

BEFORE ADJUDICATING OFFICER RERA

BENGALURU, KARNATAKA

Complaint No. CMP/181125/0001667

Presided by:- Sri K.PALAKSHAPPA

Adjudicating Officer.

Date: 09th JANUARY 2019

Complainant : RAKESH GOPAL K
Flat No:102, Sappira Apartments,
Chikoti Gardens, Begumpet,
Telangana, Hyderabad - 500016

AND

Opponent : M. Ramu
Roshan Gardenia Apartments
Flat No:001,
Roshan Palace Apartments,
92/A, 1st Cross, Kathriguppe,
Sanashankari, 3rd Stage
Bengaluru - 560085.

J U D G E M E N T

1. This Complaint has been filed by the consumer against the developer under section 31 of RERA Act claiming the payment of full amount with interest. His complaint reads as:

Dear Sir, 1. Mr.Ramu of Roshan Gardenia has committed me possession by dec.16 at the time Purchase during Nov14. 2. I was continuously visiting apartments once in 3 months to check the status till Dec16 & both there was no much progress between 2014 Dec to

2016 Dec. 3. But Builder use to demand me to pay the 100% money without any progress or completion, except tax which has to pay during registration without any progress.

Relief Sought from RERA : REFUND OF MONEY WITH INTEREST & COMPENESATION

2. In pursuance of the notice issued by this authority the complainant was present in person in 14/12/2018. The respondent has appeared through his counsel. Later the respondent remained absent and hence I have heard the argument of complainant.
3. The complainant is seeking the relief of refund of the amount paid by him. By reading the above complainant it reveals that in the year 2014 the complainant has started to pay the amount and the developer has agreed to deliver the possession by the end of 2016 but till today it is not materialized. Therefore the complainant wants to go out of the project. The developer has to pay the EMI. According to the complainant the developer demanding the amount even though he has not made any attempt to deliver the possession. Therefore there is no reason to continue with the project. For the above said reason, the complainant has approached this authority for refund of amount.
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 specific ground to go out of the project. However the parties have entered into agreement with number of clauses, they are all binding upon each other.
6. 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 section 18 of the Act says that interest to be paid as prescribed which is as per rule 16. Accordingly the amount received from the complainant to be refund with interest.
7. As per S.71(2) RERA, the complaint will have to be closed within 60 days from the date of its filing . In this case the complaint was filed on 25/11/2018. As per SOP 60 days shall be computed from the date of appearance of the parties. In the present case, the parties have appeared on 14/12/2018 and hence the complaint is being closed within time. With this observation I proceed to pass following order.

ORDER

- a) The Complaint No. CMP/181125/0001667 is allowed by directing the developer to return the amount received from the complainant towards purchase of flat.
- b) The developer is also directed to pay interest at the rate of 10.25% per annum commencing from 01/05/2017 and at the rate of 9% from the date of respective payment made prior to 01/05/2017.
- c) The developer is also directed to discharge the loan raised in the name of the complainant along with its EMI and interest if any.
- d) In case the developer has already paid the GST amount then the same may be deducted in the amount returnable to the complainant but the developer shall hand over the necessary documents to enable the complainant to take back that amount from the concerned authority.
- e) The complainant shall execute the cancellation deed in favor of the developer after the entire amount is realized.

Intimate the parties regarding this order.
(Typed as per dictation Corrected, Verified and pronounced on 09/01/2019)

(K.PALAKSHAPPA)

Adjudicating Officer