

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು  
Karnataka Real Estate Regulatory Authority, Bengaluru  
ನಂ:1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್  
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**  
**Presided by Sri K.PALAKSHAPPA**  
**Adjudicating Officer**

**Date: 30<sup>th</sup> JANUARY 2020**

|                             |   |
|-----------------------------|---|
| <b><u>Complaint No.</u></b> | <b><u>CMP/190408/0002553</u></b>  |
| Complainant                 | Elizabeth Rani Koshy<br>W/o Chandy Koshy<br>Flat No.310, Embassy Tranquil,<br>8th Main, 3rd B block, Koramangala<br>Bengalure-560034<br>Rep.by Sri Taji George, Advocate                          |
| Opponent                    | Upendra Narayan,<br>Total Environment Building System<br>Pvt. Ltd., After the Rain-Phase-1,<br>Imagine No.78, ITPL Road, EPIP<br>Whitefield, Bangalore-560066<br>Rep.by Smt.H.H.Sujatha, Advocate |

**“J U D G E M E N T”**

Elizabeth Rani Koshy, Complainant has filed this complaint bearing complaint no.CMP/190408/0002553 under Section 31 of RERA Act against the project After the Rain- Phase-I developed by “Total Environment Building Systems Pvt. Ltd.,” as the complainant is the consumer in the said project. The complaint is as follows:

*That, the respondent M/s Total Environment Private Limited had allotted me Villa-19, vide Term Sheet dated 03.03.2014 and vide payment receipts of 27.02.2013 to 01.08.2017 an amount of INR*

*D. S. S. S.*  
*30/01/2020*

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3,60,29,160/- has been paid. Annexure 1-Term Sheet / Annexure 2 - Payment Receipts ? That, INR 3,60,29,160/- includes customization charges of INR 38,85,096/-Agreed possession date in builder?s letter dated 24.04.2018 is25.09.2017. Annexure 3 - Customization Sheet / Annexure 4 - Letter of 24.04.2018 ? That, the Construction Agreement and Agreement for Sale was executed on 03.03.2014. Annexure 5 - Construction Agreement / Annexure 6 - Agreement to Sale ? That, till date the physical possession of the physical possession of the property has not been handed over, as the villa and project is not complete or habitable. ? That, the Internal and External Development Works have not reached any remote stage of completion and will not be completed before two years. ? That, even after expiry of agreed possession date, the villa and the project remain far from being habitable or livable before 2 years with contracted amenities and completion certificate and occupancy certificate. ? That, the project has not been provided with boundary walls on any side. Work on the main guardroom, BESCO / BWSSB/ Generator connections, Roads,STP, Rain Water Harvesting, Greenery, Club House and many other promised amenities has not yet even commenced. ? That, the project status may be ascertained through a Site Inspection by a court appointed commissioner. I am submitting here-withphotosshowing the status of the villa and project. Annexure 7 ? Photographs of Villa and Project Site ? That, as I have decided to stay in the project, I may nowbe compensated for delayed possession starting from date 26.09.2017, till the completion of all Internal Development Works / External Development Worksand till thecompletion certificate is obtained for entire Phase-1 and till the possession is offered with occupancy certificate for entire phase and till all amenities are in place and till Club House is provided in Phase-1 or Phase-2. ? That, delay compensation be granted asis U/s 18 (1) @ 10.75%, the Highest SBI MCLR + 2% from 25.09.2017, till the time Ready To Move In possession is handed over with the completion certificate and occupancy certificate. The amount paid to the builder till today isINR 3,60,29,129/- . ? That, if builder, again defaultson giving possession by 30.06.2019,I reserve my rights for compensation U/s 72 (b) over and above claims U/s 18 (1). ? That, I reserve my rights to refuse

*P*  
30/6/19

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*possession and claim compensation if the Club House is not provided in Phase-1 or Phase-2 on offer of possession. ? That, builder be directed to provide me copies of BDA approved plans of Phase-1 & Phase-2 Club House of 17.12.2013 and 26.08.2017 respectively. Wherefore the Respondent may be directed to pay interest on the amount paid by the Complainant , Compensation for delay in handing over Possession, equal status Accommodation or rent in lieu of the equal status accommodation from the committed date of possession/hand over, compensation for delay, compensation for mental harassment and trauma and for the Inconvenience underwent by complainant and his family, and all other claims as made herein above in the interest of justice. Further a commission may be appointed and the area of the Villa needs to ascertained and order for refund of the excess amount paid with interest and penalty.*

