

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 11th OF March 2020

Complaint No.	CMP/190806/0003434
Complainant	Naveen Raghuram Shetty, Sai Rama, 4 th Cross Road, Balaji Layout, Kadekar PO-576103 Udupi District. Rep.by Sri Naveen Chandra Shetty, Advocate
Opponent	Surendra C/o Fortuna Projects India Pvt. Ltd., #7, old No.390, 13 th Cross, Bhashyam Circle, Sadashivanagar, Bengaluru -560080. Rep. by: Smt.Sujatha, Advocate

1. Naveen Raghuram Shetty, the complainant has filed complaint bearing no. CMP/190806/0003434 under Section 31 of RERA Act against the project "Fortuna Viva " developed by 'Fortuna Buildcon India Pvt. Ltd.,' as he is the allottee in the said project seeking for the relief of *refund*. The brief facts of the case is as under:

The promoter/builder has stopped construction for last two years and has provided excuses for not starting construction every time. They received the RERA certificate in Dec 2018 but the construction hasn't started, the promoters have stopped communication in the last 6 months and looks like there is no will and intention to extend the RERA certification or resume construction. The actual completion was set for Dec 2017 but has been delayed multiple times, with false promises on restart of construction every few days. I have attached the proof of the various promises made on email by their CRM team. I would like either a start of construction with compensation for the lost time of possession or the refund of

P. Palakshappa
11/03/2020

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the full amount including the interest incurred on my home loan during the time I have waited. I have attached the details of the monies that were paid to the builder and the additional monies that I expect them to pay as part of a settlement on a refund. This includes the penalty for the last 2 years of non-delivery of the flat and the interest earned by the loan that I had to take for the apartment.
Relief Sought from RERA: construction restart or full refund with interest.

2. After registration of the case, notice has been issued to the parties. The complainant has appeared through his counsel Sri Naveenchandra Shetty and in the same way the respondent is represented by his counsel Smt.Sujatha. At the time of hearing the learned counsel for the developer submits that the present complaint is not maintainable in view of the order passed by NCLT. The same was strongly opposed by the advocate representing the complainants. Therefore I have heard the argument on this point as well as on merits of the case.
3. The point arise for my consideration is
 - a. Whether the complaint is maintainable in view of the order passed by the NCLT?
 - b. If not, what is the order?
4. My answer to above point is Affirmative in part for the following

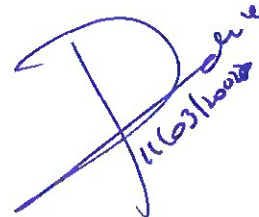
REASONS

5. The advocate for the complainants has filed the memo of calculation stating that award may be passed for a sum of Rs. 78,62,691/-. In this case the complainants have sought for refund of their amount paid to developer, towards EMI and also towards bank loan. But as per the present situation the developer is not answerable to the claim of the complainant since an interim

*Done
11/03/2019*

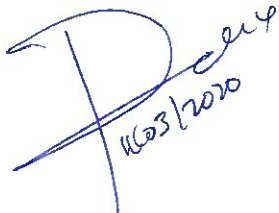
authority called IRP has occupied the position of developer by the virtue of order passed by NCLT.

6. On going through the merits of the case the complainant has sought for refund of amount. The main reason seeking for the refund is that some creditors have filed application before the NCLT and got an order. According to him the NCLT has appointed IRP who has taken the charge of administration of entire project. It means the person who has executed the agreement of sale and construction agreement in favour of the present complainant is not in a position to meet the claim. It means the whole project defunct because of the bad financial position of the developer.
7. As per S.19(4) the complainant is entitled for his claim in case the developer has failed to complete the project for any reasons. Under these backgrounds the Complainant is entitled for his claim along with interest at the rate of 9% p.a. as per the Karnataka Apartment Ownership Act, 1972 till 30/04/2017 and @ 2 % above the MCLR of SBI from 01/05/2017 till the realization of entire amount. In this connection the complainant has said that he had paid Rs.11,47,000/- from his pocket and bank has released the loan amount of Rs.45,80,000/-. The complainant is entitled for interest as said above. Further the developer shall discharge the bank loan with its interest EMI, and any other incidental charges.
8. However the learned counsel for the developer submits that the present complainant may be directed to approach the NCLT for the relief in view of the NCLT order. Hence, now I have to see the same by taking the order of NCLT which is reproduced here.



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1. The Company Petition bearing CP(IB) 124/BB/2017 is hereby admitted with the following consequential directions:
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2. We hereby appointed Shri Shivadutt Bannanje bearing IP Regn.No.IBBI/ IPA-002 / IP-N00266/2017-2018/10779 as Interim Resolution Professional (IRP) to conduct the corporate insolvency resolution Process (CIRP) in respect of the Corporate Debtor viz., M/s Fortuna Buildcon India Pvt.Ltd., & carry out the function as mentioned under the I&B Code, 2016 and the Rules framed by teh IBBI from time to time.
3. The following moratorium is declared prohibiting all of the following, namely;
 - a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration, panel or other authority;
 - b. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the securitization and reconstruction of financial Assets and Enforcement of Security Interest Act,2002;
 - d. The recovery of any property by an owner or lesser where such property is occupies by or in the possession of the Corporate Debtor;
 - e. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspend or interrupted during moratorium period;
 - f. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator as also not applicable to surety;


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- g. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.
4. IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
5. The Board of Directors and all the staff of the corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
6. The IRP is directed to file his progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time."
9. It is the case of the respondent/developer that he is not in a position to honor the order since he has already approached the NCLT for taking action as he is financially suffering. The learned counsel for the complainant submits that the order of NCLT is not applicable to RERA since, RERA Act is new one and independent to other Acts. He also read Sec. 89 and submits that no other Acts can override this Act. Per contra the learned counsel for respondent developer submits that though NCLT Law enacted in the year 2016 but a recent amendment has been carried out subsequent to RERA Act. Therefore, as per the amendment by way of ordinance when once the matter is pending before NCLT, all other Courts/Authority shall be ousted from having jurisdiction.

