

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, RERA**

**BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Date: 7<sup>th</sup> DECEMBER 2020**

Complaint No.	<b>CMP/191214/0004988</b>
Complainant:	Neelesh Kumar Gupta #703, lotus block, Oceanus Greendale Phase-2 , 16 <sup>th</sup> Cross, 3 <sup>rd</sup> Main Hoysala Nagar, Bengaluru- 560016  Rep. by Sri Srinivasa D.C. Advocate
Opponent :	Shirvision Towers Private limited # 40/43, 8 <sup>th</sup> main 4 <sup>th</sup> cross Sadashiv Nagar, Bengaluru-560080  Rep. by Sri Joseph Anthony Advocate

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

1. Neelesh Kumar Gupta has filed this complaint under Section 31 of RERA Act against the project "SHRIRAM GREEN FIELD PHASE 1" developed by Shrivision Towers Private Limited, bearing Complaint no. CMP/191214/0004988. The facts of the complaint is as follows:

*D. Devaraj*  
07/12/2020

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*I, Neelesh Kumar Gupta, S/o. Govind Ji Gupta and Snehil Gupta, W/o. Neelesh Kumar Gupta, purchased out unit E-807 in Shriram Greenfield Phase-1 on Jan-2016 with the promise and agreement with the builder to deliver the fully developed project including the club house with amenities on or before Dec.2017, I have taken multiple followings specially on the Apartment readiness, registration, infrastructure and the Club house. The builder has also repeatedly failed to meet the deadline of most of the works aforementioned. The builder also agreed to provide a fully developed infrastructure along with club house, however the builder is now running away from its responsibility of providing the club house and asking the customer to take handover without these agreed infrastructure and club house.*

*Relief Sought from RERA : Compensate the complainant for the duration from the agreed delivery date (Dec-2017) to the time until the fully-developed apartment including the club house is ready.*

2. In pursuance of the notice issued by the authority, the complainant has appeared through his advocate where as the respondent has appeared through his Advocate who has filed the objections statement.
3. This case was to be called on 17/3/2020 but on account of covid-19 calling of cases was stopped from 16/3/2020. Further the state government has declared lockdown from 24/3/2020 till 17/5/2020. In order to maintain social distance the case was called through Skype Heard the parties.

*D. Devis*  
07/03/2020

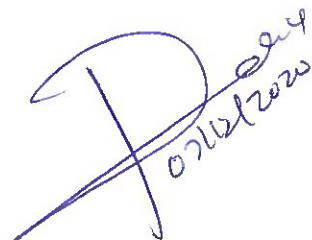
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4. The point that arisen for my consideration is
  - a. Whether the complainant proves that he is entitled for the relief as sought in his complaint?
  - b. If so, what is the order?
5. My answer is affirmatively for the following

**REASONS**

6. The complaint has sought for delay compensation from the developer since the developer has agreed to complete the project on or June 2018 including the grace period.
7. Against the same the developer has submitted his arguments by taking a specific contention as under;
8. It is submitted that, the complainants approached the Respondent Nos. 1 and 2, expressing his intent to purchase an Apartment bearing No. E-807, Tower E of Building-1. In pursuance of the same, the complainants and the respondents entered into a construction agreement dated January 14, 2016 and an Agreement to Sale dated January 14, 2016 in respect of the project. As such, the complainants were obligated to make payments, as consideration in respect of the project, in such manner as described under the details of payments under schedule E of the Construction Agreement and Schedule F of the Agreement for Sale.
9. It is further submitted that, as per the construction agreement and agreement to sale, total amount of Rs. 48,08,125/- (rupees forty eight Lakh eight thousand one hundred and twenty five only) is payable in installments as given under the details of

  
02/12/2018


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payments and the same is to be made in a timely manner without any default by the complainant, as the same is essential for the development of the Schedule Apartment. It is pertinent to note that any default/ default in payment would affect the timely completion of the entire project, thereby affecting the interest of respondent no.1, as also the interest of other purchasers of Apartments in the Respondent No.1's Project.

