

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 30th SEPTEMBER 2020

Complaint No.	CMP/180303/0000536
Complainant	Smt. Shilpa Kamath W/o Dr. Shashidhar Kamath No. 377, 2 nd Main, Gokulam 3 rd Stage, Mysore - 570002 Rep. by Sri Prashantha Advocate
Opponent	M/s. Patak Developers Pvt. Ltd No.2997/2, Rukma Complex, Kalidasa Road, Mysore - 570002 Rep. by: Smt. H.H. Sujatha, Advocate.

JUDGMENT

1. This Complaint is filed by the complainant against the developer seeking for the relief of refund of the amount. His complaint reads as under:

It is respectfully submitted that still this apartment is not yet completed and no completion report is issued not individual flat Khatha is generated and the Respondent s are willful defaulters and they have playing Compensation(s) sought: The total amount received by the Respondent's for their project from the hands of the Complainant is of Rs 38,00,000/- and the interest paid on these amounts to State bank of Mysore on the portion of the loan amount so sanction so far is of Rs12,00,000/- and the interest calculated on the merging amount paid by the complainant Rs 10.00 % p.a is Calculated at Rs 4,00,000/- thus the amount due for payment is of RS 52,00,000/- and the amount payable as Metal agony and damages is of Rs 15,00,000/- in all a sum of Rs 69,00,000/- .

*Don't
30/09/2020*

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Relief Sought from RERA : Recovery Rs 59.00Lakh with future interest and cost

2. After registering the complaint notice has been issued to the parties, the complainant has appeared through his advocate where as the respondent has appeared through his advocate and filed his objections.
3. This case was to be called on 27/03/2020 but on that day it was not called on account Covid-19 and it was ordered to stop the hearing in open court. Further from 24/03/2020 till 17/05/2020 lock down was declared and as such hearing was not possible. Further as per office note, the personal hearing was deferred and as such the parties have been called for hearing through Skype. Advocate for Complainant present but the advocate for developer has not appeared.
4. On going through the case paper it is noticed that the Secretary has called the parties where the developer has filed a memo in the form of objection statement admitting the liability.
5. In view of the same I posted the matter for judgment.
6. The point that arise for my consideration is
 - a. Whether the complainant proves that he is entitled for refund of his amount?
 - b. If so, what is the order?
7. My answer is affirmatively for the following

REASONS

8. This Complaint is filed by the Complainant seeking refund of the amount paid to the developer towards the purchase of flat bearing no. F4. According to Complainant the developer has agreed to complete the project but the developer has failed to complete the project as agreed by him. Originally the Secretary has conducted some

[Handwritten Signature]
30/09/2020

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interrogation where the developer has appeared and filed his written argument where it is said as under:

It is true that the Complainant had purchased the apartment flat no. F4, Pratham Lakshmi Situated at 3rd stage gokulam, Mysore at the price of Rs.40,00,000/-. He had availed loan of Rs. 20,00,000/-from SBI Housing finance put of which

Rs.18,00,000/- was released from the bank. He had paid Rs.20,00,000/- to Builder. In total, complainant had paid Rs.38,00,000/- to the builder.

It is true that the Complainant had lodged a complaint to the authority Rera, there was a compromise among both the parties in the hearing held on 13/7/2018.

It is true that, before the complainant has approached RERA Authority builder has started refunding the loan amount which was released from Bank. Builder had paid Rupees 17,50,000/- to the complainant loan account no. 64197927726, SBI Bank, Gokulam Branch Mysore also insurance amount of Rs.49,321 in total Rs. 17,99,321/-. The respondent has paid all outstanding amount as instructed from the bank but for his utter shock complainant has not signed the home loan closing letter hence bank is charging a nominal interest on the same.

