

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190417/0002295

Dated: 19th September 2019

Complainant : Cony Louis Dsilva,
 Krishna Shelton, Flat No. 408,
 Block A, Dwaraka Nagar,
 Bagalur Cross, Yelahanka,
 Bengaluru-560063.

AND

Opponent : Nitesh Shetty,
 7th Floor, Nitesh Time Square,
 No. 8, M.G. Road,
 Bengaluru-560001.
 Rep. by Sri. Prasad.

Amended

*Mr. Nitesh Shetty
 Nitesh Housing
 Developer Pvt. Ltd.
 7th floor, Nitesh Time
 Square, No. 8, MG Road,
 Bengaluru-560001.
 Prasad*

J U D G M E N T

1. This Complaint is filed by the Complainant against the Developer seeking for the relief of refund of the amount with interest. The Complaint reads as under:

Apartment was booked and advance amount Rs. 200000 (Twenty Lakhs only) paid on Feb 2013. Loan sanctioned Rs. 84000000 (Eighty Four Lakhs Only) by HDFC Housing Finance Loan A/C number 608926341 on 12/07/2013. Amount paid Rs. 83,03,000/- (Eighty Three Lakhs Three Thousand only). Total amount paid to the promoter Rs. 1,03,03000 (One Crore Three Lakhs and Three Thousand only). Since the promoter was supposed to handover the apartment in August 2014. I have relocated with my family to Bangalore and rented an apartment from May 2013 till

Prasad

1

date which has caused huge financial loss and hardship to me which i have paid in full to promoter and incurring a huge amount of monthly interest on housing loans. The project work is completely stopped past 3 years. Requesting to cancel my booking and refund the amount with interest from June 2013 onwards. We are still not started repaying our principal amount against our loan since the flat is not been handed over to us.

Relief sought from RERA: Cancellation of the Apartment & refund the amount.

2. After registration of the case notice has been issued to the Respondent. The Developer has appeared through his Sri. Prasad and filed the objections.

3. Heard the arguments.

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

My answer is affirmative for the following;

REASONS

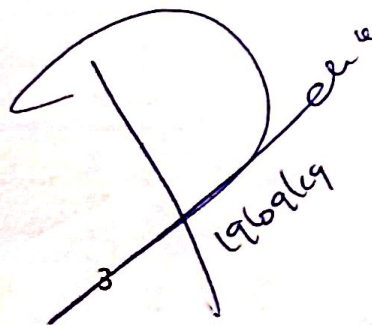
5. Admittedly the Complainant has entered into an Agreement with the Developer on 02/04/2013 it was agreed to complete the project on or before June 2015 including grace period but till today the project is not completed. The developer has Received Rs. 1,04,00,000/-. As per Section 18 the developer is liable either to refund the amount or to pay Delay Compensation in case of non completion of the project. The delay is not sustainable and there is no progress in the project. However the developer has contended that:

3) It is submitted that as per the Agreement, the Complainant is not entitled to terminate the Agreement or claim refunds of amounts due to delay arising out of force majeure circumstances. As stated above, the delay caused was due to above referred bonafide reasons and

due to litigations over the schedule property and hence the Complainant is not entitled to claim refund of any amounts. (clause 6.2 of the construction agreement)

4) It is further submitted that in case of cancellation of agreement by the Complainant as per agreement, the respondent is entitled to forfeit/with hold 18% of the amount received towards administrative charges and the balance shall be refunded within 180 days or upon resale of the apartment, whichever is later. Since the Complainant has sought for cancellation and refund of the amount the same will be considered as per the agreement and upon resale of the Apartment the balance amount will be refunded to the Complainant. (Clause No.1.4 a and c of Agreement of sell and clause No.4.3 a and c of the Construction Agreement).

6. I would like to say that the defense taken by the developer is not correct he cannot exercise his right of forfeiture when he himself is a defaulter. Therefore the objection statement has no force at all further it was submitted at the time of argument that the amount will be returned after the unit is sold to some other person, this is also not the proper submission. The inordinate delay in non completion of the project entitles the Complainant to get the refund with interest as applicable.
7. Before passing the final order I would say that 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 17/04/2019. But this complaint was received by Adjudicating Officer on 19/06/2019. Afterwards notice was issued to the parties to appear on 04/07/2019 and as such there is some delay in completing the complaint. Hence I proceed to pass the following;



Handwritten signature and date: 19/06/2019

ORDER

The Complaint No. CMP/190417/0002295 is allowed.

- a. The Developer is directed to pay Rs. 20,00,000/- to the Complainant.
- b. The developer is hereby directed to pay the interest @ 9% p.a. on the respective amount paid on the respective date prior to 01/05/2017 and @ 2% p.a. above the SBI marginal rate of interest on home loan commencing from 01/05/2017 till realisation.
- c. The developer is also directed to discharge the home loan with its interest EMI paid by the Complainant and due if any along with any other statutory charges.
- d. The Complainant is directed to execute the Cancellation of Agreement of Sale after the entire amount is paid by the developer.
- e. Further the developer shall pay Rs. 5000/- as cost.
- f. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 19/09/2019)

(K.Palakshappa)
Adjudicating Officer