

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

BEFORE ADJUDICATING OFFICER,
Presided by Sri K.PALAKSHAPPA
Adjudicating Officer

Date: 21st January 2020

Complaint No.	CMP/190802/0003774
Complainant	VISHWANATH HOSATTI Flat No.842, 'F' Block Brigade Panorama Mysore Road, Kambipura Bangalore-560060.
Opponent :	Brigade Enterprises Ltd., 29 & 39 th "Floor, WTC Brigade Gateway Malleshwaram-Rajajinagar Bangaluru- 560055

"J U D G E M E N T"

1. VISHWANATH HOSATTI, Complainant has filed complaint bearing complaint no.CMP/190802/0003774 under Section 31 of RERA Act against the project 'Brigade Panorama' developed by "Brigade Enterprises Ltd." as the complainant is the consumer in the said project. The complaint is as follows:

Project was suppose handover by Dec' 2017 but I got the hand over on 18th Jan' 2019. Even after 6 months project delayed compensation is not paid. Multiple follow up email has sent and even called up. 2) Kitchen slab and tiles along with sink has been handed over to us without fixing as per agreement, fixing charges yet to be paid 3) Advertisement and broacher provided to us while

Devi
21/01/2020

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booking, some open space area is converted to reserved surface parking, visitor parking and access road for phase 2 which result in less open space 4) As mentioned in agreement club should be constructed in 3 floor (ground, 1st & 2nd) of tower D but they have constructed only 2 floors.

Relief Sought from FERA: Compensation.

2. In pursuance of the notice issued by this authority, the parties were present. The developer has filed objections to the allegations made by the complainant.
3. Hence, I have heard arguments.
4. The points that arise for consideration is as to:
Whether the complainant is entitled for Delay compensation as prayed?
5. My answer is affirmative in part for the following

REASONS

6. The complainant has entered into agreement with the developer on 06.07.2015. He has paid totally Rs.54 lakh. According to the complainant June 2018 was the due date to deliver the possession. During the course of the arguments, it is submitted that he had taken sale deed on 15.02.2019 but the possession was taken on 18.01.2019. Therefore, it is the case of the complainant that he is entitled for delay compensation from July 2018 till 18.01.2019. Further at the time of the argument, the complainant has submitted that, the developer has failed to complete the project as per brochure. He has drawn my attention by saying that club house shall be constructed by putting 3 floors, but it is constructed only on 2 floors. It is also alleged by the complainant that kharab land has been utilised for amenities which is not correct. The space which was reserved for garden has been

*P. Devi
26/01/2020*

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converted into car parking area. Because of these grounds, it is submitted that the developer has failed to complete the project.

7. Per contra, Kumari. Sonali representing the developer has submitted that there was delay of 8 months for which the developer has paid compensation @ 4 per Sq.ft.. It is submitted by Kumari.Sonali that the club house is covered by towers 'C' and 'D'. It is also submitted on behalf of the developer that he has not used the kharab land as alleged by the complainant. Whatever the advertisement through brochure it is always subject to change and in this regard disclaimer has been shown. Therefore, it is the case of the developer that there is no violation as alleged.
8. I would say that, the delay is also admitted by the developer, but the delay compensation has been paid as per the agreement which is not permissible. Therefore, the developer has to pay delay compensation commencing from July 2018 till 18.01.2019 @ 2% above the MCLR of SBI on the principal amount paid to the developer wherein the delay compensation paid by the deliver has to be deducted. .
9. So far as other allegations is concerned, I would say that mere allegations are not sufficient. In this regard, the developer has given his explanation which reads as under:

1. *Company submits that the Brochure mentions about "Club House in Ground, First and Second floors in both Block C and Block D. Entire Brigade Panorama project will have single Club House meant for use by all the residents of the project. Brochure mentions about various facilities like badminton court, mini theatre, fully equipped gym, sauna, table tennis, billiards, board games, provision for*

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- convenience store, crèche, clinic and pharmacy, multipurpose party hall. Brochure clearly mentions that list of amenities mentioned in the master plan or marketing brochures are only indicative and subject to charges as may be decided by the developer.
2. Building plan sanction for block C (Tower 5) and Block D (Tower-4) mentions about club at First and Second floors of the respective blocks.
 3. While project is executed. Part of Ground floor of Block C (Tower 5) is retained as car parking. Balance of Ground floor and First floor in Block C (Tower 5) are merged to give double height clearance keeping in mind the special requirement of badminton court and audio visual room (AV room, mini theatre) (Block C is inadvertently mentioned as Tower D in our objection statement). Second Floor is consisting of table tennis, carom, chess etc., Similarly, in Block D (Tower-4) Ground Floor is completely provided with car parking and First and Second floors are merged to give double height clearance and converted as two multipurpose party halls (Banquet halls), clinic and pharmacy and convenience store. The said Club house is owned by the apartment owners of Brigade Panorama jointly.
 4. Thus, it is clear that we have given bigger club with whatever we have promised with sporting facilities in Block C (Tower 5) and public utilities in Block D (Tower 4). Sporting activities in Tower-5 is over 3 floors and public utilities in Tower-4 is spanned over 2 floors for club facilities.
 5. Clause 9.8 of the agreement provided the following: The club house would be developed in Ground, First and Second Floor of Towers 4 and Tower 5 and Purchaser/s of apartment in the said Tower 4 and Tower 5 shall not

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object for use of club house and facilities by purchaser/s of the apartment in Tower 1, Tower 2, Tower 3, Tower 6 and Tower 7. The area in Ground, First and Second Floor of Towers 4 and Tower 5 are apportioned as common area for calculation of super built up area for apartments in each of Towers in Brigade Panorama and accordingly, undivided share is calculated proportionately, to ensure all the apartment owners of Brigade Panorama jointly own the Club House, constructed in Towers 4 and Tower 5.

6. Thus, it is very clear that what is built is what promised, and complainant is only hair splitting to gain sympathy of RERA by trying to put forth imaginary grouse. Panorama project is developed on a very high terrain land. There is over 9 mts of level difference from the entry to the last drop-off, in which we have housed multiple activity across all levels right from basement level to 2nd floor. We have parking at the GF-level, we have apartment entry @ GF level and upper basement level and also we have part of the Club house activity like the badminton court and AV room.

10. From the above explanation it is clear that some investigation is very much necessary to find out the truth. Further the same has to be determined by having local inspection. Further, the complainant except allegation not produced any other documents to prove the same. Furthermore, the jurisdiction of the Adjudicating officer is confined to determination of compensation. I have already discussed and held that the developer is liable to pay the delay compensation as per the act. I would say that the complainant may take appropriate action against the developer in case there is violation by using the Kharab land by producing the necessary evidence.

P. Renu
24/01/2020

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11. 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. The said 60 days to be computed from the date of appearance of the parties. In this case the parties appeared on 12/09/2019 and case is being disposed off on today with some delay. With this observation, I pass the following

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190802/0003774 is hereby allowed in part.
- b. The developer is hereby directed to pay delay compensation on the total amount paid by the complainant by paying interest @ 2% above the MCLR of SBI commencing from July 2018 till 18/01/2019.
- c. The developer is hereby directed to deduct the amount paid in the form of compensation out of the compensation ordered to be paid in column No.b.
- d. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.
- e. The complainant is at liberty to take action for other allegations.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 21/01/2020).


K. PALAKSHAPPA
Adjudicating Officer