satyam,
Divya Jnnati Layout, Babusapalya
Bengaluru-560043
Rep. By: Sri. M.Mohan Kumar Advocate.

AND

Opponent : MANTRI Webcity-3A
Mantri Developers PVT. LTD,
No.41 Mantri House, Vittal Mallya Road,
Bengaluru - 560085.
Rep. by: Sri. Veersh R.Budihal Advocate.

J U D G M E N T

1. Oswal Sunil Mendonca Save has filed this complaint under Section 31 of RERA Act against the project "MANTRI Webcity-3A" developed by M/s Mantri Developers Homes PVT. LTD, bearing Complaint no. CMP/190222/0002125. He has filed this complaint for refund of his amount with compensation. The facts of the complaint is as follows:

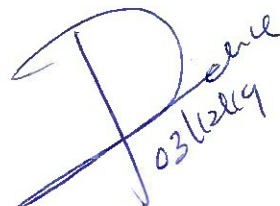
I have booked an apartment bearing flat number 102 in W Block measuring area of 1445 Sq. ft in the project of MANTRI WEBCITY by MANTRI DEVELOPERS PVT LTD and signed Agreement for Sale on 21st Jan 2014 with agreement value as Rs.69.03.650/- (INR sixty nine lakhs, three thousand and six hundred and fifty only). The developer committed the possession date of the property as 31st January 2016. The payment of Rs.68,03,494/- (INR sixty eight lakhs, three thousand and four hundred ninety four only) is paid to developer until date based on Construction Linked Payment Plan (CLPP) scheme. On 7th December 2015, developer communicated the revised timeline for completion and handover of the apartment as October 2017. On 12th July, 2016 developer again communicated on change in completion and handover date to September 2018. Thereafter developer is non-committal on the handover and completion of the project. The project status is also not shared and further possession

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and completion dates are not communicated. It can also be noted that the developer has violated the extended date of project completion date furnished to Karnataka RERA which is 29th Jan 2019. I have availed home loan amounting to Rs. 55,00,000/- for which EMI of Rs. 55,000/- is being paid on the monthly basis. I have incurred a huge financial loss due to my investment in this project as I haven't received the possession of the apartment as committed in agreement plus I have the additional burden of paying the interest on my home loan amount. I don't see any concentrated effort from the developer to complete the project to provide the requisite. In view of the repeated false commitments on part of the developer on the project completion and possession of the apartment, the complainant prays for delivery of flat within 2 months of this complaint with an interest of 10.55% compounded as delay compensation on the following grounds a) Total interest loss due to delay in handing over the property : 10,30,000/- (Proofs attached) b) Loss of real estate agency charges paid for the purchase of the property of the respondent and re-incurring a cost for purchase of new property instead. Also pursuance to clause 14.5 of the referred Agreement of Construction between the Complainant and the Respondent. Respondents have committed to pay Rs.3 per square feet, which is meagre compared to rental income fetched in the market. Hence complainant prays Rs.20/- per sq ft per month as delayed charges amounting 10,40,400/- In the event of failure to deliver the flat by April 30, 2019, the complainant prays for full refund of the payment made to the respondent also an interest of 10.55% compounded interest per annum for the tenure of delay in delivery on the following grounds: a) Loss of rental income on the property calculated at a market value of such property for let out on rental basis @ Rs.30000/- per month amounting to Rs. 10,80,000/- for the tenure of delay in delivery from January 2016 b) Mental agony due to uncertainty in the investment made by the Complainant in the above referred property of the Respondent c) Mental agony and incremental market value considerations for purchasing a new property of similar nature in the current market time as compared to the year 2015 when Complainant had purchased the property of the respondent considering the fact that the respondent is not able to commit the delivery date and the current agreement be terminated as prayed in this paragraph. d) Loss of real estate agency charges paid for the purchase of the property of the respondent and re-incurring a cost for purchase of new property instead. Also pursuance to clause 14.5 of the referred Agreement of Construction between the Complainant and the Respondent, Respondents have committed to pay Rs.3 per square feet, which is meagre compared to rental income fetched in the market. Hence complainant prays Rs.20/- per sq ft per month as delayed charges amounting 10,40,400/-

Relief Sought from RERA : Flat handover with delay compensation

2. In pursuance of the notice issued by the authority, the parties have put in appearance through their respective advocate. The complaint has filed this complaint for compensation. The same was strongly opposed by the other side.
3. Heard Arguments.
4. The point that arise for my consideration is
 - a) Whether the complainant is entitled for the relief as prayed in the compliant?
 - b) My answer to the same is affirmatively for the following

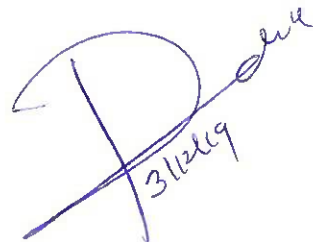

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REASONS

2. On 21/01/2014 both the parties have entered into Agreement with respondent to Unit No. W-102 wherein it was agreed to handover the possession in the month of January 2016 The total consideration amounts to be paid was Rs. 69,03,650/- excluding taxes. Out of it the Complainant has paid Rs. 68,53,385/- It is alleged by the complainant that the developer has failed to complete the project/apartment as per the commitment given to the complainant under the agreement of construction. Further the respondent has unilaterally extended the time line to hand over the said apartment to the complainant from 29/01/2019 and further extended to 30.01.2020 which is contrary to the provisions of RERA Act and Rules.

