

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/190712/0003559

Presided by Sri K Palakshappa

Adjudicating Officer

Date: 3rd JANUARY 2020

Complainant : Jayanta Chakrabarti
93A, K.N.Sen Lane
Kasba-700042, Kolkata District
West Bengal – 700042.

AND

Opponent : Lily Realty Pvt. Ltd.,
2nd Floor, Doddamane Building
19/1, Vittal Mallya Road
Bangalore-560 001
Rep.By: Sri Veeresh R.Budihal, Advocate

“J U D G E M E N T”

1. Jayanta Chakrabarti, complainant under complaint no. CMP/190712/0003559 has filed this complaint under Section 31 of RERA Act against the project “Pashmina Waterfront Phase-I” developed by Lily Realty Pvt. Ltd., as the complainant is the consumers in the said project. The complaint is as follows:

The apt was schedules for delivery by June 20015 including 6 months grace period. The builder was supposed to pay the pre-emi to the lending bank HDFC till they intimate me about the readiness of the apt, stating that the flat is ready for interior fit outs. The developer has stopped paying the pre-emi since they have intimated me about the flat being ready. The pre-delivery inspection was done on 26.06.2019. The developer has stopped paying the pre-emi since May 2019, though the pre-delivery

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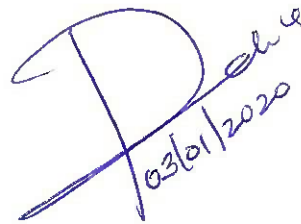
inspection was scheduled on 26.06.2019 and found major flaws. I have done the pre-delivery inspection of my apt on 26.06.2019 and found major flaws which can hardly be fixed in entirety and even if it is possible it will take a long time. In the view of the above and the project is already delayed, I would like to exit from the project.

Relief Sought from RERA: Exit with penalty due to delay and constn quality.

2. When the case was called the complainant was present in person. The developer was represented by Sri Veeresh R. Budihal Advocate. He has filed his objection statement and I have heard the parties.
3. The point that arisen for my consideration is as to
 - a. Whether the complainant proves that he is entitled for the relief as sought in the complaint?
 - b. If so what is the order?
4. My answer is affirmatively for the following

REASONS

5. It is the case of the complainant that he has entered into agreement on 04.01.2013 in respect of flat bearing No.T-0211A. The Developer has agreed to complete the project and agreed to deliver possession of the unit on or before 30.06.2015 including grace period. The complainant has filed this complaint for refund of his amount on the ground that the Developer has failed to complete the project as agreed. It is the case of the complainant that the Developer has received occupancy certificate on 29.06.2019 and he was prevented from completing the project as there was a direction by the NGT.


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It is the case of the Developer that construction was stopped in the month of August 2018 and he has obtained Clearance certificate from the Fire and Emergency department on 10.08.2018. The officers of the Town Planning Section had visited the building on 09.04.2019 and observed that, there is a deviation in the construction, but it was within the limits. Therefore, Commissioner has approved occupancy certificate on 30.05.2019, but it is the case of the Developer that National Green Tribunal has issued directions to the BBMP and other planning authorities not to sanction any construction project etc,. Due to orders passed by the NGT, the BBMP has suspended to issuance of occupancy certificate. However on one or the other pretext the BBMP was postponing for issuance of occupancy certificate.

6. This is the reason given by the Developer that though his project was completed by putting up of the construction but failed to get the occupancy certificate by virtue of the NGT orders. Of course, the reasons given by the Developer might be having some force, but the delay in getting occupancy certificate is more than four years from the due date. The Hon'ble Apex court has held in Pioneer case that even though Developer has taken the occupancy certificate the complainant is entitled for refund, because if the occupancy certificate has been taken after lapse of two years from the date of completion as mentioned in the agreement, then the complainant can demand for refund of the amount despite of receipt of occupancy certificate. The Judgment of the Apex Court 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*

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03/01/2020

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

7. In view of the observation made by the Apex court and also the claim made by the complainant, I have no any reasons to dismiss the complaint. Generally the developer has to give the possession of the apartment or the site to the consumer as agreed in the agreement of sale. The developer has made his efforts to say that the delay was because of the legal hurdles and also the reasons given as above. I would say that the Hon'ble Apex court has observed that the consumer should not be asked to wait for indefinite period. I would say that the developer has taken the occupancy certificate after the lapse of more than 4 years from the due date. When that being case, it is the choice of the complainant either to continue with the project or to exit. In this case the complainant has opted for exit. It cannot be prevented because of inordinate delay caused in completing the project. Hence, the complaint is deserves to be allowed.

A handwritten signature in blue ink, followed by the date '03/01/2020' written below it.

8. 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. This complaint was filed on 12/07/2019. In this case the parties were present on 29/08/2019. After filing objections and arguments the matter came up for judgment now and as such there is a little delay in closing this complaint. Hence, I proceed to pass the following.

ORDER

The Complaint filed by the complainant bearing No. CMP/190712/0003559 is allowed.

1. The developer is hereby directed to return Rs. 19,22,955/- to the complainant.
2. The developer is directed to give the interest @ 9% p.a. on the respective amount paid on the respective date till 30.04.2017 and @ of 2% above the MCLR of SBI on the total amount paid by the complainant.
3. The developer is hereby directed to discharge the loan amount with its interest, EMI if any, EMI if paid by the complainant and also to discharge any other statutory charges.
4. The complainant shall execute the cancellation of agreement of sale in favour of the developer after the entire amount is realised.
5. 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 03/01/2020).

K. PALAKSHADPA
Adjudicating Officer

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