

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 Paiakshappa
Adjudicating Officer**

Date: 14th JANUARY 2020

Complaint No.	CMP/190627/0003248
Complainant	POORNA PRAKASH K 904, Tower-1, Rustomjee Ozone Goregaon West Mumbai Maharashtra-400062 Mumbai Sub Urban District Rep.by: Shri.Bojanna K.J Advocate.
Opponent	LGCL Properties Pvt. Ltd., 12/1, Rest House Bengaluru- 560001.

"J U D G E M E N T"

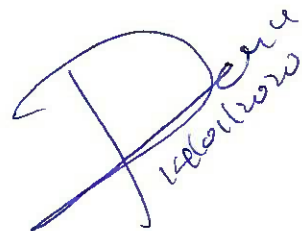
1. POORNA PRAKASH K, Complainant has filed complaint bearing complaint no.CMP/190627/0003248 under Section 31 of RERA Act against the project 'LGCL Stonescape' developed by "LGCL Properties Pvt. Ltd.," as the complainant is the consumer in the said project. The complaint is as follows:

1.In the year 2011 M/s LGCL Properties Pvt.Ltd., had exhibited in News paper regarding its new row house/vills project LGCL Stonescape and the possession of the said villa by June 2014. In this connection I got engaged with Mr.Vatsal Kumar and/Girish Purvankara of LGCL. I was offered for sale a 3 bed room villa being built by M/s LGCL Properties Pvt. Ltd., at survey No.41/1 measuring

[Handwritten Signature]
14/01/2020

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1 acre 36 guntas situated at Chikkagubbi village, Bidarahalli hobli, Bangalore East Taluk. 2. It is submitted that I had to pay a token amount of Rs.500000/- on 08.09.2011 in favour of LGCL Properties Pvt.Ltd., and booked a particular unit row house bearing No.9 on the schedule B property (more fully described in the schedule C) of the construction agreement (the agreement). The total cost of the row house being Rs.12436750. 3. In the dream of owning a villa in Bangalore at the LGCL instance I entered into aforesaid agreement and executed a loan agreement with IDBI Bank Ltd., A/c No.008675100022136. From the date of booking a total payment of INR 9954439, including the loan amount is paid to LGCL as a part of sale consideration. 4. I have been paying a per the Annexure-2 payment schedule to the construction agreement and depending on the progress in construction. As per the clause 9 of the construction agreement the construction of the schedule C property and handover possession of schedule C property within 25 months (i.e., October 2014) starting from September 2012 with the grace period of six months. 5. However it has been more than four years since the project is incomplete. It is pertinent to state that since the date of entering into the agreement with LGCL I have been coordinating with them to complete the project as per the scheduled date. It is further submitted that I having visited the property on 20.04.2019 could ascertain that there is lot of work pending to be carried out by the promoter. With regard to that I had taken few photographs and the copies of the photographs are herewith enclosed. Further on 11.05.2019 I once again visited the property to know the progress in the development with regard to the property and the stage of construction seems to be the same as above. The photographs taken on that day is herewith enclosed. 6. LGCL has been making false promises every now and then with regard to the completion of the project. 7. Copies of the agreement of sale construction agreement E-mail correspondences and recent photographs of the villa and the surrounding are attached as pdf


14/04/2019

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file to this complaint. 8. Complaint seeks liberty to file a detail additional complaint along with email correspondences exchange of notices and calculation sheet through his counsel on the date of hearing. Wherefore, I humbly pray that this Tribunal be pleased to direct M/s LGCL Properties Pv.Ltd., to a) refund the amount of Rs.9964439/- with interest at 24% p.a in the interest of justice.

Thanking you K.Poorna Prakash 9820740426

Relief Sought from KERA : refund with interest @24% and compensation.

