

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

1

BEFORE ADJUDICATING OFFICER

PRESIDED BY SP.I.F. BIDARI

DATED 09th November 2021

Complaint No.	CMP/190525/0003132
Complainant	Mr. Niranjan Goyal Flat RBA 503, Purva Riviera, Marathahalli Bridge, Bengaluru-560037. (In person)
Respondent	Purvankara Limited 130/1, Ulsoor Road, Bengaluru- 560042. (Miss. Sonali Sylvia Authorised Signatory)

J U D G M E N T

Mr. Niranjan Goyal (here-in-after referred as complainant) has filed this complaint bearing no. CMP/190525/0003132, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent M/s Purvankara Ltd., (here-in-after referred as respondent), seeking relief of delay compensation till handing over of possession of the apartments.

2. The brief facts of the case are as under:

The respondent M/s Purvankara Ltd., has developed a Real Estate Project Purva Westend (here-in-after referred as project) in piece and parcel of converted immovable property, in Sy. Nos.



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

2

55/5 and 55/7 in all measuring 7 acres 34.79 guntas or 3,42,762.75 sq.ft., situated at Hongasandra Village, Beguru Hobli, Bengaluru South Taluk, described as schedule A property. The complainant is an allottee of a 3 bedroom and 1 single bedroom apartments bearing Nos. E-1001 and E-1002 respectively on the 10th floor, in E Block, of multi-storied residential apartment complex in the project being developed in the aforesaid Schedule A property. The built up area of the said apartments are measuring 1413 sq.ft., and 126 sq.ft. respectively. The complainant pursuant to booking of aforesaid apartment has entered into two separate agreements of sale and two separate construction agreements dated: 17.03.2014 (here-in-after referred as agreements of sale and construction agreements respectively) with the respondent to purchase proportionate undivided share in Schedule A property measuring to an extent of 324.091sq.ft. and 28.771sq.ft., respectively and to get construct aforesaid apartments there-on. As per the agreed terms the respondent was to handover completely constructed aforesaid apartments to the complainant within 36 months from the date of agreements or upon receipt of Commencement Certificate (here-in-after referred as CC) whichever is occur later and with 6 months grace period. As on date of filing of complaint respondent had collected 98% of the agreed considerations. The complainant inspected the apartments on 23.02.2019 and sent his inspection report on 05.03.2019, highlighting multiple defects and deficiencies in the apartments but till date of filing of the complaint promoter has neither confirmed the defects mentioned in the inspection report is fixed or assured complainants of any date of defect fixing or any timeline for handing over of apartments. The respondent

✈

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

3

neither handed over apartments to the complainants nor paid the damage compensation awarded by RERA in case No.CMP/180225/0000512. Therefore the complainant has filed this complaint U/Sec. 18 of the RERA Act, for the relief sought. The memo dated 20.11.2019 has been filed on behalf of the complainant wherein it is stated that in view of the order passed by this authority in Complaint No.512/2018, the complainant restrict his relief for delay compensation from January 2019 till the date of handing over of possession of the apartments. The complainant has filed detailed additional statement to his complaint.

3. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent has appeared through it's authorised signatory. The respondent has filed the statement objections admitting the fact that complainant has entered into an agreements of sale and construction agreements dated:17.03.2014. The respondent has constructed and completed the project. The Brahat Bengaluru Mahanagara Palike (here-in-referred as BBMP) has granted Occupancy Certificate (here-in-after referred as OC) dated 29.12.2018. The complainant did submit booking forms on 03.12.2013, subsequently agreements have been executed on 17.03.2014. As per the terms of the agreements respondent was to deliver possession of the apartments within 36 months from the date of agreements or from the date of receipt of CC, whichever occurs later, with 6 months grace period, subject to complainant's timely payment. It is pleaded that respondent has registered the project with K-RERA as an ongoing project. The completion date of project as per the registration certificate with the K-RERA was 31.12.2018.

✓

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-560021

4

The 1st intimation for inspection of the apartments was sent to complainant on 06.02.2019 but complainant conducted the inspection on 05.03.2019, the snags reported of the said inspection were rectified and intimation for final inspection was sent to complainant on 27.05.2019, however the complainant went on differing final inspection, settle his dues and register his apartments. There is no delay on the part of respondent to complete the project and to handover possession of the apartments. The delay, if any, in registration and execution of conveyance deed and subsequent possession of apartments is attributable to the complainant. These main grounds among others urged in the statement objections, prayer to direct the complainant to conduct final inspection of the apartments also to direct to execute and register the conveyance deed in-respect of apartments and after full payment of dues payable by him to the respondent. The respondent for the aforesaid grounds prayed to dismiss the complaint.

