

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

K.PALAKSHAPPA Adjudicating Officer
Complaint No. CMP/190129/0002011

Date: 3rd September 2019

Complainant : Dipesh K Shah
Flat no.501,5th Floor, S L Gardens
#9, Link Road, Seshadripuram
Bangalore-560020

AND

Opponent : m/s Monarch
No.54 4th Floor ,Monarch Plaza
Brigade Road
Bengaluru, -560001

JUDGMENT

1. Dipesh K. Sha, Complainant under complaint no. CMP/190129/0002011 has filed this complaint under Section 31 of RERA Act against the project "Monarch Aqua-Block A" developed by Monarch Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

Sequence of Events: 1. 2 Flats bought under subvention scheme (10-80-10 option) provided by M/s Monarch in Jan 2017. Basis my credit score, home loans availed for buying the property from HDFC Bank & IIFL, with whom Tripartite Agreements are signed. 2. Agreement made for a buy-back option. This option is available in case I am unable to buy the properties, which is accepted by Monarch at a mutually agreed rate of interest ie., 75% for a period of 30 months & with a condition that I have to exercise this option within 2 years from the date of agreement. 3. The loan disbursements done to M/s Monarch on time to time basis (with all the required assistance as & when required),

[Signature]
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depending on the construction stages of the project. The last disbursement was not done by HDFC Bank in Sep 2018, stating that the construction was behind schedule. 4. Now I am in need of funds & so I am willing to exercise this option of Buy-Back, for which mail is sent to the builder in 7th Oct 2018, well within the defined timelines of 24 months. 5. M/s Monarch reverts back that they have withdrawn such options, because of new RERA regulations after our agreement was signed. There is no communication of any such withdrawal of the scheme to me till date from M/s. Monarch. 6. Need RERA's intervention to exercise the agreement.

Relief Sought from RERA: HELP in EXERCISING the AGREEMENT TERMS.

2. This complaint is filed by the complainant for the relief of buyback. 2 apartments are involved in this case and the agreements of sale were executed on 17/3/2017 and 20/3/2017. He has agreed to purchase 2 apartment bearing No. 9A3 and 7A3. So far as agreement regarding Apartment 9A3 is concerned he has paid Rs.6,64,700/- and for another Apt. 7A3 he has paid same 10% of the amount. According to the complainant this is a subvention wherein no PRE-EMI for a period of 30 months from date of booking. The developer has assured to pay additional sum of Rs.75% on the 10% advance sale consideration in case the complainant has exercised the option before 30 months i.e 18/1/2020.
3. Accordingly the complainant has exercised the same by sending a mail on 10/1/2019. And there by it is the case of the complainant that he is entitled for the refund of 10%with benefit.
4. The same was opposed by the opponent admitting that the complainant has agreed to purchaser of 2 flats.

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5. It is the say of the developer that in the Tripartite agreement dated 15/4/2017 there is an obligation on the respondent only in respect of interest payment liability for Rs.48,00,000/- for a period of 30 months from 29-12-2016. It is further stated that respondent has no liability with regard to loan, other than making the aforesaid interest payment to HDFC for a period of 30 months.

In the Buy Back agreement entered between the complainants and respondent, as per the aforesaid agreement Clause J there is an obligation on the complainant "that the bank has to sanction 80% of the value of flat amount. The purchaser undertake and agrees to submit all the necessary papers as per the check list provided by the bank within 7 days of booking and co-ordinate with the bank to complete the paper work and execute the loan agreement and other documents required for disbursement of loan so that the first instalment can be disbursed by the bank within 45 days of booking subject to compliance of all necessary formalities by the owner. This agreement shall come to an end in case bank fails to disburse the first instalment payable to the owner within 45 days of booking due to delay in submission of documents by the purchaser and or any default directly attributable to the purchaser".