*Relief Sought from RERA: Delay Compensation, Interest on Payment*

2. In pursuance of the summons issued by this authority, the parties were present. The complainant is represented by his advocate Taji George and the developer is represented by his advocate Smt. H. H. Sujatha. After filing the objection statement and hearing the parties, the matter was posted for judgment.
3. The point that arise for consideration is as to:  
Whether the complainant is entitled for the relief as prayed in the complaint?
4. My answer is affirmative for the following

*[Handwritten Signature]*  
30/01/2020

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**REASONS**

5. The complainant had booked a villa bearing No.19 on 25.04.2013 measuring 3100 Sq.Ft. its total consideration amount was Rs.3,07,60,000/-. According to the agreement the Developer was expected to complete the construction of the villa on or before 30.09.2016. But according to the complainant she had entered into customised agreement on 25.09.2016 and as per the said agreement the Developer was expected to complete the project by delivering the possession of the villa on or before 25.09.2017.
6. It is the grievance of the complainant that, the Developer has failed to adhere to the terms of the agreement and written a letter dated 24.04.2018 stating that due to delay in delivery of kitchen cabinets and furniture, the villa is not ready to handover at present and he had assured to hand over possession on or before 30.09.2018. This is the indication that the Developer has not able to complete the project as per the terms of the agreement.
7. As per Sec.18 of the RERA Act, the Developer is liable either to give delay compensation or refund the amount in case the consumer wants to with draw from the project. Accordingly, in this case, the completion date was on 25.09.2017. But as per the letter dated 24.04.2018 the project was not completed. Therefore, undoubtedly, the Developer is liable to pay delay compensation to the complainant.

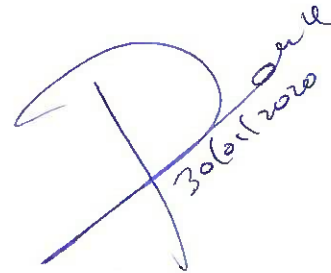
*[Handwritten Signature]*  
30/04/2018

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8. It is the case of the Developer that he has applied for Occupancy Certificate on 01.10.2019. But the same will not absolve his liability to pay compensation. But however Smt. Sujatha, Advocate submitted that delay was not intentional one. She submitted that the Developer has made his best efforts to get the commencement certificate, occupancy certificate, electricity, water and sanitary connections within the stipulated time, but it was not materialised. It is also expressed that non-availability of building materials on account of lorry strike are all grounds for the Developer to cause delay in completion of the project.
9. I would say that word 'force majeure' attracts natural calamity, but no ground as urged by the Developer. The completion date was on 25.09.2017, two years has already been lapsed even then the Developer is not able to get the Occupancy certificate means he is unable to complete the project within a reasonable time. Therefore, the Developer has no legs to stand on his own foot.
10. On 18/01/2020, the learned counsel for the developer has filed written argument on behalf of the respondent. The advocate submits that soft copy of the same is also sent to the complainant. In view of the same, the learned counsel for the complainant has also filed his rejoinder to this written argument. The learned counsel for the complainant has attacked the steps taken by the developer in filing the written argument after inordinate delay and as such the learned counsel for the complainant has requested this authority not to give importance to the written arguments.

  
30/01/2020



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11. I would say that the relationship between the complainant and the developer has been proved. It is also proved that the developer had executed the agreement of sale on 03/03/2014, wherein the completion date was mentioned as 30/09/2016, but the customization agreement was executed on 25/10/2016 wherein the completion date agreed to be completed on 25/09/2017. There is no dispute on these aspects. The complainant also submits that the completion date was on 25/09/2017, but his grievance is that even today the developer has not been able to deliver the possession of the Villa by obtaining the Occupancy Certificate. Now the written arguments filed at the belated stage where in, the developer submits that he has obtained partial Occupancy certificate on 17/12/2019. The developer has also contended that he has applied for the grant of Occupancy certificate in the month of October 2019. Based upon this document, the learned counsel for the developer wanted to take benefit by stating that since the developer has already obtained Occupancy certificate, the present complaint cannot be considered.
12. I would say that the developer has contended in his written arguments stating that as per construction agreement dated 03/03/2014 and subsequent customization agreement dated 25/10/2016, the completion date was 25/09/2017. But it is further contended by the developer that due to delay in delivery of kitchen cabinet and furniture, the Villa was not handed over on or before 25/09/2017. So, admittedly, there is violation on the part of the developer. Further, the developer has assured the complainant that Villa will be delivered on or before 30/09/2018. But I would like to say that this is also not adhered to the promise made by the developer. I would say that as per Sec.17

