BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K.PALAKSHAPPA
Adjudicating Officer
Dated: 12th March 2020

Complaint No.	**CMP/180103/0000372**
Complainants :	Brijesh Kumar Soni #717, Door No. 201, 15th Main Sector-3, HSR Layout Bngaluru – 560102. Rep.by: Sri. Vikas Mahendra, Advocate.
Opponent :	SJR Prime Corporation Pvt. Ltd., SJR Primus,7th Floor, #1 Industrial Layout, Koramangala 7th Block, Bengaluru-560095. Rep. By Sri. Prakyath, Advocate

J U D G M E N T

1. The above complainant has been filed by complainant under Section 31 of RERA Act against the project "BLUE WATERS PHASE 2" developed by SJR PRIME CORPORATION PVT. LTD., his complaint reads as under:

> *The Builder here is referred as "SJR Primecorp". Few facts about my flat SJR Bluewaters, Boston (Block 6), Flat no. 1101: -As per agreement signed in Apr'16, the Builder promised a possession date of Dec'2017. After paying 90% of the total amount, the construction*

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status is nowhere close to possession. -The Builders promises different possession date to every individual for the apartments in the same building/same floor for which the possession date is on or before Jan'2017, which is highly unlikely to differ. -Builder has given a new committement date of possession (Jul-Sept'18). When we homebuyers asked Builder in quarterly meeting about date given in RERA, they told Q2-2019, which is also a bluff from the builder and he is knowing cheating by giving different dates to each and everyone -Builder is giving different possession date to the new buyers for the same apartment (Dec'2018 or later) -The builder has kept the agreement totally in their favour adding clauses for hundreds of escape points to not pay compensation after 'possession date'. -An email reminder was sent to the builder, but the builder responded vaguely saying compensation will on case to case basis, but 'as per agreement', which is merely 3 Rs/ square feet for a month, which accounts to Rs.3510 ; way below compensation rule set by RERA (MCLR Rate+2%). I request RERA to take an early action on builder as this is causing me severe financial stress and mental stress.

Relief Sought from RERA :Compensation as per RERA rules

2. I would like to say that the complainant has sought for delay compensation as a main relief from the developer. In pursuance of the summons issued by this authority Sri. Vikas Mahindra Advocate has appeared on the behalf of the complainant. Sri. Prakyath, Advocate has appeared on behalf of the developer.

3. The Developer has filed an Interim Application under S.8 of Arbitration and Conciliation Act during the pendency of the complaint for which the complainant has filed objections. After hearing the parties, the said I.A. was dismissed and posted the matter for arguments on merits.

4. The developer filed his written objections filed written arguments.

5. I have heard the arguments on both sides.

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6. The points that arise for my consideration are:

   a) Whether the complainants prove that he is entitled for delay compensation along with other kind of reliefs?

   b) If so, what is the order?

7. My answer is affirmative in part for the following

REASONS

8. The complainant has entered in to agreement of sale with the developer on 06/04/2016. As per the agreement the developer has agreed to complete the project on or before June 2018 including the grace period, but the developer failed to complete the same and as such this complaint has been filed.

9. The complainant has filed this complaint seeking the relief of delay compensation. It is the case of the complainant that the developer is liable to pay the delay compensation as per the agreement since the developer had to complete the project on or before December 2017 with 6 months grace period which means the developer had to deliver the possession on or before June 2018. Even though the project has not been completed within time as mentioned in the agreement, the learned counsel for the developer submits that he is not liable to pay delay compensation since the date given to the RERA Authority has not yet completed. In addition to the above submission it is also the case of the developer that he was prevented from completing the project with some excuses.

10. As per Section 18 (1) proviso the allottee who is not going to withdraw from the project shall be paid by the promoter with interest including the compensation. During the course of calculating the delay compensation; the Authority has to look into Section 72 of the RERA Act. The Developer has failed to complete the project on or before June 2018 including grace period of 6 months. It is the case of the developer that as per clause 6.1 the due date was December 2017 with six months grace period. As per his submission if it is proved that the delay was not wilful delay then another 6 months grace period with occur means it comes to December 2018. Further it is alleged that there was no any violation of S.72 of the Act. No allegation regarding the deviation of the amount to other projects and as such it is submission that the delay compensation as sought by the complainants is not covered.