As per the Clause J the defaults committed by the complainant, from date of booking date was 19-12-2016. The loan was sanctioned as per sanction letter dated 20-2-2017 and the loan sanctioned after a lapse of 50 days. As per the terms of agreement the loan should be sanctioned within 7 days from the bank as per buy-back agreement. Secondly the 1st instalment disbursement has to be disbursed within 45 days to the respondent from the date of application. But the bank disbursed on 12-5-2017 after the execution of Tripartite Agreement dated 17-3-2017. Thirdly

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the complainant has to obtain 80% of the total value of flat amount from the bank, the total cost of the complainant flat was Rs.70,46,506/- the 80% of the value which comes to Rs.56,37,204/- since respondent received the sanction letter from the bank for an amount of Rs.48,00,000/-. The above said defaults committed by the complainant side, the complainant will become non-eligible for the buy-back scheme.

6. It is further submitted by the developer that the complainant is entitled for the relief in view of Bill no.85 of 2018 introduced in Lok Sabha "BANNING OF UNREGULATED DEPOSIT SCHEMES BILL 2018". In the above act it restricts all the unregulated deposit schemes. The relevant classes stated below, chapter-1, definition clause-(i)

"deposit" means an amount of money received by way of advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of specified service, with or without benefit in the form of interest, bonus, profit or in any other form.

7. For these reasons the developer has denied the case of the complainant. I would like to say that the stand taken by the developer has no meaning because it was the scheme launched by the developer to attract the consumers. Accordingly the consumer has accepted the offer made by the developer and paid the amount. As per the scheme they have exercised to take the benefit. In order to accumulate the fund and developer the project the developer has issued such kind of scheme. On the basis of said scheme the

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agreement was entered into. Now the developer cannot take a turn just to defeat the interest of the consumer.

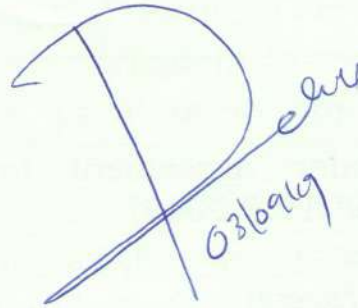
8. Of course the complainant has filed memo of calculation which reads as under:

Flat No.	7A3 (In Rupees)
10% under Agreement for sale dated 20.3.2017	6,64,700
As on date	11/7/2019
Returns (%age)	75%
No. of days	843
Returns as on 11/7/2019-(B)	4,59,799/-
EMI paid for April,2019- (c)	25,793/-
EMI paid for May,2019- (D)	25,793/-
EMI paid for June,2019- (E)	25,793/-
EMI paid for July,2019- (F)	25,793/-
TOTAL	12,27,671/-
FLAT NO.	9A3 (In Rupees)
10% under Agreement for sale dated 17.3.2017	6,64,700/-
As on date	11/7/2019
Returns (%age)	75%
No. of days	846
Returns as on 11/7/2019-(B)	4,61,435/-
EMI paid for July,2019- ©	3,969/-
TOTAL	11,30,104/-

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9. But the same was strongly opposed by the developer. I would say that the authority has to pass orders in accordance with S.18 by awarding the interest as per Rule 16. With this observation I say that the complaint has to be allowed.

10. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint is filed on 29/01/2019. In this case the complainant and the developer were present on 27/02/2019 and the parties took sufficient time to file objections. Hence, the complaint is being disposed of with little delay. Hence, I proceed to pass the following


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ORDER

The complaint No. CMP/190129/0002011 is hereby allowed.

- a. The developer shall return a sum of Rs. 6,65,000/-each which was paid by the complainant towards purchase of flat No. 7A3 and 9A3 together with interest @2% above the SBI marginal lending rate of interest on home loans commencing from the date of its payment till the realisation.
- b. The developer is also directed to discharge the bank loan with EMI if any paid by the complainant and due if any and interest including any incidental charges.
- c. The developer has to pay cost of Rs. 5,000/-as cost of this petition.
- d. The complainant is directed to execute the cancellation of agreement of sale after the entire amount is discharged.

Intimate the parties regarding this order.
(This Order is Typed, Verified, Corrected and pronounced on 3rd September 2019)


K.PALAKSHAPPA
Adjudicating officer