

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI K. PALAKSHAPPA
DATED 9TH NOVEMBER 2020

Complaint No.	CMP/UR/190802/0003465
Complainant	Arunachalam Meiyyappan No.60/201,Radha Nivas , 7 th Main, 2 nd Block, Bagaluru-560011. Rep. by Kumar and Kumar Advocates.
Opponent	<ol style="list-style-type: none">1. Tata Housing Development Company Limited Regional Office: Times tower, 12th Floor, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai City-400013. Maharashtra State.2. Pramont Hill top Private Limited Regional Office: Trade World, B wing 2nd Floor, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel, Maharashtra State. Mumbai City-400013.3. Pramont Hill top Private Limited Regional Office: Trade World, B wing 2nd Floor, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel, Maharashtra State. Mumbai City-400013. Rep. by Sri Deepak Poonamiya, Advocate.

Deepak Poonamiya

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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JUDGMENT

Arunachalam Meiyyappan, the complainant has filed this complaint no. CMP/UR/190802/0003465 under Section 31 of RERA Act against the project "Tata the Promont" developed by "Tata Housing development company, seeking for the relief as under:

The Complaints have paid an amount for Rs. 70,52,640/- for booking of apartments in the block i.e., Altezzaa in the project name "THE PROMONT". The Respondents failed to deliver the apartment to complaints as promised by claiming that there were alleged force majeure conditions. The Complaints have repeatedly communicated with Respondents to deliver of the apartment as promised. The Complainants have repeatedly brought to the notice of the Respondents that they have paid a sum of Rs.70,52,640/- and have also substantiated the same by furnishing the receipts issued by the Respondents themselves. The Respondents, it is clear, have acted in a totally high handed manner, have acted illegally in retaining the amounts of the Complainants, adopted unfair trade practices and have cheated the Complainants of their legitimate amounts. Hence, the present Complainant. The Complaint is annexed as Annexure -1

Relief Sought from RERA : Respondents to pay the Comp 70,52,640 at 18%

2. After registering the complaint notice has been issued to the parties, the complainants have appeared through their advocate where as the respondents have appeared through his advocate Rep. by Sri Deepak Poonamiya, Advocate.
3. Before going to discuss on merits I would like to narrate some facts. This complaint was filed against the unregistered project. Therefore the Secretary has initiated preliminary enquiry regarding non-registration of the project. However complaint was transmitted to adjudicating officer for disposal on 18/12/2019.

4. Accordingly notice has been issued to the parties. Complainants have appeared and the advocate for developer has filed his vakalathanama and the case was posted to 27/03/2020 to file objections. Due to lock down the case was not taken up. After lifting the same and in order to maintain the social distance the parties have been called for hearing through Skype. On 07/07/2020 when the case was called through Skype Sri. Anath Bhat advocate submitted that he will file vakalath and rejoinder. Accordingly on 5/08/2020 a written complaint has been filed by the complainants along with vakalath nama of their advocate.
5. Arguments were heard and posted the matter for judgment.
6. The point that arise for my consideration is
 - a. Whether the complainants prove that they are entitled for the relief as sought in the complaint?
 - b. If so, what is the order?
7. My answer is affirmative in part for the following

REASONS

8. This Complaint is filed by the complainants against three respondents seeking for the relief of compensation with refund of the amount. After registration of the complaint notice has been issued to the parties. At the time of hearing the complainant has filed physical copy of the compliant where he has made his wife as 2nd Complainant.
9. Sri Abhinar. R Advocate has filed vakalath on behalf of the complainants. The developer has appeared through his advocate and filed the written submission.

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10. The gist of the compliant is as under.

The complainants have filed the complaint seeking for the refund of the amount paid towards purchase of the flat. The respondent 1 and 2 have entered into agreement with the complainants on 12/1/2015 towards the purchase of flat bearing no.604. The total consideration amount was Rs.2,26,27,500/-. Out of it the complainants have paid Rs.76,35,600 -. The respondents have agreed to complete the project on or before 15/12/2015.