11. But, the word compensation has not been defined in this Act. In this regard I would like to take the following commentary:

> *Adjudication of Compensation: The Act provides for compensation to the Allottee for false advertisement, structural defect failure to complete construction or deliver, defective title, and failure to discharge the other obligations under the Act, Rules or Regulations or Agreement. This section enables the authority, to appoint adjudicating officer for the purpose of adjudging the compensation.*
>
> *The word compensation is not defined under this Act, However, section 72 lays down the factors to be taken to account while adjudging the quantum of compensation namely, the amount of disproportionate gain or unfair advantage made, loss caused as a result of default and the repetitive nature of such default and other factors.*

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The Act unlike Consumer Protection Act and all other previous enactments strike a balance to protect the interests of both promoter and allottee. Subject to the Act and Rules and Regulation made there under the parties are free to enter into agreement and both the promoter and the allottee are bound by the same. The Promoter has a right to cancel the agreement as per the terms of the agreement, for reasons to be reviewed by the authority. They may approach the adjudicating Authority for adjudging the compensation.

12. From the above position of law it is clear that the Authority will have to take the notice of Section 72 along with Section 18. The Developer is going to complete the project since he is developing the same. The developer has given the date of completion to this authority as June 2019. In view of the same the developer is bound to compensate the complainant since the delay is there. However as per my discussion it is clear that as there is no any allegation regarding the deviation of funds to another project and as such I feel that the complainant are entitled for delay compensation alone.

13. By keeping the above principle in mind, I am going to discuss on merits the points raised by the rival parties. Admittedly the Complainant has sought for delay compensation. As per the construction agreement the project was to be completed on or before June 2018 but even till today the project is not completed. In this connection it is the argument of the developer that the complaint is premature one since he has given the date for completion of the project as 30th June 2019 as per S.4(2)(l)(c) to RERA. It is not correct to submit in such a fashion on the ground that the Act has facilitate the developer to complete the project by giving a fresh date but it does not mean that the compensation cannot be calculated from the date mentioned in the agreement. Hence, the stand taken by the developer has no force.

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14. It is the case of the developer while excavating the land he found a hard rock. In this regard he submitted that, it was discovered that sheets of hard rock of approximately 15000 cubic metres were present. Since the project was located amongst other residential buildings under construction, the respondent was unable to conduct rig-blasting as Government permissions would not be granted in such residential areas. Therefore, the rocks had to be remove through a method of chemical blasting. This method involves drilling of holes into the rocks and filling it with a certain chemical. This chemical breaks down the rock and then the debris is removed from the site. This process of chemical blasting takes an extremely long time, especially as the rock encountered was very large. Ideally, without rainfall, the breaking of hard rock sheets to the extent stated ideally takes 4 to 5 months. However, owing to the onset of monsoon and heavy rainfall, breaking of hard rock and excavation process was further hindered. Since the excavation was delayed owing to the discovery of hard rock and further affected by the onset of monsoon, the excavation was severally hundred which overall delayed the construction activities by over 6 to 7 months. Further, the rock could not be broken during the monsoon period or even a day or two after the day of rain since the mixing of powdered rack and water resulted in formation of slush which was difficult to load and transport outside the project site. Further, the slush formed also hindered the ingress and egress of vehicles transporting the excavated material from the project site.

15. Further he has said that the pollution control board has imposed restriction with regard to blasting to be carried out in quarries. He also said that the delay has been caused because of non-availability or river sand. The government authorities have caused delay in giving permissions and clearances. The National Green Tribunal has passed an order to measure the buffer area for construction around lakes and rajakaluves. Sand Lorry Owner's strike, Cauvery strike, demonetisation, GST, external modifications sought by the

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consumers heavy rain fell in Bengaluru City and also the stoppage of work ordered by the Deputy Inspector of General of Prisons, Central Prisons of Parappana Agrahara are all the reasons preventing him from executing the work on time.

