

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY

COMPLAINT No. CMP/190112/0001852

Dated 16th of March, 2020

Sudhir Pillai,

....

Complainant

No. 3037, Casa Paradiso,

Shobha City,

Bengaluru Urban – 560064.

AND

M/S Shobha Ltd.,

...

Respondent

Sarjapur,

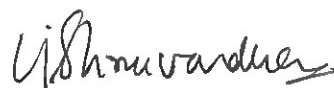
Marathahalli Outer Ring Road,

Bengaluru Urban – 560103.

The brief facts of the case are as under:

The complainant Sri Sudhir Pillai and Mrs.Rama Pillai had jointly entered into an agreement for purchase of an apartment from M/s Shobha Ltd., in its project titled "Shobha City Paradise Block-4" vide agreement dated 21/07/2015. The sale consideration agreed as per agreements was for a sum of Rs.1,40,60,180/- and the unit No.A2-4071 in Block-4 of Shobha City Paradise Block-4 Casa Paradiso was allotted to the complainant. The project was not







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completed as on the date of commencement of Real Estate (Regulation & Development) Act, 2016 and therefore, the promoter of the project had registered the project with Karnataka RERA and Registration certificate was issued. As per the Registration Certificate issued by K-RERA the date of completion of the project is 01/12/2018. It is submitted by the complainant that in accordance with the sale and construction agreements, the respondent had committed to deliver possession of the apartment by 31/05/2018. After taking into consideration the grace period of 6 months, the apartment was required to be delivered to the complainant on or before 01.12.2018 and in case any delay grace period of 6 months was also provided which may be obligatory on the part of the promoter to deliver the possession of the apartment, completing in respect to provisions of requisite amenities by 30/11/2018.

In the written submissions filed by the complainant, it is submitted that the respondent had not registered the sale agreement, despite repeated requests by the complainant. Instead of fulfilling the obligation of registering the sale agreement, the promoter of the project addressed an e-mail dated 28/11/2018 to the complainant that the project viz., Casa Paradiso Shobha City Paradise Block-4 was completed and the respondent was in the process of obtaining Occupancy certificate. It was further stated in the said e-mail that the occupation of the units will be allowed only on the issuance of the Occupancy certificate. According to the complainant although the requisite amenities such as regular electricity, basic drinking water, drainage and other environmental/ sanitary requirements were not provided, the promoter of the project had prematurely claimed that the project was complete and ready for occupation. The complainant has sought that the following facts and

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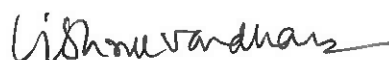
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circumstances and the legal provisions may be taken into account for giving appropriate relief on the prayers made before this Authority.

That by virtue of Section 13 (i) of the Real Estate (Regulation and Development) Act, 2016, *"the Promoter shall not accept a sum more than 10% (ten percent) of the cost of the apartment, plot or building, as the case may be, as an advance payment or application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale under any law from the time being in force."* It is envisaged on the Act that onus lies on the promoter to register the sale agreement. However, the Respondent has since the time of execution of the Agreements side-lined his responsibility of registering the same and is trying to put the onus of registering Agreements on the Petitioners.

That the Petitioner no. 1 is a senior citizen herein, and is a retired officer of the Indian Navy. The Petitioners' herein, have invested their hard-earned money in the impugned project for a peaceful, joyful and hassle-free living during their retirement age. Towards paying premium costs for the apartment, the petitioners' had to sell two other immovable properties held in the name of each petitioner and thus have no other housing available for use. It is further pertinent to note that as the Section 5.1 of the Construction Agreement, the possession of the Premises was to be delivered to the Petitioners by 31.05.2018. Further, pursuant to Section 5.5 of the Construction Agreement the Respondent liberates further grace period of 6 moths exempting interest and extending the date of delivery of possession of the premises until 01.12.2018. However, the Respondent has failed to comply with all the timelines pertaining to the







