

**BEFORE ADJUDICATING OFFICER, RERA**

**BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Complaint No. CMP/190108/0001834**

**Dated: 9<sup>th</sup> August 2019**

Complainant : Naveen Shetty  
Shetty Compound, Site No. 64,  
9<sup>th</sup> Block, Post Katipalla;  
Mangaluru, Dakshina Kannada,  
Karnataka  
Rep by Sri N.P. Kallesh Gowda, Advocate.

**AND**

Opponent : Provident Housing Limited,  
No. 130/1, Ulsoor Road, Bengaluru.  
Rep. by Kumari. Sonali.

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

1. Naveen Shetty has filed this complaint under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansion Pvt. Ltd., bearing Complaint no. CMP/190108/0001834. The facts of the complaint is as follows:

My name is Naveen Shetty and NRE residing in Qatar. I booked a flat in Project: Provident Skyworth Apt./Unit No : PS-2G-1103 on 29 August 2014 and paid advance amount INR 100,000 on 28 August 2014. Accordingly Sale Agreement and Construction was executed on 17 September 2014 (attached). As per the construction agreement, the builder was liable to provide the possession of the flat on or before 30th June 2016 with a grace

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period of six months. Further, I have paid 96% (INR 5,401,700) of consideration value as per their payment demand note within agreed payment date (attached payment demand note and receipt) through my NRE banking NEFT. The construction agreement mentions that (clause No. 6), in the event of any delay in payment by the purchaser, the builder will charge interest @1.5 % per month for each day of delay on the amount delayed and without prejudice to other remedies available to the builder, be deducted in precedence or upfront from the next installment paid by the PURCHASERS. As the project is delayed for more than 2 years, I approached the builder to surrender my flat and seeking refund of my principal payment, interest and compensation and settle amicably.

Relief Sought from RERA :  
refund of payment with compensation

2. In pursuance of the summons issued by this authority the complainant was present through his friend on 08/02/2019. Later his advocate has filed vakalath on his behalf. Similarly the developer was represented by Kumari Sonali. The developer has filed objections. The Complainant is seeking refund of the amount.

3. Heard the arguments.

4. The point that arisen for my consideration was:  
Is the complainant entitled for refund of his amount?

My answer is affirmative for the following

### **REASONS**

5. In this case the Complainant has sought for refund of his amount since the developer has failed to complete the project within the time. The same was admitted but opposed on some points. It is the stand taken by the developer that the delay is not intentional one. The developer has admitted that the Complainant has paid Rs.54,01,700/- which includes the taxes but on reality the developer has received Rs. 50,56,669/-

  
17/8/2019



towards the sale consideration Rs.3,41,226/- have been given towards tax. Therefore the same amount can't be refunded.

6. The developer has said about the delay which reads as under;

(a) Whilst acknowledging that there have been delays in completing the project on account of various unforeseen events and unnatural weather events in the region where the project is located, the company has repeatedly communicated to the complainant that it is ready and willing to abide by the terms of clause 15 of the Construction Agreement. Even though there is no clause for termination by Complainant under the Construction Agreement, the Company has received and acted upon the Complainant's request for cancellation of the Apartment Agreements.

(b) The company has also expressed its willingness to resolve the issues amicably and in pursuance of such intention, the Company communicated its settlement and refund offer to the Complainant. Details of the offer are set out below and the company submits that it has addressed the issue of refunding the principal amount paid by the complainant; as well as prevailing law.

(c) Given this context, the Company accepts surrender of the Apartment Agreements. Consequent upon such surrender and termination of the Apartment Agreements, the company is willing to refund money to the Complainant in accordance with the terms of the Construction Agreement. This acceptance of termination and offer to refund has been communicated to the Complainant.