3. In this regarded the developer submits as under:

It is submitted that the complainant did not object to the extended time period for handing over possession of schedule apartment i.e. till 30.01.2020 and thereby, he had acquiesced and voluntarily agreed to the extended time period. The time period of handing over possession of schedule apartment to respondent no.2 was initially agreed to be 31.01.2016. however, the said time period was subject to the clauses of the agreement for sale of undivided share of interest and agreement for construction, such as force majeure etc. And the complainant had agreed upon the same. Due to some reasons beyond the control of the respondent, the time period fixed for handing over possession of schedule apartment had to be extended to January,2019. This was duly communicated to complainant. The complainant has not expressed any opposition of schedule apartment, and thereby had accorded his consent for the delay in handing over the possession of the apartment.


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4. The said judgment referred by him to state that the present complaint is pre mature as the new completion date given to RERA is 31/01/2019 which is accepted by the statutory body. But I would like to say that this aspect has already been decided in many cases stating that the date mentioned in the agreement is the criteria to decide the date of completion of the project. Therefore, the stand taken by the developer cannot be accepted.
5. The developer has given some reasons for non completion of the project in stipulated period in

"It is hereby submitted that the schedule flat could not be delivered on the date as mentioned in the said construction agreement due to various reasons such as;

- a. Firstly, there is no availability of sand due to strike by sand suppliers and lorry drivers;*
- b. Secondly, the Hon'ble High Court of Karnataka had imposed restriction on the working hours of construction by the builders. Subsequently, the pace at which construction work should have proceeded declined further adding to delay in handing over possession of the apartments.*
- c. It is submitted that the amendment of Law, change of Law, slow down of work due to labourers, labour shortage, economic slow down and recession in real estate sector, administrative conflicts or legitimate reasons beyond the control of the developer.*

I state that, while the construction work was under progress, during November 2016, our country faced demonetization, due to which there was major financial crises. The respondent was also affected financially and faced various issues to continue with the construction work in a smooth manner. As stated supra and coupled

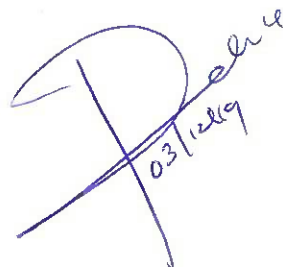
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with the fact that the respondent's project was a big one, laborers were large in number. Laborers at the construction site were to be paid their daily wages for their work. Since the laborers did not possess bank accounts, the respondent could not deposit/transfer the money to their respective accounts."

6. The developer calls these reasons as Force Majeure. But I am not going to accept this reason because the developer has collected the amount from the complainant from the year 2014. In this regard I would refer the wordings and meaning of the word "force majeure in a judgment which is as follows.

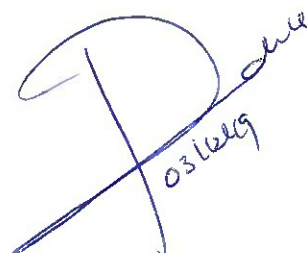
"Only defence taken by the opposite party for failure to deliver possession of respective apartments to the complainants is the plea of Force Majeure. On careful perusal of written statements filed in response to the respective complaints as also the affidavit evidence by the opposite party, the opposite party has tried to justify plea of Force Majeure on four counts: (a) restriction imposed by the order of Punjab and Haryana High court on user of underground water for construction activity and scarcity of the sewerage treated water; (b) shortage of labour due to various reasons; (c) shortage of bricks due to restriction imposed by the Ministry on brick kilns and; (d) shortage of sand due to suspension of mining activities aravali range. In our considered view the opposite party has failed to substantiate the pleas in supports of the plea of force majeure"

7. In view of the above observation the plea taken by the developer on the ground of force majeure holds no water. There is a clause in the agreement for delay compensation in case of delay in completion of the project. Admittedly the delay has been caused and the developer


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has not completed the project within the time mentioned in the agreement. When the agreement shows the clause for the payment of delay compensation, the developer has to pay the same. However the payment of delay compensation from which day has to be ascertained. This point is already made clear and accordingly the developer has to pay the delay compensation from the date mentioned in the agreement.

8. At the time of argument the Learned Counsel for the complainant submits that the developer cannot say that he is ready to pay delay compensation as mentioned in the agreement because he will impose interest @18% to us. Therefore, there should be parity in payment of interest. I find some force because as per Sec. 19(7) the liability to pay interest is prescribed. Therefore, the submission made on behalf of complainant is having force. The developer has no voice against the same.
9. Therefore I say that the argument submitted on behalf of the Complainant is supported with documents and I say that the complainant is entitled for the delay compensation from the due date as mentioned in the agreement of sale which was duly executed between the parties.
10. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. In this case the parties were present on 12/06/2019. After the presentation of objections the learned counsel for the developer has filed a Memo stating that the Real Estate Appellate Tribunal has given finding regarding the consumer who is taken the flat under the buyback scheme is not an allottee. But later said Memo was withdrawn on the ground that the present complainant is not under the buyback scheme and therefore the complaint is being disposed of with some delay. Hence, I proceed to pass the following;



A handwritten signature in blue ink, followed by the date '03/12/19' written below it.

ORDER

The Complaint filed by the complainant bearing No. CMP/190222/0002125 is allowed.

- a. The developer is hereby directed to pay delay compensation @9 % p.a. on the respective amount paid on the respective date commencing from February 2016 till 30/04/2017 and also pay interest on the total amount paid @2% above the MCLR of SBI till the possession is delivered after obtaining the occupancy certificate .
- b. Further the developer shall also pay Rs. 5000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 03/12/2019).

(K. PALAKSHAPPA)
Adjudicating Officer

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