16. For the above said reasons it was the case of the developer that the delay was caused is beyond his control and as such it is the main contention of the developer that the complainants are not entitled for delay compensation. I would say that the developer has utterly failed to connect the events of demonization, GST, Cauvery water strike and other events which are all main cause for delay. The events took place has no direct bearing on the delay caused to the developer. In my view, the grounds urged by the developer are not having any direct effect on the project. In case of shortage of sand, he could have completed other works by balancing the total work of the project

19. Further on behalf of the developer it was submitted that the delay should be proved to be a "wilful". There is nothing on record to show that the delay was wilful, even assuming that there is any delay, the wilful nature of the delay is a significant factor. It must be deliberate and with malicious intent. Further he submitted that the entire effort put by the developer is to complete the project within time has no benefit is accrued by him by any delay. According to developer there is no delay and in any event in the absence of wilful delay there is no question of any claim that can be made against the respondent.

20. It is the case of the developer that the delay has not been construed in view of the date mentioned in the RERA as 30/06/2019 and also it is said that as per clause of the agreement and said that the original date for completion was December 2017 with 6 months grace period means it comes to June 2018. Further she said that in case failure to prove wilful delay the developer will get another 6

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months time and thereby he wanted to say that the actual date of completion was June 2019. It is also his case that then only the complainant is eligible to get the delay compensation at the rate of Rs. 3 sq. ft,.

21. It is also submission that the delay must be wilful delay. If not, the complainant is not eligible for compensation. But it is not correct to say that the delivery date shall be calculated as June 2019 since the question of proof of wilful delay does not arise in view of S.18 of the Act. Hence, I hold that the developer was expected to deliver the possession by completing the project maximum by June 2018. In support of the counsel for the complainant has given the decision:

> *"In case of Praveen Kumar v. SVS Buildcon CMP No. N-BPL-17-0010, Madhya Pradesh Real Estate Regulatory Authority and Shashi Gupta v. SVS Buildcon CMP No. N-BPL-17-0006, MPRERA,(para 6)*
>
> *Proposition: Compensation for delay can be claimed regardless of registration and the date given for registration.*
>
> *Para 6:- we now deal with issue (b). If the claim that the Authority has jurisdiction over the project after, and only after, it has been duly registered were to be accepted, it would result in as absurd situation, e.g., supposing a project which required registration chose not to apply for registration; or if it did not comply with the essential requirements of clear land title, or statutory permissions etc., still the Authority would be barred from acting against the promoter on the grounds that the project was not registered ! it would means that having committed one default of the law (ignoring the requirement to apply for registration, or having applied, failing to qualify for registration), this very act of default would further protect the defaulter from any penal action and insulate the defaulter from legitimate claims made by the aggrieved customers. Such an absurd interpretation of the law cannot be maintained."*

22. Similar to the above decision, the counsel for the complainant has also given two more decision cited as :

> *" Tufail Ahmed Abdul Quddus and ors v. Pramod Pandurandg Pisal and Ors. CMP no. CC006000000023023 AND*
>
> *Subodh Adikary v. Reliance Enterprises CMP no. CC006000000055349" wherein the Maha RERA has said that completion of every month of delay should be given to the allottee from the date of possession as agreed in the agreement*

I am fully agreed with the finding given by the Maha RERA and as per judgment of this authority in different complaints the delay compensation has been computed from the date mentioned in the agreement.

23. The counsel for the complainants submits that in the event the Respondent had performed his obligations and delivered the possession within the specific date of possession, then the Complainant could have rented out the flats and earned rent. Shri. Vikas Mahendra advocate submits that evidently the developer fails to give possession as agreed means he is bound to pay the delay compensation in accordance with the sale agreement. With all these observations I would say that the complainants are definitely entitled for delay compensation as per S.18 of RERA.