Further the complainants have submitted that the Respondents realized that they would not be able to honor their commitments and all of a sudden and on 09/10/2017, the respondents sent a mail to the 1st complainant stating that due to non-payment, the cancellation letter has been sent to the complainants. The respondents further made false claims that the apartment was ready to be handed over. The complainants were shocked and disturbed towards attitude of the respondents. The 1st Complainant sent a reply to the respondents expressing his disappointment. The entire sequence of events was also set out. Despite their reasonable stand taken by the complainants in their reply mail dated 07/10/2017, on the same day itself, the respondents again sent an untenable demand for payment of the balance amount within 7 days failing which the apartment would be cancelled. The complainants submit that the respondents have acted unfairly in the manner. On one pretext the developer has cancelled the agreement but in other they kept extending the time for completion. The Complainants were forced to make alternative arrangements to get the benefit of Capital Gains Exemption. To hide the deficiency, the respondents making unrealistic demands to the complainants and ultimately proceeded to unjustify, illegally and in the handed manner cancel the booking. If that were the stands that were taken by

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10/11/2017

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~~Dear~~

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The Respondent no.2 has sent the agreement for sale and construction agreement ("Said Agreement") vide their mail dated 17th march 2015, calling upon the complainant to Execute the said documents.

The complainants have till date paid an amount of Rs.60,54,147/-. The respondent no.2 as per the agreed schedule, vide demand dated 30/6/2017 demanded the outstanding amounts. The complainant failed and neglected to pay the due amounts. Thereafter, the respondents issued 1st reminder letter dated 02/08/2017 raising a demand of Rs.2,64,12,870/- (which included the interest on late payment). The complainant failed and neglected to make the payments. The respondent no.2 issued the 2nd reminder letter dated 23/08/2017 raising a demand of Rs.2,65,87,493/- (which included the interest on late payment) and since, the complainant did not pay the amounts as demanded, the respondent no.3 issued the Final Reminder Letter dated 11/09/2017, raising a demand of Rs.2,67,33,011/- (which included the interest on late payment).

The Respondent no.2, vide their email 7th October 2017, sent the cancellation letter to the complainant, since the complainant failed and neglected to pay the balance amount. The Complainant responded to the said email vide his email dated 7th October 2017, seeking a time of 90 days to make the payment. The complainant also sought to add the name of his brother as a co-applicant since, he was seeking financial assistance from him. The respondent no.2 replied to the said email vide their email dated 9th October 2017 wherein, the Respondent no.2 agreed for an interest waiver upon receiving the complete payment.

12. It is the case of the respondent no.2 that he has cancelled the booking on the ground that the complainants have failed the

*Deputy
Registrar*

proper payment. In para no.3,2,9 he admitted the complainants have paid Rs.60,54,147/-. Out of it he has paid Rs.36,51,141/- towards tax and Rs.24,03,006/- has been forfeited for the default on the part of the Complainant. By this way the developer has denied the case of the complainants and said that they are not entitled for the relief as sought in their complaint.

13. Under this back ground of the pleadings now I am going to say on the merits of the case. In this case the complainants have sought for refund of the amount paid by them which comes to Rs. 70,52,640/- together with interest @ 18%. In this regard I would like to say that the rate of interest is governed by Rule 16 and therefore the claim for grant of interest @ 18% does not arise.
14. On going through the paper submitted by both the parties it is clear that the developer claims that he has received Rs. 60,52,640/- from the complainants where as the complainant says that he has paid Rs. 70,52,640/-. It means the only dispute is regarding payment of Rs. 10,00,000/-. I will refer the same after some points.
15. The agreement was executed on 12.01.2015 where the developer has agreed to complete the project on or before June 2016 including the grace period. It is the allegation of the complainant that he is seeking refund of the amount because the developer is not able to obtain the occupancy certificate but it is the case of the developer that he has obtained partial Occupancy Certificate date 23.08.2016 and 23.08.2017.
16. The developer has taken a stand in his objection statement stating that as per the condition imposed in the agreement 25% of the amount will be deducted and also the tax paid by him in case cancellation has been made by the complainant. In Para no. 3.4.1 of his written submission he submitted that he could not able to

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complete the project on or before May 2016 on account of Sand Larry owner's strike, blasting of work problem, strike and other reasons. It means the delay is also admitted by the developer. As per Section 18 a right will accrue to the buyer when the developer has failed to deliver the possession within the due time. In this case it is an admitted fact that the project has not been completed within the due time. Therefore now it is the choice of the buyer either to continue with the project or go away. The present case the buyer decided to go out of the project. When that being the case the developer has to return the amount. The contention taken by the developer that as per the terms of the agreement he can exercise forfeiture clause cannot be taken into consideration because the developer himself is a defaulter. The question of invoking forfeiture clause comes into picture only when the developer has completed the project within the due time. If not; the said question of forfeiture cannot be exercised.

