

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟ ಬಿಲ್ಡಿಂಗ್,  
ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್‌ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

**BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Date 26<sup>th</sup> MAY 2020**

<b>Complaint No.</b>	<b>CMP/190702/0003376</b>
Complainant	A. Nirmal Raj 301, Cheroy Manoer, 15, 50 <sup>th</sup> cross, C-street, Hutchins road, St.Thomas town, Bengaluru-560084. Rep.by: Shri M.Mohan Kumar Advocate.
Respondent	Chowriappa Construction Pvt. Ltd No.41 6 <sup>th</sup> floor Chirstu complex , Lavelle road, Bengaluru-560001. 2. Ashok Chowriappa 3. Preeti Chowriappa (Residing in the same above address) Respondent No. 1 to 3 are represented by Sri Noor Ahammed, Advocate. 4. Cherin A Paul 5. Saramma Cherin Paul Residing at Villa No.90, 10 downing, Sai Baba Ashram Road, Kannamangala , White field, Bengaluru-560067 Respondent No.4& 5 are Rep.by: Sri R. Anand Murthy, Advocate

*Renu*  
26/05/2020

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

1. A. Nirmal Raj, the complainant has filed this complaint bearing Complaint no. CMP/190702/0003376 under Section 31 of RERA Act against the respondent seeking relief of delay compensation. The facts of the complaint is as follows:

*I entered into an agreement for sale and construction agreement dated 04.04.2013 for buying apartment bearing No.704, in the 7th Floor, in the building Known as ?Chowriappa Constellation? to be constructed on Bruhat Bangalore Mahanagara Palike Katha bearing No. 5, Converted Survey No.34/1, measuring One Acre Twenty Five Guntas, situated at Geddalahalli Village, Horamavu Ward, Bangalore East Taluk, Bangalore. I state that the total consideration of the said apartment mutually agreed at Rs.69,19,804/- and in order to make prompt payment, the appellatant had obtained a personal loans and arranged for bank Loan on other property utilized the same to pay the Promoter/Respondent. I state that I have paid a sum of Rs.60,00,000/- in the year 2013 itself. I state that 1st respondent is company and Respondent No.2 & 3 are its director, Respondent No.4 & 5 are the landlord who have entered into joint development agreement. I state that the entire project was to be completed and possession of the building was to be handed over within 26 months from the date of agreement i.e., 04.04.2013 and in all probabilities same should have been completed by 04.06.2015. I state that since the Respondent did not complete the project filed a complaint before the Karnataka RERA in complaint bearing No.CMP/180107/0000383. I state that the said Complaint was withdrawn by virtue of Memorandum of Understanding dated 29.03.2018 wherein it was agreed that the Respondent No.1 would pay Rs.70,00,000/-. I state that a memo dated 31.03.2018 was also filed wherein it was agreed to settle the matter outside RERA authority. I state that my sale agreement and construction is not cancelled and I am entitled to all the benefits of the RERA Act. I state that the Respondent No.1 paid a sum of Rs.15,00,000/- after lapse of some time, however did not bother to settle the entire settlement amount. I state that said*

*Handwritten signature and date: 26/05/2018*

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money may be set off against the delayed compensation as claimed hereunder. I state that I am entitled to delayed interest on my entire sale consideration which has been paid to the Respondent at the rate of 11% per annum which on Rs. Rs.60,00,000/- is Rs.26,40,000/- (Rs.60,00,000/- X 11% X 4 years delay as on June 2019 = Rs.26,40,000/-). I state that the action of the Respondent amount to absolute deficiency of service causing mental harassment, agony apart from causing financial harassment. I state the conduct of the Respondent is purely amount to unfair trade practice. I state that I had also sought for enforcement application, however the same is yet to be settled.  
Relief Sought from KERA :Delivery of Apt, Delay Compensation & as prayed

2. In pursuance of the notice issued by the authority, the Complainant has appeared through his advocate Sri M. Mohan Kumar and respondent No. 4 and 5 have appeared through their advocate Sri R. Anand Murthy where as respondent No. 1 to 3 are represented by Sri Noor Ahammed Advocate. The respondent No. 1 to 3 and respondent NO. 4 and 5 have filed their respective objection statement.
3. Heard the arguments of the parties.
4. The points that arise for my consideration are:
  - a) Whether the complainant is entitled for relief as prayed in the compliant?
  - b) If so, what is the order?
5. My answer to the above points are in the affirmative in part for the following