2. In pursuance of the summons issued by this authority, the complainant was present through her counsel Sri Bojanna K.J. The developer represented through his representative Sri Mallikarjuna.
3. I have heard arguments on both sides and the matter was posted for judgment on merits.
4. The points that arise for consideration is as to:
Whether the complainant is entitled for refund of amount as prayed?
5. My answer is affirmative for the following

REASONS

6. The counsel appearing for the complainant has filed Memo of calculation stating that he has paid Rs.99,51,952/- commencing from 09.08.2011 to 12.12.2017.
7. The parties have entered into agreement on 21.11.2012 agreeing to the agreement of sale. The developer has agreed to complete the project on or before September 2012 with grace period of six months. It means before March 2013 the project was to be

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completed, but till today the project is not completed. Therefore, this complaint has been filed seeking for the relief of refund of the amount. But the developer has submitted that he has already received occupancy certificate in the month of March 2019. It is the allegations that the complainant himself has not taken the possession by tendering the due amount of Rs.57 lakhs. Surprisingly the respondent has filed counter claim against the complainant. According to the developer he has received occupancy certificate on 28.03.2019 for which the complainant was obliged to pay Rs.1,24,86,750/- excluding statutory and other charges. It is his further case that the complainant has paid only Rs.99,64,439/- and still he has to pay Rs.46,98,114/-.

8. The developer has further contended in his objection statement that at para-15, 16, 17 and 19 as follows:

Para-15: The complainant is exhausted from running pillar to post and the respondent till date have not stop beating around the bush. The complainant is constrained to seek the relief as prayed for in the complaint as the respondent has not adhered to the terms and condition of the agreement. It is pertinent to mention that respondent even now is demanding additional payments to hand over the possession, without the villa being ready for possession. Even the process of Registration for transfer of ownership is not ready, which should be completed at time of demanding the final payment.

Para 16 & 17: Commandant denies the allegation that he is 'regular defaulter' complainant had never defaulted in making the payment and all the payments were made as per the progress in

Peru
14/01/2020

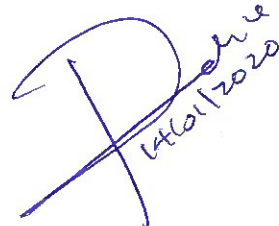
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construction and respondents demand. There are multiple emails being sent by complainant apart from the regular telephone and personal visits to check the status.

It is further submitted that the credit reputation of the complainant is negatively impacted due to this kind of delay, where the unveiled balance loan is cancelled by the bank due to non compliance with the requirement of creation of security or the loan (Mortgage of property within specified time). Bank has forced the EMI on the loan already disbursed instead of interest on the partially disturbed loan amount.

Para-19: Reason stated for the delay is vague and with any iota of proof and the respondent is put to strict proof of the same. The reason stated in the para under reply is just to evade from the clutches of penalty from this Hon'ble Tribunal. Delay of 5 years is not a small time as stated by the Supreme Court in its recent judgment "A buyer can be expected to wait for possession for a reasonable period'

9. In addition to it, the developer has contended that, these are the reasons he could not able to complete the project and successfully got the occupancy certificate in the month of March 2019, and therefore, he prays for dismissal of the complaint.
10. I would say that, the claim made by the developer has no full force. As per Sec.17 and 19(10) of the Act, it was the duty of the developer to invite the complainant or the consumer to take possession through execution of the sale deed. It is not the case of


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the complainant that the developer has invited the complainant immediately after the receipt of the occupancy certificate. Moreover, as per the allegation made by the complainant that the project was to be completed in the month of March 2013. The developer has received occupancy certificate in the year 2019, it means after lapse of six years. As per the observation made by the Hon'ble Apex Court in Pioneer case, which reads as under:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No. 12238/2018,
Pioneer Urban Land & Infrastructure Ltd.
V/s
Govindan Raghavan

which reads as under:

Para 6.1: In the present case admittedly, the appellant builder obtained the occupancy certificate almost two years after the date stipulated in the apartment buyer's agreement. As a consequence, there was failure to handover possession of the flat to the respondent flat purchaser within a reasonable period. The occupancy certificate was obtained after a delay of more than 2 years on 28/08/2018 during the pendency of the proceedings before the National Commission. In LDA v. M.K.Gupta, this court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for consideration, it is a "service" as defined by Section 2(1)(o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

In Fortune Infrastructure v. Trevor D'Lima, this court held that a person cannot be made to wait indefinitely for

D. D. D.
12/01/2020

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possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with the compensation.