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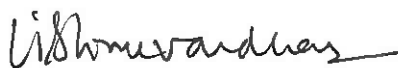
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possession of the Premises and has so far not delivered the possession of the Premises to the Petitioner. As a result of this non-compliance and non-adherence to the timelines committed as per the Construction Agreement, the Petitioners are still occupying the rented premises having paid Rs. 35,000 (Rupees Thirty Five Thousand) from September 2017 to July 2018 and have since renewed rent agreement paying Rs. 32000 (Rupees Thirty Two Thousand) plus maintenance levies of Rs. 5000 (Rupees Five Thousand) per month and a third agreement is pending renewal with the non-resident owner and awaits his impending visit to India. These rentals are over and above the interests accruing towards loan availed from SBI. EMI disbursements have not been commence pending handover, execution and registration of Sale Deed, as required towards a Mortgage Agreement to be executed and registered between the Petitioners' and the Bank. The non-delivery and execution of sale agreement are also likely to adversely impact LTCG tax under the IT Act if not concluded for the five year period ending 2020.

That the Respondent blatantly claims that the project has been completed by comfortably side lining the fact that the project has not received the completion certificate and the occupancy certificate from the competent authority. The project has not been facilitated with a permanent electricity connection till recently, and a proper municipal water supply and drainage mechanism to connect effluents to an authorized drainage system, continue to elude the project, though these are conditions imposed when the respondent firm applied for and obtained plans sanctions, building licenses and commencement certificate.







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Prayer:

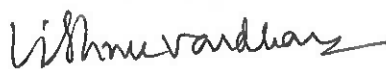
As per the complaint filed by the complainant dated 1.4.2019 the following prayer was made:

- i. To pass an order directing the Respondent to deliver the possession of the premises with all legal and compliance documents necessary for occupying the Premises by the Petitioners.
- ii. To pass an order directing the Respondent to pay compensation towards the delay in delivery of possession of the Premises at the interest rate as per Section 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 and Sec 18 of the Real Estate (Regulation and Development) Act 2016 payable from May 2018.
- iii. To Pass an order directing the Respondent to compensate for the rental payments being made by the Petitioners' May 2018 till the date of delivery of possession of the premises.
- iv. To pass an order directing the Respondent to take the onus of responsibility of registering the sale Agreement and the Construction Agreement, as required under the law, in the event the Respondent fails to deliver the possession of the Premises (along with the occupancy certificate and other legal and compliance documents) to the Petitioner within one month of the filing of this complaint.

Thereafter the complainant has filed an additional affidavit dated 11.10.2019 wherein the following prayer has been added:

1. Provide a direction to Register the Sale Agreement executed on 21 July, 2015 for which the Stamp Duty was duly paid, but was not registered by







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the respondent, including payment of any penal and accrued dues payable towards the registration of aforementioned agreement.

2. Direct the Respondent to provide for detailed reasons for Occupancy Certificate not having being obtained and current progress statement to this effect.
3. As a pre-condition to permit occupancy the respondent be directed to obtain OC at the earliest and permit occupation thereafter at the earliest.
4. Direct the Respondents to compensate the petitioners for all losses accruing which include rentals, loan interests, besides other incidentals, including a possible loss of LTCF benefits due to the negligent approach of the respondents in non-delivery of apartment in a timely manner.
5. Direct the payment of Interest at 24%, as claimed by respondent from petitioners in Sale Agreement, as against SBI MCLR plus 2% to cover expenditures beyond interest accrued on amount paid by petitioners to respondent and to honour the time value of money at a time of depreciating interest rates.
6. Direct the Respondent company to correct their book entries in Accounts ledger where interest at 11% on a compounded basis has been levied on the petitioners by the Company since December 2018. This as against compensation due under Section 18 of RERA Act. The Accounts Ledger is herein attached as **Annexure 8**.

The case was heard by the Authority on various dates and adequate opportunity of hearing was provided to the complainant as well as the respondent. The respondent has filed his objections vide his submission dated 07/11/2019.