17. In view of the above condition the other contentions taken by the developer falls on the ground. So far as forfeiture of amount is concerned; I would like to relay upon the decision of Maha RERA which was based upon the observation made by the Apex Court.

Relying upon the principle laid down in the case of Central Intand Water Vs. Broio Nath Ganguly & Ann On 06.04.7986 (7986 AIR SCR (2) 278), the Hon'ble Supreme Court, while deciding the case in favour of an allottee, held the view in Pioneer Urban Land and Infrastructure Vs. Govindan Raghavan in Civil Appeal No.72238 of 2078 on 02.04'20Tgsignifying that court will not enforce an unreasonable, unfair contract or an unreasonable and unfair clause in a contract where contracting parties are not equal in bargaining power and where a man has no choice or rather a meaningful choice but to give his assent to a contract or to sign on the dotted line in a prescribed or

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The 1st & 2nd respondents made various representations with regard to their proficiency, skill, expertise etc., in the field development of real estate and promised that the entire scheme would be developed and executed within specified time period lure various persons to purchase residential apartments in the scheme. The complainants by believing the representations and the promises made by the 1st & 2nd Respondents were lured in to purchase a residential apartment. Accordingly, the complainants approached the 1st & 2nd respondents and thereafter the complainants were asked by the respondents to fill up a booking form and pay a sum of Rs. 10,00,000/-. The complainants were assured that a necessary documentation would be done at a large stage and accordingly by believing the respondents and by placing implicit faith and trust, the complainants paid a sum of Rs.10,00,000/- by way of account payee Cheque bearing No.057019 drawn on IDBI Bank towards booking amount. In response to the complainants received a communication dated 25/10/2013 confirming allotment of Apartment No. Altezza 204 for a total sale consideration of Rs.3,30,84,848/- which included two covered car parks. The allotment letter dated 24/10/2013 also confirmed the receipt of a booking amount of Rs. 10,00,000/-. However the booking amount of Rs.10,00,000/- was sought to be unilaterally adjusted in a particular manner as set out in the allotment letter. This was never informed or discussed with the complainants nor have they agreed upon adjustment of the same in any particular manner.

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When they took up the said issue with the Respondents, the complainants were told that it is a standard format and that would be receiving an Agreement for Sale. The Respondents assured the Complainants that the booking amount was safe and there was nothing that the Complainants were to be worried about.

21. By seeing the stand taken by the complainants it reveals that the transaction between him and the complainant was commenced from 2014 itself. The 1st booking was cancelled, 2nd booking was also cancelled by the developer as per the letter dated 8/11/2017. The cancellation is only because the complainants have failed to make the payment. Of course the 1st booking was called and the 2nd booking was done by the complainants as per the letter dated 8/11/2017 which reads as under.

Cancellation of booking of Apartment No. Altezza 604 at the promont-Bangalore Project ("Apartment")

Ref:

1. Demand Letters dated 30/6/2017 and 15/9/2017.
 2. 1st Reminder Letter dated 2/8/2017.
 3. 2nd Reminder Letter dated 2/8/2017.
 4. Last & Reminder Letter dated 11/9/2017.
-
1. Pursuant to your application, you applied for booking of the above mentioned flat for a consideration of Rs. 3,02,63,200/- and other charges mentioned therein.
 2. As per the terms of the Application form/ Allotment letter/ Agreement for Sale you were required to make timely payment towards the Consideration and other charges as per the payment schedule mentioned therein.
 3. As on date you have paid an amount of Rs.60,54,147/- towards Consideration (including Service Tax).

Devi
09/11/2017

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4. We request you to kindly refer to the Annexure A attached to this letter, which is a statement of payments received and payment due along with applicable interest as on date.
5. The company vide its above referred letters had called upon you to make payment of outstanding amounts along with applicable interest for delayed payment. In spite of the demand letters and repeated reminders, you have failed and neglected to make the payments of the due amount.
6. Vide the Last & Final Reminder Letter issued to you, we had once again called upon you to pay the due installments with interest as applicable. We has also informed you that on failure to make the payments the company shall be considered to cancel your booking, as per the terms and conditions of the Application Form/ Allotment Letter/ Agreement for Sale. In spite of the same, you have failed and neglected to make the payment of the outstanding amounts.
7. Under the present circumstances, we are considered to cancel the allotment of the said Apartment and terminate the aforesaid Application Form/ Application Letter/ Agreement for Sale. In terms of the Application Form/ Agreement of Sale, we are entitled to forfeit the charges, levies etc., of any nature whatsoever shall be refunded to you.
8. Please note that from that date hereof pursuant to aforesaid cancellation you have no right, title and/ or interest in the aforesaid Apartment of whatsoever nature and the company shall be entitled to deal with, to sell, allot, transfer and/ or dispose off said Apartment to any other person/ party as it deems fit.
9. All earlier correspondence/ receipts including but not limited to the Application Form, Allotment Letter issued and exchanged in reference to the said Flat stands forthwith cancelled and revoked.