11. This is completely against to the observation made by the Apex Court in pioneer case where it is said that the developer shall not made to wait for indefinitely. The same reads as under:

2018 (5) SCC 442

Fortunate Infrastructure and another

v

Trevor D'Lima and others

This court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him, along with compensation.

Two years is maximum period to wait for completion of a project from the due date. Here the due date was February 2017 and now we are in the year 2020. Hence, any length of argument made on behalf of the developer is not well founded and he is liable to refund the amount with interest.

Even though the occupancy certificate has been obtained after lapse of more than two years then also the complainant can go for refund of the amount, hence, there is no force in the argument submitted on behalf of the developer.

12. Further on 12.09.2019 it was submitted on behalf of the developer, that the project is completed in all sense, but the same was denied by the complainant. Therefore, it was ordered to have inspection in presence of the complainant and accordingly, one

D. Devaraj
14/10/2020

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Sathish B, Chartered Engineer & Approved Valuer has given his report, which reads as under:

"The site inspection was carried out by Er.Nayankumar P Patel along with the owner Mr.Poorna Prakash accordingly, the following observations were noted:

Inspection work report on Project

1. Firstly there were no representatives from LGCL side to accompany us to the villa location.
2. Compound wall construction not yet completed.
3. Construction of layout road not completed
4. Water supply connection not obtained.
5. Generator for the power backup is not been installed.
6. Permanent electrical connection not obtained.
7. Club house construction not completed.
8. Swimming pool work not completed
9. Children play area work not commenced till date
10. The quality of material used for work is not upto the mark.

Inspection work report on Villa

Following observations were noted at Villa No.R9

Electrical fittings not installed.

Poor quality door frames.

Exhaust for ventilator not installed.

Plumbing work not completed.

Finishing for the railing work is not completed.

Common area work not completed.

Tile fitting work not done properly.

Flooring in the bedroom not done.

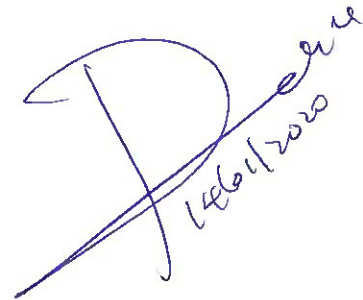
Water leakage from the common wall is been accumulated in the balcony

Poorna Prakash
14/6/2022

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Inferior quality of aluminium sliding door.
Bore packing work not done properly.
Cleanliness not maintained.”

13. The Chartered Engineer & Approved Valuer has also annexed the photos which discloses that the project was not completed and the same is not habitant situation. It means though the developer has received occupancy certificate, but he has not completed the project, it means question of denial the claim of the complainant does not arise. The allegation made by the complainant has been supported from the Inspection report as well as the delay caused in taking the occupancy certificate. The reasons afforded by the developer for the delay cannot be accepted.
14. 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. The said 60 days be computed from the date of appearance of the parties. In this case the parties appeared on 19.07.2019 and case is being disposed off on today with some delay. With this observation, I pass the following


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ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190627/0003248 is hereby allowed.
- b. The developer is hereby directed to return Rs.5,00,000/-together with interest 9% p.a. on the respective amount paid on the respective date till 30/04/2017 and @ 2% above the MCLR of SBI commencing from 01/05/.2017 till realization.
- c. The developer is hereby directed to discharge the loan along with its interest, EMI if due, EMI if paid by the complainant and any other charges.
- d. The complainant is hereby directed to execute the cancellation of agreement of sale after the entire amount is realized.
- e. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 14 /01/2020).


K. PALAKSHAPPA
Adjudicating Officer