10. It is submitted that, as per clause 6.1 of the Construction Agreement, the Respondent No.1 has agreed to obtain commencement certificate, complete construction and deliver possession of the Schedule Apartment on or before December 2017 with an additional 6 (six) months grace period, and subject to clause 6.2 of the construction agreement. It is submitted that clause 6.2 of the construction agreement stipulates that " the first party ( respondent no.1) shall not be liable if they are unable to complete the construction of the Schedule 'C' Apartment (Schedule Apartment) and deliver possession by the aforesaid date by reason of non-availability of skilled labour, cement, steel, sand, bricks and other construction materials, civil commotion or by any Act of God or if the delay is as a result of any change of law including any rule, notification of the Government, municipal Authority, plan sanctioning authorities, any court and/ or construction activities or for reasons consisting a force majeure and/or for reasons beyond the control of the First Party ( Respondent No.1) and in any of the aforesaid events, the first party ( Respondent No.1) shall be entitled to an extension of time for completion of construction and delivery of possession of the schedule 'c' apartment and the monies till then paid by the



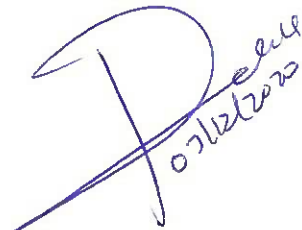
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second party under this construction Agreement shall not be refunded or be entitled to any interest.

11. This is the stand of the developer. I would say that the defense taken by the developer has no force at all. The conditions imposed by him against the complainant under his Agreement of Sale have no force in view of S.18 of RERA act. He is bound to compensate the buyer immediately when he fails to complete the project within due time. As per the agreement the due date was June 2018 including the grace period. Therefore he is liable to pay delay compensation from July 2018 till he receives occupancy certificate by completing all kinds of amenities. Though the developer has filed his lengthy objection statement but failed to disclose regarding the occupancy certificate.
12. Further the developer has submitted that the condition of the agreement is giving exemption to him from the liability since the grant of occupancy certificate is not within his hands. I would say that the developer has to complete the project within the due date as agreed by giving all the amenities. The conditions imposed by him in his agreements which are contrary to the provisions of RERA law are not having any force. It is well settled that the RERA act is applicable to all on-going project irrespective of date of their agreement. The provision of this present law is applicable and as such whatever contention taken by the developer holds no water.
13. I failed to understand as to why the developer has not disclosed regarding the occupancy certificate. I further says that the developer will have voice to say about the terms of his agreement only when he able to complete the project within due

  
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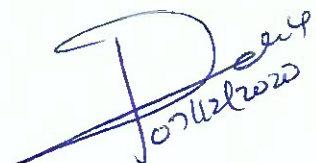
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date. He cannot shirk his liability on the others by ignoring his duties and responsibility as envisaged in Section 19 of the present Act. Though the respondent has submitted that the conditions stipulated in the agreement are binding upon the buyer but he failed to adhere to the same by completing the project as per the assured date. As per S.18 of the Act, the developer shall pay the delay compensation to the buyer immediately from the due date when he failed to get the occupancy certificate. This is already settled by passing number of judgments by this authority by rejecting the plea taken by the developer. Hence, I have no hesitation to allow this complaint.

14. AS per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the Complaint was presented on 14/12/2019. In this case the parties have appeared on 18/02/2020. After hearing the parties it is posted to 17/03/2020 to file objections. On account of Covid-19, calling of cases in open court was stopped and from 24/03/2020 till 17/05/2020 the state has declared the lock down and as such the case has not been taken up. After lifting the lock down, the case was called through Skype and reserved for judgment. Hence, I proceed to pass the following.

**ORDER**

- a. The Complaint No. CMP/191214/0004988 is hereby allowed.
- b. The developer is hereby directed to pay delay compensation in the form of simple interest on



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the total amount paid by him @ 2% above the MCLR of SBI on the total amount paid by him commencing from July 2018 till he execute the sale deed after receiving the occupancy certificate by providing the amenities as agreed.

- c. The developer is also liable to pay RS.5,000/- as cost of this petition.
- d. The complainant may file a memo of calculation in case the order is not complied by the developer to execute the same within 60 days from today.
- e. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 07.12.2020)

**(K.PALAKSHAPPA)**

Adjudicating Officer

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