4. This authority i.e., Adjudicating Officer, on hearing both side, appreciating materials and documents on record through judgment and order dated 03.06.2020, did dismiss the complaint CMP/190525/0003132, against which complainant had preferred appeal before the Hon'ble Karnataka Real Estate Appellate Tribunal Bengaluru(here-in-after-referred as appellate Tribunal) in appeal (K-REAT) No. 295/2020. The Hon'ble Appellate Tribunal through its judgment and order dated 03.09.2021, partly allowed the appeal, set aside order dated 03.06.2020 passed by the Adjudicating Officer of this authority, and matter is relegated to the Adjudicating Officer (here-in-after referred as AO) for determination of compensation issue after



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

5

affording sufficient opportunity for the parties as directed therein. Thus the instant case has been taken up for disposal afresh as directed by the Hon'ble Appellate Tribunal. There-after receipt of the records from the Hon'ble Appellate Tribunal, notices were issued to the parties. Pursuant to services of notice the complainant appeared in person, though earlier had engaged an Advocate on his behalf in this case before the AO and the respondent appeared through authorised signatory.

5. I have heard the complainant and heard Miss. Sonali Sylvia Authorised signatory for the respondent, through Skype. Perused the records and materials.

6. The points that would arise for consideration are:

Point No.1: Whether the complainant is entitled for delay compensation? If so, to what extent?

Point No.2: What order?

7. My findings on the above points are as under:

Point No.1: Yes, to the extent as shown in the final order.

Point No.2: As per final order, for following:-

REASONS

8. Point No.1: The fact of parties entering into the agreements of sale and construction agreements dated:17.03.2014, is admitted one. So also the fact that BBMP has issued CC, on 23.04.2015, is not in dispute. As per the agreed terms, the apartments were to be handed over to the complainant within 36 months from the date of agreements or from the date of receipt of CC, whichever is occurs later, with 6 months grace period, which comes to, on

✍

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

6

or before 23.10.2018 as CC, has been issued on 23.04.2015. Admittedly the agreements are executed on 17.03.2014, much prior to coming in to force of the RERA Act. Therefore it is just to consider as to whether the provisions of RERA Act 2016 and K-RERA Rules 2017, are applicable in the present case or not. Admittedly project has been registered with Karnataka RERA as the project in question in this case as an ongoing project as per the provisions of RERA Act and K-RERA Rules. The Hon'ble Haryana Real Estate Appellate Tribunal in appeal Nos. 52 & 64 of 2018 decided on 03.11.2020, in appeal No 52/2018, in the case of Emaar MGF Land Limited Vs. Ms. Simmi Sikka and another and in appeal No. 64/2018 in the case of Ms. Simmi Sikka Vs. M/s. Emaar MGF land Limited, among others observed that provisions of the Act shall become applicable even to an unregistered project or projects which do not require registration with respect of the fulfilment of the obligations as per the provisions of the Act, Rules & Regulations framed thereunder. Therefore, it is made clear that in the instant case the project in question is ongoing project so, required to be registered, accordingly same is registered with K-RERA, which is an admitted fact, as such, the provisions of the RERA Act and K-RERA Rules are made applicable to the present case though the agreements were entered between the parties on 17.03.2014, before coming to the force of RERA Act.

9. There is no dispute that the learned AO of this authority through judgment and order dated 24.05.2018 in complaint No. CMP/180225/0000512 (here-in-after referred as complaint No.512) filed by this very complainant Mr. Niranjana Goyal with regard to aforesaid apartments allowed the said complaint and