**REASONS**

6. This complaint is filed by the complainant seeking for compensation with a further relief for execution of sale deed as per the agreement dated 04/04/2013. I would say that most of the allegations are admitted by all the respondents. It is the stand of the respondent No. 4 and 5 that they are the land

*D. S. Rao*  
26/05/2019

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owners and they have not participated in the agreement. However the respondent No. 1 to 3 are directly involved in the execution of agreement of sale. It is also an admitted fact that the present complainant had filed a complaint against the same developer for the relief of refund of the amount. It is an admitted fact that the said complaint was disposed off on the ground of settlement arrived between the parties. Accordingly the previous complaint was dismissed as withdrawn as per the terms of the settlement.

7. But now the complainant has filed this complaint seeking the relief of delay compensation and to hand over the possession of the same flat bearing No. 704. In view of the same the developer has taken a strong defence stating that the present complaint is not maintainable in view of the settlement arrived in the previous complaint. It is a fact also.

8. The learned counsel for the complainant has argued before me to the effect that he has no any occasion to file another complaint in case the developer had adhered to the terms of the settlement. I find some force in his submission. The developer himself has produced the copy of the settlement arrived between them in the previous complaint. When I gone through the same I appreciate the case of the complainant because the terms of the settlement obliges the developer to pay Rs. 70,00,000/-to the complainant within the agreed time. I would like to reproduce the same for better appreciation:

*Now the memorandum of understanding/agreement witness as followed:*

*The purchaser a and builder, in view of the effective conciliation made by side, have conciliated to get to end the complainant by way of mutual understanding compromise and the following terms and condition:*

*Dehu*  
*26/05/2010*

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1. *The purchaser will return back the Apartment No. 704 to the builder and the builder has agreed to pay a sum of Rs. 70,00,000/- (Rupees Seventy Lakhs only) as the buy-back price for the apartment No. 704. Total inclusive without any other further charges within this stipulated time mentioned below in the following manner:*
  - a. *An amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) being paid by way of cheque bearing No. 001132 dated 25/04/2018 drawn on Kotak Bank, Lavelle road branch Bengaluru.*
  - b. *The balance amount of Rs. 60,00,000/- only will be paid on or before 25<sup>th</sup> July 2018*
  - c. *In the event if the builder finds any prospective purchaser who is interested to buy the balance due will be cleared even earlier to agreed date.*
  - d. *A cancellation agreement will be drawn with the same terms and conditions mentioned in this memorandum and on refund of the entire amount the original construction agreement and agreement for sale dated 4<sup>th</sup> April 2013 will be cancelled and handed over by the purchaser to the builder.*
9. *Any person who goes through the same will say that the developer shall pay the amount as agreed by him. Surprisingly the developer has taken a different stand in his objection statement which reads as under:*

*This is submitted that admitted by the complainant in the complaint, earlier complainant filed RERA complaint before this Hon'ble authority in complaint Bearing No. CMP/180107/0000383. And that proceeding was ended with the amicable settlement between the parties, in view of settlement between the parties entered Memorandum of understanding dated 29.03.2018. copy of the Memorandum of understanding dated 29.03.2018 is herewith enclosed as DOCUMENT 1 as per the memorandum of understanding complainant have to execute cancellation Deed. Para 1(D) of the Memorandum of understanding dated 29.03.2018 reads as follows:*

*Devi*  
*26/05/2018*

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***“A cancellation agreement will be drawn with the same terms and conditions mentioned in this memorandum of understanding and refund of the entire amount the original construction agreement and agreement for sale dated 4<sup>th</sup> April 2013, will be cancelled and handed over by the purchaser to the builder”***

10. By going through the defence taken by the developer it is unfortunate to say that the developer has utterly failed to give any explanation as to why he has not complied the terms of the settlement. In the defence he has again blamed the complainant himself as to non-compliance of terms which is not sustainable. The execution of cancellation agreement of sale does arise only in case the developer has fulfilled the terms by tendering the amount as agreed with in the schedule time. Instead of giving any explanation as to why he has not fulfilled the terms but the developer trying to put fault on the part of the complainant.

