

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by:- Sri. K.PALAKSHAPPA

Adjudicating Officer.

Complaint No. CMP/180817/0001150

Date: 02nd January 2019

Complainant : NEELESH KUMAR ARAMANDLA
207, 3rd Floor, Aditya Nagar, Near High
Tension Line Road, Kukatpally,
Hyderabad - 500072.

AND

Opponent : Anand Marthand Purohit
S & G LUXURIA,
SHWETA AND GITA CONSTRUCTION INDIA
Pvt Ltd,
Sy No. 132, Iggaluru Chandapura, Attibele
Hobli, Anekal Taluk,
Bengaluru -560099.

J U D G E M E N T

1. Neelesh Kumar Aramandla 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/180817/0001150. The brief facts of the complaint is as follows:

Respected sir/madam, I have cancelled the flat E-503 in the project S&G Luxuria on 15/04/2018, which i went on sale & construction agreement with the builder "Shwetha and Gita Constructions India Pvt Ltd" on 22/02/2016. I have cancelled the flat since the construction progress is dead slow or nothing as they are supposed to deliver the flat in 2017 Feb as per the agreement and also i moved out of the city on job purpose in mid 2017. So not interested to hold the flat by paying huge EMI to LICHFL and also paying rent for my house in Hyderabad. The true fact is that even after 1.5 yrs of the proposed time of handover/possession, there is no sign of completion of project and infact, at the project site, the progress of the work has almost stopped and is dismally slow. All the assurances given by the builder so far are nothing but empty promises as a result of which I lost faith in their credibility to deliver the project with quality. Therefore I cancelled the flat and its more than 4 months I have been following with the builder, till now I didnt get any refund. I paid a sum of more than 50 percent i.e. 19,80,011/- (9,56,010/- disbursed by LICHFL as loan) to the builder till now (i.e. all the amount paid before 2017 Feb) as the overall flat cost is 36 lak. As i am paying full Emi(24,970 per month) to LICHFL ,interest paid till Aug 2018 is 1,37,670. O/S principal is 5,18,447. Attaching the sale & construction agreements, cancellation mail for reference. I have all records of whatsapp chat with the builder. I am completely stressed and disturbed with this as they are not responding properly also to calls or messages. Please help me in getting the original amount(19,80,011/-) along with interest from the builder(i.e. interest paid to LIC and interest loss on the amount, 10,24,001/-) paid by me from nearly 3 years).

Relief Sought from RERA :Please help in getting the refund amount.

2. In pursuance of the summons issued by this authority the Complainant was present on 06/09/2018 but the Respondent has not appeared. On 28/09/2018 the Developer has appeared through his advocate.

Done
026/119

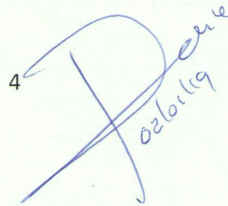
3. Finally on 21/12/2018 arguments were heard and reserved for orders.
4. The Complainant is seeking refund of the amount paid by him to the Developer and the same has not been denied. The developer has made a prayer that he required some time for refund of the amount. Of course it was also submitted 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.
5. 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”.*
6. 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.
7. 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.

8. 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.

9. 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.
10. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. This complaint was presented on 17/08/2018. 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.

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ORDER

- a. The Complaint No. CMP/180817/0001150 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