✓

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

7

directed the respondent to handover possession of the apartments within 31.12.2018 and to pay Rs.50,000/- delay compensation to the complainant. The Hon'ble Appellate Tribunal in its judgment dated 03.09.2021 in appeal (K-REAT) No. 295/2020, taking into consideration of the judgment and order dated: 24.05.2018 in complaint No. CMP/180225/0000512 among others observed that though the learned AO has awarded compensation to the complainant till 31.12.2018, then also the present complaint No. 3132 is maintainable and setting aside the judgment and order dated: 03.06.2020 relegated the matter in the present complaint No.3132 for determination of compensation. The record discloses that subsequent to filing of present complainant No.3132, the respondent along with land owner have executed two separate sale deeds both dated 17.02.2020, in favour of the complainant and his wife, in-respect of the aforesaid two separate apartments. The copies of the some of the emails exchanged between the parties are on record the copy of email dated 16.07.2019 discloses that respondent sought 10 days time from that date for rectification of the snags in the apartments. The copy of email dated 05.08.2019 disclose that final inspection of the apartments was scheduled on 10.08.2019. These documents leads to the only probability that the possession of the apartments were not handed over to the complainants on or before 23.10.2018 as agreed and there was delay in handing over possession of the apartment. The recitals in the aforesaid two separate sale deeds dated: 17.02.2020 discloses that the possession of both the apartments in question is handed over to the complainant on 17.02.2020 itself. Therefore it is evident that apartments are handed over to the possession of the



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

8

complainant on 17.02.2020. The one of the contention of the respondent is that in the registration certificate, the date of completion of the project is mentioned as 31.12.2018 and where as the OC has been obtained on 29.12.2018 for the project, as such, there is no delay and no fault on the part of the respondent, as such, respondent is not liable to pay delay compensation to the complainant. As per the observations of their lordships in a ruling reported in AIR 2021 Supreme Court 70 in Civil Appeal No. 3581-3590 of 2020 the period mentioned in the builder -buyer agreement be taken as a base to consider the date of handing over of the possession of the apartments. The relevant portion of the said ruling in AIR 2021 Supreme Court 70 in Civil Appeal No. 3581-3590 of 2020(Arising out of Civil Appeal Diary No. 9796/2019) and Civil Appeal No. 3591 of 2020 (Arising out of Civil Appeal Dairy No. 9793/2019), in the case of M/s. Imperia Structures Ltd. Vs Anil Patni and Anr., reads as under:

“(B) Consumer protection Act(68 of 1986), S.2(d)(r), S.23- Real Estate (Regulation And Developer) Act (16 of 2016), S. 79, S.18- Registration of project under RERA-Effect of- period in which construction should have been completed has expired before registration of project- Merely because registration is valid up-to certain date, entitlement of allottee to maintain action does not stand deferred – Period has to be reckoned in terms of Builder Buyer agreement and not registration.”

10. Therefore in view of observations of their lordships in the aforesaid ruling reported in AIR 2021 Supreme Court 70, the date of completion of the project mentioned in the registration certificate as 3.1.12.2018 shall not be taken into account to



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

9

consider period of delivery of possession of the apartments but the period mentioned in the agreements to be taken for that purpose. At the cost of repetition it be stated that possession of the apartments is handed over to the complainant on 17.02.2020 as mentioned in the sale deeds and respondent has not produced any materials to show that earlier to 17.02.2020 possession of apartments was handed over to complainant, as such, there is no substance in the contention of the respondent. The materials on record prove that the respondent has contravened provisions of Sec.18 of the RERA Act, in as much as, causing delay in handing over of the possession of the apartments to the complainant. Admittedly the delay compensation has been awarded to the complainant in complaint No. 512 till 31.12.2018 and the memo dated: 20.11.2019 also filed in this regard on behalf of the complainant and complainant restricting his prayer for delay compensation in this complaint from 01.01.2019 till handing over of possession of the apartments. Under the circumstances it is held that the complainant is entitle for delay compensation by way of interest @ 2% per annum above the MCLR of SBI from 01.01.2019 to 17.02.2020, on respective amounts from the dates of receipt of respective amounts. Thus I hold point No.1 accordingly for consideration.

11. As per the provisions contemplated U/sec. 71(2) RERA Act the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 25.05.2019, thereafter notices issued directing the parties to appear through Skype for hearing as because of COVID-19 pandemic the personal hearing before the

✓

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

10

Adjudicating Officer not yet commenced. The case was once decided by the AO on 03.06.2020, against which appeal was preferred before the Hon'ble Karnataka Real Estate Appellate Tribunal Bengaluru. The parties given the reasonable opportunities to contest the case, as such, the judgment is being passed on merits, with some delay.

12. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

ORDER

- (i) The complaint filed by the complainant bearing No.: CMP/190525/0003132 is partly allowed against the respondent.
- (ii) The respondent is hereby directed to pay delay compensation to the complainant by way of interest @ 2% per annum above the MCLR of SBI from 01.01.2019, on respective amounts from the dates of receipt of respective amounts till 17.02.2020.
- (iii) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (iv) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with this order to enforce the order.
- (v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 09.11.2021)



I.F. BIDARI

Adjudicating Officer-1