24. One more argument has been placed by the counsel for Respondent that the RERA is not applicable to the present case as there is no 'Agreements for Sale'. The Respondent has urged that the RERA does not envisage application to a situation where sale has been affected by a combination of an 'Agreement to Sell' and a 'Construction Agreement' and applies only to those agreements strictly titled as 'Agreement for Sale' contained in a single

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document. It is submitted that the Respondent's argument is against the basic principles of contract law and against the basic rules on interpretation of statutes.

25. It is for this reason that in the definition of an 'Agreement for Sale' in sub-section (c) of Section 2, the RERA defines 'Agreement for Sale' as "*an agreement entered into between the promoter and the allottee*". This includes within its definition any agreement that results in sale of an apartment and thereby the learned counsel Sri Vikas Mahendra submitted and concluded that the arguments made on behalf of the developer is meaningless.

26. By concluding his argument the learned counsel for the argument submits that the complainant is entitled for the delay compensation.The complainant had paid considerable amount to the developer. It is nobody's case that the developer has stopped the development work. It is their grievance that there is delay in completing the project. The developer has given the date of completion as 30/06/2019 while registering his project with RERA as per S.4 of the Act. It is nobody's case that the developer was absconding. It is not their case that the development was stopped without any justification. In view of the above reasons this Authority has to go through Section 71 and 72 of the Act. Absolutely no allegations have been made against the Developer with regard to deviation of the amount or misappropriation of the same. Of course, there is a delay in completing the project which may be condoned by granting the delay compensation. The question of excess payment made towards GST will be considered at the time of execution of the sale deed.

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27. Coming to the relief towards mental agony is also not applicable since the Hon'ble Apex Court held that compensation under mental agony cannot be granted under a general agreement. In this regard I would like to refer a decision:

> *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.*

28. In view of the above position of Law question of giving the compensation of under mental agony does not arise.

29. However at the time of argument, Shri Vikas Mahendra has drawn my attention to award compensation on the loss sustained by the complainants. He submits that complainants may be awarded compensation towards rent they are paying. In this regard the learned counsel for developer has said that complainants have not produced or proved the payment of rent and loss sustained by them. At the cost of repetition I would say that the Authority has to balance the claim of parties. In this regard I would refer the commentary:

> *" while deciding whether the allottee is entitled to any relief and in moulding the relief, the following among other relevant factors should be considered:*
> *(i) whether the layout is developed on 'no profit no loss' basis or with commercial or profit motive;*
> *(ii) whether there is any assurance or commitment in regard to date of delivery of possession;*
> *(iii) whether there were any justifiable reasons for the delay or failure to deliver possession;*

(iv) whether the complainant has alleged and proved that there has been any negligence, shortcoming or inadequacy on the part of the developing authority or its officials in the performance of the functions or obligations in regard to delivery; and

(v) whether the allottee has been subjected to avoidable harassment and mental agony"

30. From the above principles and as per the discussion made by me it is clear that the developer had a commitment to deliver the possession but it was not possible due to justifiable reasons and no proof of negligence. I find some force in his submission since there is no allegation regarding deviation of fund to any other project or misuse of this fund. Hence, I hold that the award of interest on the amount paid by them is sufficient to cover all these aspects.

31. As per Section 71(2) of the Act the complaints shall be disposed of within 60 days. As the project was not approved as on filing of these complaints and as such the case was taken up for trial after hearing the parties. During the course of trial the learned counsel for the developer has filed an I.A u/s S. 8 of Arbitration and Conciliation Act by saying that the dispute has to be referred to Arbitration. The counsel for the complainants has strongly opposed the same and after hearing parties I have dismissed the same. There afterwards the developer has filed his objections and submitted arguments. For the above said reasons it was not possible to complete the judgment within 60 days. Hence, I proceed to pass the following order;

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ORDER

a) The complaints filed in CMP/180103/0000372 is hereby allowed in part.

b. The developer is hereby directed to pay delay compensation in the form of simple interest @ 2% above the MCLR of SBI as on today commencing from July 2018 till the possession is delivered after obtaining Occupancy Certificate.

c. The developer is also directed to pay Rs. 5,000/-as cost to each case.

d. Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 12/03/2020).

(K.PALAKSHAPPA)
Adjudicating Officer.