As per the compromise in the authority the builder had agreed to pay Rs.31,10,000/- from the date of compromise within 45 to 60 days. It is true that, as per the compromise in the authority the respondent has paid Rs.7,00,000/- on 28/10/2018 to complainant account no. to which complainant acknowledges the same . As per the compromise the builder is yet to pay Rs. 24,10,000/- to the Complainant. As the real estate market is not booming at this stage on 26th October 2018 respondent had sent the letter to the authority and to the

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30/09/2018

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customer stating the balance amount will be paid within 90 days starting from 26th October 2018, as 90 days will be completed on 26th January 2019.

The respondent is agreeing to pay liable interest on Rs.24,10,000/- from 29/9/2018 to 26/12/2018 that is Rs.66,275/-. The respondent has an intention to clear the issue amicably without spoiling his reputation in the market. The Complainant is demanding the interest exorbitantly high which is not practical according to the rules of Rera as per section 4 of Rera rule rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the STATE BANK OF INDIA highest marginal cost of lending rate plus 2 percent.

9. In view of the same I would say that there is no much for discussion. The respondent has clearly admitted the transaction. Of course the counsel for the developer though not submitted her argument but the reply given to Secretary on 26/12/2018 proves many things.
10. Recently the complainant has given a memo of calculation where he claims the interest on the sum paid by him and also on the EMI along with mental agony.
11. In this regard he has given a memo of calculation claiming a total amount of Rs. 29,48,858/-from the developer. At one stage the learned counsel for the complainant submits that the submission made by the developer in his objection statement dated 18/12/2018 is correct. Except the said memo the developer has not placed any other evidence. The claim made by the complainant for mental agony cannot be granted in view of the observation made by the Apex Court which reads as under:

Deny
20/01/2019

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Coming to the relief towards mental agony is also not applicable since the Hon'ble Apex Court held that compensation under mental agony cannot be granted under a general agreement. In this regard I would like to refer a decision:

When compensation for mental agony can be granted: - in the case of Ghaziabad Development Authority v. Union of India, (2000)6 SCC 113 wherein whilst considering a case of breach of contract under Section 73 of contract Act, it has been held that no damages are payable for mental agony in case of breach of ordinary commercial contract. The Supreme Court considered the case of Lucknow Development Authority AIR1994 SC 787 and held the liability for mental agony had been fixed not within the realms of contract but under principals of administrative law.

12. In view of the above position of Law question of giving the compensation of under mental agony does not arise. Further the complainant has said that

Further the rate of interest shall be guided by KOFA act and RERA rules. As per the say of the complainant he has paid Rs. 20,00,000/- on 19/10/2015. Further a sum of Rs. 5,10,000/- (Rs. 30,000x 17 months) has been paid to the bank in the name of the complainant to the loan which was ought to be paid by the developer. On 29/09/2018 the developer has refunded only Rs. 7,00,000/- and hence a suitable order may be passed. In view of the same and admission made by the developer I allow this complaint in part.

13. 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 03/03/2018. Originally the case was handled by the Secretary and afterwards it was transmitted to Adjudicating Officer in the month of January 2020. After issuance of notice the parties have appeared on

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30/01/2020

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21/01/2020. When the case was posted to 27/03/2020 physical hearing of the cases has been stopped in view of Covid-19 and from 24/03/2020 lock down was declared till 17/05/2020. Hence the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

ORDER

- a. The complaint no. CMP/180303/0000536 is allowed in part.
- b. The developer shall return Rs. 18,10,000/- to the complainant.
- c. The developer is hereby directed to pay simple interest @ 9% P.A. on the amount of Rs. 20,00,000/ from 19/10/2015 to 30/04/2017. Further the developer is directed to pay simple interest @ 2% above the MCLR of SBI commencing from May 2017 till 28/09/2018.
- d. Further the developer shall pay the simple interest @ 2% above the MCLR of SBI on Rs. 13,00,000/commencing from 29/09/2018 till realisation of the said amount.
- e. The developer is also liable to pay cost of Rs.5,000/- to the complainant.
- f. Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 30/09/2020)

K.PALAKSHAPPA
Adjudicating officer