7. Further the developer said that he is willing to refund the amount as per the following conditions;

  
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(i) Refund a sum of Rs. 50,56,669/- (Rupees Fifty Lakh Fity Six Thousand Six Hundred Sixty Nine only) to the Complainant, representing the entire sale Consideration received by company towards purchase of the apartment; and

(ii) Pay the complainant a sum of Rs. 60,000/- (Rupees Sixty Thousand Only) in accordance with clause 15 of the construction Agreement, for the period commencing 01.01.2017 and ending 31.12.2018; and

(iii) Notwithstanding the fact that the Complainant's communication seeking termination was received prior to 31.12.2018 as a result of which the company is not obligated to offer additional compensation, the company is also willing to pay to the Complainant a sum of Rs. 96,780/- (Rupees Ninty Six Thousand Seven Hundred Eighty Only), being interest at the rate of 10.75% per annum commencing 01.01.2019 to 28.02.2019.

8. But the complainant has not agreed to the same since it is his submission that the developer cannot make use of his money for his benefit and he is bound to repay the same with interest at prayed by him. In this regard the complainant has said that;

*It is submitted that, the First Party has categorically admitted that, there is 3 years delay in construction of the apartment. Further the first party has admitted to pay back lesser amount to the second party and the first party is trying to deduct the amount illegally and is trying to avoid to pay interest on the amount received by the first party from the second party. Further due to deficiency in service on behalf of the first party, the second party has come up for refund of the amount and the termination of the agreement is*

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solely on the ground that, the first party has failed to fulfil the contractual obligation and there is no fault on behalf of the Second party.

It can be recalled that Hon'ble Supreme Court in its recent judgment (Kolkata West International City Pvt. Ltd, against the order for refund passed by the state and national consumer commissions) has made it clear that buyers can't wait for flat indefinitely. Supreme Court has upheld orders of State Consumer Commission and the National Commission to refund payment with interest to a homebuyer for delay in handing over possession of the flat he had booked with a Kolkata based builder.

It is further submitted that, under the above facts and circumstances the first party is liable to pay interest to the second party from the date of the amount received by the first party. If at all the second party would have invested in same amount in any other property, the second party would have get the more returns and the second party has invested his hard earned money with the builder/ first party, hence the builder/first party is liable to pay the interest at the rate of 18% per annum for the amount paid by the second party amounting to Rs.98,32,115 (original amount Rs. 54,01,700 and interest amount Rs. 44,30,415) assuming that settlement date as 31<sup>st</sup> May 2019. Please refer to Appendix-A for detailed calculation.

9. It means the question of deduction has claimed by the Developer is the only point for consideration; According to the Developer the deduction was as per the Agreement of Sale but according to the Complainant it is not permissible. I would like to say that the Agreement was dated 17/09/2014, since then the Developer is collecting the amount from the Complainant. He has paid 96%

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of the amount to the Developer who has made use of the same for his benefit. He himself has violated Section 18 by non delivering the goods as agreed by him. Ofcourse there is a clause for forfeiture only in case the Complainant has withdrawn from the Project before the due date. In this case the Developer can't exercise forfeiture clause even then the date given in the Agreement of sale was already expired. Further the consumer will get a chance either to continue with the project or to go away from the project as per S.18 of the Act. If he wants to go away on the fault of the developer then the developer has to return the amount with interest. Therefore I would like to say that the submission made on the clause of forfeiture holds no water. Hence the Complaint deserves to be allowed.

10. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 08/01/2019. In the present case, the parties have appeared on 08/02/2019. Hence, the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

### **ORDER**

The Complaint No. CMP/190108/0001834 is allowed.

- a. The developer is directed to return amount of Rs.50, 56,669/- to the complainant.
- b. Out of the same he is also liable to pay the interest @ 9% P.A. on the respective date on respective amount till 30/04/2017 and @ 10.75% P.A., from 01/05/2017 today till the realisation of the amount.
- c. The developer shall pay Rs. 3,45,031/-which was collected towards tax.



- d. The developer is also directed to pay Rs. 5,000/- as cost of the petition.
- e. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 09/08/2019)

(K.Palakshappa)  
Adjudicating Officer

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