*D. D. Dewy*  
30/09/2019

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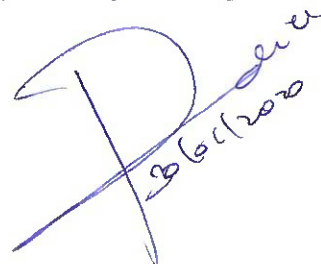
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read with 19(10) of RERA Act, the developer can claim that his project is completed only by possessing Occupancy certificate in his hand from the competent authority. Admittedly, the developer has received the partial Occupancy certificate on 17/12/2019 and as such till 17/12/2019 he cannot claim that his project was completed. Till 17/12/2019 the project was not completed means there is a clear violation of Sec.18, because the terms of the agreement was violated. In this regard, I would say that whatever the length of arguments submitted by the respondent will not gets importance because Sec.18 clearly says that the consumer is entitled for delay compensation when there is no compliance of terms of agreement. Admittedly, the completion date was 25/09/2017 from that date till possession is delivered with all amenities, the developer is bound to pay the compensation as per 18 of the Act.

13. Why I am directing the developer to pay delay compensation till the possession is delivered because mere obtaining Occupancy certificate is not sufficient. In case the developer is able to prove before this authority that Villa in question is ready for occupation supported with the Occupancy certificate, then only his case may be accepted. Unfortunately, it is not done so, because the photographs produced by the complainant taken on dated 25/01/2010 goes to show that his villa is not yet completed and not fit for occupation. When that being the case, mere obtaining partial Occupancy certificate will not absolve the liability of the developer unless he obtains Occupancy certificate and completes the villa for habitual condition. Therefore though the developer has taken the Occupancy certificate on 17/12/2019 but the photographs proves contrary to the same. Hence, the developer is not absolved from the liability to pay delay compensation on the

  
26/1/2020

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total amount paid by the complainant @ 2% above the MCLR of above SBI commencing from October 2017 till Villa is delivered to the possession of the complainant with all amenities.

14. The learned counsel for the complainant has vehemently contended that partial occupancy certificate produced by the developer has no sanctity. According to him the said partial occupancy certificate is not recognised by the Act. It is his submission that the developer cannot buy back by producing this kind of document. I would say that the stand taken by the complainant has not force, because, the partial occupancy certificate is recognised by the Rules. But the important point is the complainant has filed this complaint for delay compensation due date was September 2017, the partial occupancy certificate has been obtained in the month of August 2019. There is an inordinate delay in obtaining the occupancy certificate, till that date the developer is liable to pay delay compensation. Therefore, the contention taken by the complainant to discard the partial occupancy certificate has no reasons.
15. Of course the learned counsel for the complainant has attached some decisions along with his reply dated. 27.01.2020. In this regard I would say that so far as principle of Law is concerned there is no quarrel.

*Deny*  
30/01/2020



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16. Further on 10.12.2019 the complainant has filed his additional written arguments stating that when he made a recent visit to the site none of the amenities and basic requirements such as water, power and other amenities were not ready. Therefore, it is submitted that he is entitled for the interest at the rate of 10.75% on Rs.3,60,29,160/- commencing from 26.09.2017 till possession is handed over. It is necessary to say that the rate of interest is governed by Rule 16. Therefore, the claim of the complainant will be considered in this background.
17. Before passing the final order I would like to say that as per section 7(12) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. The said 60 days be computed from the date of appearance of the parties. In this case the parties have appeared on 26.06.2019. After hearing the parties the case heard and reserve for judgment. However, the learned counsel for the developer has filed his written arguments along with partial OC and other documents and submitted for reconsideration. The learned counsel for the complainant has also filed his rejoinder along with some citations. The complainant has also produced some documents and as such the case is being disposed off on today with some delay. With this observation, I pass the following

*D. Deval*  
30/01/2020

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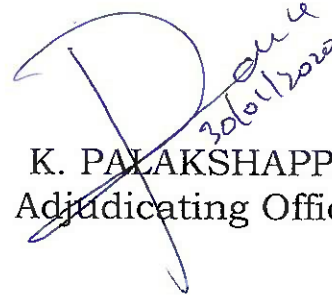
**ORDER**

The Complaint filed by the complainant bearing No. CMP/190404/0002553 is allowed by directing the developer to pay delay compensation @ 2% p.a. above the MCLR of SBI on the amount received from the complainant towards purchase of Villa bearing No.19 commencing from October 2017 till the developer executes the Sale deed after obtaining Occupancy Certificate by providing all the amenities.

Further the developer shall also pay Rs. 5,000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 30/01/2020).

  
K. PALAKSHAPPA  
Adjudicating Officer