

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by:- Sri. K.PALAKSHAPPA

Adjudicating Officer.

Complaint No. CMP/180815/0001146

Date: 02nd January 2019

Complainant

**: NARESH MANICKAM
203, 1st floor, 5th Cross,
GPR Royale Layout, Huskur Road,
Electronic City Phase - 2,
Bengaluru - 560100.**

AND

Opponent

**: Sitanu Sekhar Behura
S & G LUXURIA,
SHWETA AND GITA CONSTRUCTION INDIA
Pvt Ltd,
Sy No. 132, Iggalur Chandapura, Attibele
Hobli, Anekal Taluk,
Bengaluru -560099.**

J U D G E M E N T

1. Naresh Manickam has filed this complaint under Section 31 of RERA Act against the project "S & G LUXURIA" developed by SHWETA AND GITA CONSTRUCTION INDIA Pvt Ltd, bearing complaint no. CMP/180815/0001146. The brief facts of the complaint is as follows:

Done
02/01/19

I, Nareshkumar Manickam booked a flat (E-603) in "S & G Luxuria" project on 29 Dec 2016. I have paid Rs.4,00,000/- as a booking advance and disbursed Rs.20,96,000/- from home loan account till date. The delivery /possession of the flat mentioned in the construction agreement is Sep? 2017. But the construction progress was not to the satisfactory level even after the grace period of six months. So, I have cancelled the booking on 5 Feb 2018 by E-mail communication to Mr. Sekhar and his team. As per cancellation terms in the agreement, S&G supposed to refund the payment within 90 days from the cancellation date. But as on 06 Aug 2018 (more than 180 days) I have not received the refund amount. On 25 May 2018, Builder has given 3 cheques of Karnataka bank, he told me to deposit the one of three cheques which value is Rs. 8,25,000/- (cheque no ? ?103246?) for honoring. But the cheque was bounced due to insufficient fund and later after follow up, builder gave the replacement cheque, which also got bounced. Since then I am following up, but no positive response from the S&G construction team and directors, but no luck. Board of Directors 1. SITANSU SEKHAR BEHURA - Director 2. SHWETA MISHRA - Director 3. ANAND MARTHAND PUROHIT-Director 4. VIJAY UPADHYAY - Director To get the refund, I have been following with builder last 6months, till now I haven't received single rupee or refunded by the builder on disbursed amount. I am completely depressed and stressed with this issue. I have all the records of communication in mails, WhatsApp messages and call records. Kindly help me to get refund from Builder. Note: Builder has paid Pre-EMI's interest of the Home loan till May 2018 after long follow-up as delayed and part by part payment. Now I have been paying EMI for the loan. All the mail communications are uploaded with this online complaint and also all WhatsApp chat conversations I have handy, same can be provided as need

Relief Sought from RERA : Request for complete refund with interest

Done
02/01/19

2. In pursuance of the summons issued by this authority the Complainant was present on 06/09/2018 through his advocate but the Respondent has not appeared. On 28/09/2018 the Developer has appeared through his advocate. Finally on 21/12/2018 arguments were heard and reserved for orders.
3. The Complainant is seeking refund of the amount paid by him to the Developer and the same has not been denied. The developer has made a prayer that he required some time for refund of the amount. Of course it was also submitted that the present Developer is searching for a new Developer or a Developer who is funding. But the Complainant who has paid the amount is waiting since long time for realization of his dream to own a flat but because of the delay shown by the Developer in completing the project the Complainant wants to go out of the flat.
4. As per Section 18 of the RERA Act, it is the wish of the consumer to be with the project or to go out of the project. The wordings used in Section 18 are as under:
- “ in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act”.*
5. By reading the above, it is clear that the Act does not make any specific ground to go out of the project. However the parties have entered into agreement with number of clauses which are all binding upon each other.

6. More over before going to award the compensation I have to give importance to Section 72 along with Section 18. The developer has to honour the demand of the consumer and hence, I hold that the complainant is entitled for the relief since there was any hurdle in granting the relief. Another point for consideration is regarding the interest.

Coming to section 18 of RERA, the complainant who is going away from the project is entitled for refund of the amount with interest @10.25% P.A from 01/05/2017. According to complainant he has paid 95% of the amount to the developer. It means he has paid the amount to the developer even before delivery of possession. Therefore the complainant is entitled for compensation @9% as per Karnataka Apartment Ownership Act, 1972 till coming into force of RERA Act.

7. As per sec.18 by the Act delay Compensation has to be paid at the rate of interest as prescribed. As per rule 16, it is said under.

Rate of interest payable by the promoter and the allottee:- The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.

8. By taking into consideration of all these Points; I would like say that the complainant is entitled for compensation @ Rs.9/- on the amount paid by him from the respective payment till 30/04/2017 and @10.25% P.A from 01/05/2017.

9. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. This complaint was presented on 15/08/2018. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 28/09/2018 and hence, there is some delay in disposing of the case. With this observation I proceed to pass following order.

ORDER

- a. The Complaint No. CMP/180815/0001146 is allowed.
- b. The developer is hereby directed to return all the amount received from the Complainant towards purchase of the flat.
- c. The developer is liable to pay interest at the rate of 9% of simple interest on the above said sum on the amount paid on the respective date till 30/04/2017 and at the rate of 10.25% commencing from May 2017 till the realisation of entire amount.
- d. The developer is also directed to discharge the loan amount with its EMI if any.
- e. The developer is hereby directed to deduct the GST amount if paid and necessary documents be provided to the complainant to enable him to take back that amount from the Government.
- f. The complainant is hereby directed to execute the cancellation deed only after realisation of entire amount.

Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 02/01/2019)

(K.PALAKSHAPPA)
Adjudicating Officer