

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

**BEFORE ADJUDICATING OFFICER, RERA  
BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Date 16<sup>th</sup> JUNE 2020**

<b>Complaint No.</b>	CMP/191125/0004790
<b>Complainant</b>	Mrs. Mangala M. Gowda, 897, 9 <sup>th</sup> A Cross, WCR Mahalakshmpuram , 2 <sup>nd</sup> Stage, Bengaluru-560086 Rep. By Kumari Jasleen Kaur, Advocate.
<b>Opponent</b>	Dr. K. Balaraman No.559, RMV 2 <sup>nd</sup> Stage, New BEL Road, Bengaluru-560094 Rep. Sri Sanjay H. Sethiya Advocate.

**J U D G M E N T**

1. Mrs. Mangala M. Gowda the complainant has filed this complaint no. CMP/191125/0004790 under Section 31 of RERA Act against the project "KRSNA LABURNUM" developed by 'Dr. K. Balaraman seeking for the relief of delay compensation. Her complaint reads as under:

*The Complainant Mrs. Mangala M Gowda is filing this complaint against Dr. K. Balaraman (hereinafter referred to as the Respondent) who executed the Agreement of Sale dated 21.02.2017 in favour of the Complainant with respect to apartment No. C9, having super built up area of 2400 Sq. Ft., on the eighth floor in the project named as ?KRSNA LABURNUM? situated in a portion of portion of Municipal No. 559, RMV 2nd Stage, Dollars Colony, Sanjaynagar, Ward No.*

*Dellu*  
16/06/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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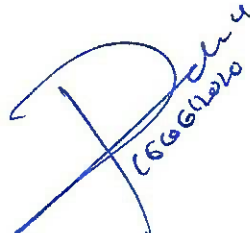
100 ? Bengaluru) carved out of erstwhile Sy. No. 24/5 of Chikkamarenahalli Village, Kasaba Hobli, Bangalore North Taluk. The Respondent has formulated a scheme of development of a luxury residential apartment complex and the Complainant had paid a lumpsum amount of Rs.2,50,00,000/-. The Respondent executed an Agreement to Sell dated 21.02.2017 and should have delivered the completed Apartment by 01.02.2018. The Respondent failed to do so. Hence, Complainant seeks for compensation. Detailed complaint is annexed as Attachment No. 1.

Relief Sought from RERA : Completion and handover as promised with OC + delay compensation u/s 18 of RERA Act.

2. After registering the case, notice has been issued to the parties. The complainant has appeared through her advocate and the respondent has appeared through his advocate and filed his objection statement.
3. I have heard arguments of parties.
4. The points that arise for my consideration are:
  - a. Whether the complainant is entitled for the relief of delay compensation?
  - b. If so, what is the order?
5. My answer is Affirmatively for the following

### REASONS

6. The complainant has entered into agreement of sale with the developer on 21/02/2017 in respect of flat bearing No. C-09 in the said project. It is the case of the complainant that the developer has agreed to complete the project on or before January 2018 including the grace period. The developer who was expected to complete the same failed to do so and as such this complaint has been filed with the said relief.

  
16/06/2018

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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7. I would say that as per S.18 of the Act, the allottee will get a right to file this kind of complaint either to claim refund or delay compensation. Of course the developer has taken so many contentions as against the allegations made by the complainants. It is the case of the developer that he had obtained the plan sanction and had acquired the TDR for the construction of said apartment and initiated the construction of apartment with a view to deliver the possession to the complainant. In this connection he has approached the BBMP for revised plan but the said authority caused delay of two years to sanction the same. Thereafter he started to put additional floors and now the same is successfully completed. He has drawn my attention to clause 19(iii) of the agreement to say that there is a clause which says that if the delay is caused from the office to get the certificate then it does not amount to delay in completion of the project. The important aspect of this case is that the developer has not completed the project within the due time as promised and he has not yet taken the occupancy certificate. In this regard I would say that the defence taken by the developer as to clause 19(iii) of his agreement has no relevancy in view of S.18 of the Act. Moreover when the developer was aware about the TDR at the time of agreement of sale itself then he ought to have taken care of completion date before promising to the complainant.
8. The above contentions taken by the developer are all not acceptable since the present act gives a right to the allottee to claim the benefit. S.18 of the Act has no place as to wilful delay or delay from the different authorities in granting permission or delay due to some other aspects beyond the control of developer which are all have no force. What the promise made by the developer regarding completion of the project is the only moot point to be determined. More over the project will come to an end only after

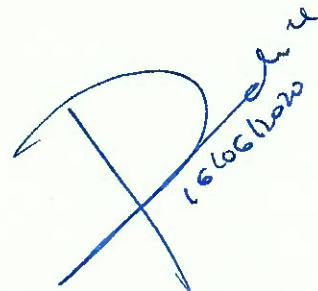
*Peru*  
16/06/2020

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receipt of Occupation Certificate and as such taking of OC is also an important stage to the developer. Therefore as rightly argued by the counsel for the complainant that she is entitled for delay compensation cannot be denied. Further at the time of argument it is brought to my notice that she had paid considerable amount to the developer and now demanding for more money than agreed terms which is not fair on the part of the developer. The developer is bound to pay the delay compensation as per S.18 of the Act from the date mentioned in the agreement and as such his stand cannot be accepted.

9. 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 25/11/2019. In this case the parties have appeared on 20/12/2019. After hearing arguments of the parties, the matter came up for judgment. In the meanwhile on account of natural calamity COVID-19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2010 and as such this judgment could not be passed. With this observation, I proceed to pass the following.

  
16/06/2020

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**ORDER**

- a. The Complaint filed by the complainant bearing No. CMP/191125/0004790 is hereby allowed.
- b. The developer is hereby directed to pay delay compensation in the form of interest on the total amount paid @ 2% above the MCLR of SBI commencing from February 2018 till the possession is delivered after obtaining the occupancy certificate. (MCLR to be calculated @ prevailing rate as on today)
- c. The developer is also hereby directed to pay Rs.5,000/- as cost of the petition.
- d. Intimate the parties.  
(Typed as per dictated, corrected, verified and pronounced on 16/06/2020).

(K. PALAKSHAPPA)  
Adjudicating Officer

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