Wishnuvardhan

Wishnuvardhan

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Further to the hearing dated 07.11.2019 the complainant filed Memos dated 28.01.2020, 19.02.2020 and 26.02.2020. The respondent has filed a written submission dated 15.02.2020.

As per the respondent submission dated 15.02.2020, Occupancy Certificate Project was issued by BBMP on 22.01.2020.

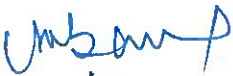
It is prayed by the petitioner that the compensation payable by the Respondent may be directed to be paid at the earliest. It is also submitted by the petitioner, vide Memos referred to above, that the petitioner has also paid the final payment, on 31.01.2020, even though the said final payment was required to be paid only at the time of handing over the possession of the apartment. It is submitted that the respondent has not handed over the apartment, in spite of the fact that 100% payment has been made. A further submission is made to the effect that the respondent has been demanding interest on the final payment, which is not applicable on account of the fact that the apartment is not handed over till date.


After carefully considering the issues raised by the petitioner in the written submissions and during the hearing proceedings as well as the submissions made by the respondent, the Authority orders the following:

ORDER

The complaint bearing No. **CMP/190112/0001852** is hereby allowed under Sec. 31 of the Real Estate (Regulation and Development) Act, 2016.

1. **Registration of Sale Agreement:** The promoter is directed to register the sale agreement forthwith at the cost of the promoter and no recovery shall be made from the allottee since the delay in registration of the sale agreement is entirely attributable to the promoter. Since this relief was







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sought in the initial stage of the hearing of the complaint, the same is allowed to recognize the right of an allottee to get the sale agreement registered even at a later date.

2. **Handing over Possession:** Promoter is hereby directed to handover possession of the apartment to the allottee within two weeks from the date of this order, since the Occupancy Certificate is obtained.
3. **Registration of the Apartment.** Promoter is hereby directed to register the appointment in favour of the allottees within four weeks from the date of this order.
4. **Compensation:** i) The allottee/s has furnished a statement of computation of compensation on the basis of which it is evident that the allottee/s are entitled for compensation on the payments made by them, on account of the fact that the apartment was not delivered for possession for occupation as per the date committed by the promoter in the sale agreement which is 31st May 2018.
ii) The interest payable by promoter to the allottee/s is regulated in accordance with the Rule 16 of The Karnataka Real Estate (Regulation and Development) Rules, 2017. The submission of the allottee/s that the respondent promoter has charged 11% interest on the final payment due from the allottee is found to be arbitrary. The allottee is liable to make the final payment only at the time of the delivery of possession for occupation and therefore any levy of interest and any deduction/recovery of any such amount from the compensation payable to the complainant allottee is not permissible. It is evident from the Memo submitted by the complainant allottee that the final payment of Rs.10,07,076 has also been made by 1st February, 2020 itself without waiting for handing over

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possession of the apartment. Having regard to the facts and circumstances of the case, the promoter of the project is hereby ordered to pay compensation in accordance with Rule 16 of The Karnataka Real Estate (Regulation and Development) Rules, 2017. Accordingly, the respondent is directed to pay interest to the complainant-allottees @ State Bank of India highest marginal cost of lending rate plus two per cent computed from 01.06.2018 till the date of handing over possession of the apartment. For the purpose of calculating the interest payable, the aggregate amount paid by the allottee upto 31.05.2018 shall be considered as the principal amount and the final payment of Rs.10,07,074 paid on 1st February, 2020 shall be added to the principal amount, so as to consider the said amount also eligible for interest w.e.f. 2nd February, 2020.

5. **Completion of all Development Works and Amenities:** The Respondent-promoter is further directed to ensure that all the pending development works are completed as per the specifications and representations made in the sale agreement; all the internal and external developmental works are completed in accordance with the approved plan of the project and all the requisite amenities are provided and are functioning satisfactorily.


(M.R. Kamble)

Chairman


(D. Vishnuvardhana Reddy)

Member 1


(Adoni Syed Saleem)

Member 2

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