11. Of course the complainant should not file a fresh complaint in case the developer has shown any intention to perform his obligation as per the terms. This complaint is filed in the month of July 2019 as against the developer promised to pay Rs. 70,00,000/- on or before 25<sup>th</sup> July 2018. As against the same the developer had paid only Rs. 15,00,000/- amount regardless with the terms of the settlement. The date of payment made by the developer is as under:

- a. A sum of Rs. 5,00,000/- by way of RTGS on 26/04/2018.
- b. A sum of Rs. 5,00,000/- by way of DD bearing No. 322403 dated 28/05/2018
- c. A sum of Rs. 5,00,000/- by way of Cheque bearing no. 544812 dated 26/06/2018.

*Devi*  
*26/05/2018*

12. The said payment is also against to the terms of the same. Therefore the developer has lost his right to take any kind of defence as against the case made out by the complainant. Further the developer has not given any reasons as to why he has not all paid the amount payable by himself as per the settlement and fell himself as defaulter and thereby he cannot oppose the present complaint. Furthermore the present complaint is perfectly maintainable since the judgment of the previous complaint became fruitless because of the default shown by the developer. The question of execution of cancellation of agreement of sale will not come to picture since the balance amount has not been paid by him. Now the present complaint is filed for the different prayer for which the complainant is entitled for since the developer has violated terms of the settlement.

13. The developer has raised another stand that the complaint has to be dismissed since the Agreement is not registered. The same is not having any force since the agreement of sale was executed prior to commencement of this Act.

14. However the complainant is also not entitled for the whole relief as sought by him. His prayer for grant of interest @ of 11% has no basis. Further in his calculation memo he has calculated the interest @ compounded interest which is not permissible. Further the relief sought by the complainant towards Mental Agony cannot be granted for the following decision:

*D*  
26/05/2020

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*When compensation for mental agony can be granted: - in the case of Ghaziabad Development Authority v. Union of India, (2000)6 SCC 113 wherein whilst considering a case of breach of contract under Section 73 of contract Act, it has been held that no damages are payable for mental agony in case of breach of ordinary commercial contract. The Supreme Court considered the case of Lucknow Development Authority AIR1994 SC 787 and held the liability for mental agony had been fixed not within the realms of contract but under principals of administrative law.*

15. In view of the same the complainant is entitled for the relief in part.

16. Before concluding my discussion I would say that respondent No. 1 to 3 are the developer/promoters who are main responsible for the allegations made by the complainant. Respondent No. 4 and 5 are land owners who have not entered into any kind of agreement and as such they are not directly answerable to the claim of the complainant and hence, the present complaint is liable for dismissal against them.

17. As per Section 71(2) of the Act the complaint has to be disposed with in 60 days from the date of its filing. However 60 days be computed from the date of appearance of the parties. In this case the complaint was filed on 02/07/2019 and the parties have appeared on 01/10/2019. In this case there are five respondents. The developer/promoter have appeared through their advocate where as land-owners have appeared through their separate advocate. Filed their respective objection statement. . In the meanwhile on account of natural calamity COVID 19 whole nation was locked down completely from 26/03/2020 till 16/05/2020 and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.

*Deena*  
26/05/2020



**ORDER**

- a. The complaint No. CMP/190702/0003376 is hereby allowed in part.
- b. The developer is hereby directed to pay delay compensation @ 9% on Rs. 60,00,000/- from 05/06/2015 till 30/04/2017.
- c. The developer is hereby directed to pay delay compensation @ 2% above the MCLR of SBI on Rs. 60,00,000/- from 01/05/2017 till 26/04/2018.
- d. The developer is hereby directed to pay delay compensation @ 2% above the MCLR of SBI on Rs. 55,00,000/- from 27/04/2018 till 28/05/2018.
- e. The developer is hereby directed to pay delay compensation @ 2% above the MCLR of SBI on Rs. 50,00,000/- from 29/05/2018 till 25/06/2018.
- f. The developer is hereby directed to pay delay compensation @ 2% above the MCLR of SBI on Rs. 45,00,000/- from 26/06/2018 till the possession is delivered after obtaining the Occupancy Certificate with all amenities.
- g. Intimate the parties regarding the Order.
- h. The complaint is dismissed against respondent No. 4 and 5.

(Typed as per Dictates, Verified, Corrected and  
Pronounced on 26<sup>th</sup> May 2020)

(K.PALAKSHAPPA)  
Adjudicating Officer

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