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10. We call upon you to immediately handover the original Allotment Letter, Agreement for Sale, payment receipts and all other correspondence addressed by the company to our representatives.

22. Based upon the same the learned counsel for the complainants submits that the developer has cancelled the booking for his own reasons. But it was the case of the developer to the effect that the cancellation has been done because the complainants have failed to make timely payments as agreed. It means the parties are making allegations against each other.
23. I would say that generally it is not safe on the part of this authority to order for refund when the developer has received the occupancy certificate. When it was brought to the notice of the advocate for complainants he submitted that the booking has been cancelled by the developer and as such the question of remaining in the project does not arise. I find some force in his submission and by going through the history of his case I would say that the developer has cancelled the booking twice. Of course the reason given by the developer for cancellation of booking was only because of non-Payment of installments regularly as agreed. In response to the same it is submitted that he is seeking refund of the amount just because the developer has cancelled the booking. The developer has forfeited the amount and expressed the inability to refund the whole amount since he has paid tax to the authority. I would say that when the developer has cancelled the booking then only question remained for my consideration is as to refund of the amount.

P. S. S. S.
10/10/2020

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24. I have already discussed in the above paragraph regarding the validity of the forfeiture. Therefore, the developer cannot forfeit the amount of Rs.24,03,006/- and he shall return the same. Further the developer has taken the benefit of the amount which was received from the complainants. There is no any returns to the complainants for their money which was being used by the developer for many years. Despite of it, he claims that he is having right of forfeiture then it is against to the principle of natural justice. There is one letter given by the complainants requesting for cancellation of booking and another letter says that the booking has been cancelled by the developer for non-payment of instalments. By taking into consideration of all these aspects I would say that an order may be passed by directing the developer to return the amount to the complainants will meet the ends of justice.
25. So far as tax liability is concerned the developer cannot plead his helplessness with regard to tax paid to the authority because he will collect the same tax amount from the proposed buyer for when he sells the same. Therefore, the developer shall return the amount of Rs.36,51,141/- to the complainants and get adjustment with the taxing Authority when the same flat is sold to a new buyer. There is no any alternative so far as payment was made to the taxing authority is concerned.
26. So far as Rs. 10 lakh which was received for the first booking amount by the developer also to be returned to the complainant. He cannot exercise the right of forfeiture for many occasions. In fact the developer has not said anything about the said payment but the same is proved by the complainant by producing the receipt issued by the developer. Therefore as rightly claimed by

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09/04/2020

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the complainant the developer shall return the amount of Rs.10,00,000/- to the complainant.

27. By taking into the consideration of all the above facts he shall return the amount of Rs.70,52,640/- to the complainant within 30 days from the date of this order. If not it will carry the interest @ 2% above the MCLR of SBI from the 31st day.

28. Before passing the final order I would like to say that as per Section 7(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 was filed on 22/09/2019. Since this complaint was filed against the unregistered project, the file was with the Secretary who has taken necessary steps against the developer with regard to the registration of his project. Later the complaint has been transferred to this authority on 13/12/2019 for disposal in accordance with law. Afterwards this authority has issued notice to the parties and filed the objections. In the meanwhile on account of natural calamity COVID 19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2020 and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.

Per
09/10/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/UR/190802/0003465 is hereby allowed in part.
 - b. The developer shall return the amount of Rs. 70,52,640/-to the complainants within 30 days from today.
 - c. If not it will carry the interest @ 2% above the MCLR of SBI from 31st day till the possession is delivered.
 - d. The complainant may file memo of calculation after 60 days in case the order is not complied by the developer as per SOP dated 28.10.2020
 - e. Intimate the parties regarding the order.
- (Typed as per dictated, corrected, verified and pronounced on 09/11/2020).

K. PALAKSHAPPA
Adjudicating Officer