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10. Of course there are no any precedents on this point. However, I would like refer the judgment passed by Rajasthan RERA Authority in Complaint No. RAJ-RERA-C 2018-2127 where in it is discussed as under:

----- Furthermore, even if a winding up order had been made or were to be made, the present proceedings are pending under the RERA act, which is a special Act of the parliament, made with the special purpose of regulating and promoting the real estate sector, of protecting the interest of consumers in the real estate sector and of establishing an adjudicating mechanism for speedy dispute redressal. That the RERA Act is a special Act is also borne out by the fact that Section 79 of the RERA act has barred the jurisdiction of all Civil Courts in respect of all matters to be determined under the RERA Act. Thus, the RERA Act is a special Act; and it has been made in 2016, i.e., much after the Companies Act, 2013 was made. Moreover, the RERA Act has an overriding provision under its S. 89, which reads as under:-

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

As such, even if the RERA Act were not a special Act, it being a later Act and an Act having overriding provisions, its provisions will prevail over all earlier laws and over all general laws, including the Companies Act, 2013. More specifically, provisions of S.31 of the RERA Act will prevail over the provisions of S. 279 of the Companies Act, 2013.

11. By relying upon the same it is clear that the complainant shall not be diverted to any other authority but the same has to be disposed of by this authority only. But as rightly submitted by the counsel for the developer that the Rajasthan RERA authority has failed to refer the amendment made by way of Ordinance and therefore it is his submission that finding given by the Rajasthan Authority cannot be considered. Further, he has drawn my attention to some commentary made in the Act IBC 2016 published by Commercial Law Publishers (India) Pvt. Ltd., which reads as under:

This section lists the actions that the adjudicating authority shall take once an application for initiating the corporate insolvency resolution process has been admitted. The adjudicating authority shall

(a) declare a moratorium in accordance with section 14

(b) cause a public announcement of the initiation of corporate insolvency resolution process with respect to the corporate debtor to be made and call for claims in the manner laid down in section 15 and

(c) appoint the interim resolution professional for the corporate debtor in accordance with Section 16.

12. So far as declaration of moratorium by prohibiting the further proceedings, the commentary says as under:

This section describes the effect of the moratorium, include keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the Company may continue as a going concern while the creditors take a view on resolution of default. This also ensures that multiple proceedings are not taking place simultaneously and helps

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obviate the possibility of potentially conflicting outcomes of related proceedings and further ensures that the resolution process is a collective one. The order under this Section inter alia, prohibits the institution or continuation of suits or any legal proceedings against the corporate debtor, the disposal of any asset of the corporate debtor and debt enforcement actions under the securitization and reconstruction of financial assets and enforcement of Security Interest Act, 2002. The moratorium on initiation and continuation of legal proceedings, including debt enforcement action ensures a stand-still period during which creditors cannot resort to individual enforcement action which may frustrate the object of the corporate insolvency resolution process. The prohibition on disposal of the corporate debtor's assets would ensure that the corporate debtor or its management is not able to transfer its assets, there by stripping the corporate debtor of value during the corporate insolvency resolution process. The moratorium also extends to recovery of any property occupied by or in possession of the corporate debtor. It also prevents the termination of a contract that provides for supply of such essential goods and services as may be specified. Access to certain goods and services during the insolvency resolution process may be important for ensuring orderly completion of the proceedings.

13. By taking the shelter of the above proposition it is the say of the counsel for the developer that the RERA also covered by the said Code. According to him the home buyers also covered under this code by the virtue of Ordinance. In this regard he has submitted the decision Hon'ble Supreme Court passed in Writ Petition no. 744/2017 date 9/8/2018

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Chitra Sharma and others

vs

Union of India and others

In the same judgement at para No. 39 it says as under:

*Para No. 39:- In considering the rival submissions, several important facets of the case need to be underscored. First and foremost, the CIRP was initiated on 9/8/2017, following the order of the NCLT admitting the proceedings. The period of 180 days for concluding the CIRP come to an end on 6 /2/2018 and the extended period ended on 12/5/2018. When the CIRP was initiated and until the period of 270 days concluded, the home buyers did not have the status of financial creditors under the provisions of the IBC. They had no statutory voting rights in the COC. Under the interim directions of this court, a workable arrangement was sought to be put into place by appointing a representative of the home buyers on the COC to facilitate their interests being duly borne in mind. But the point to be noted is that in the absence of a statutory recognition of the position of the home buyers as financial creditors, the law did not allow for real and substantive entitlements to them in the COC. These statutory entitlements have been brought in by the ordinance in order to recognize the vital interests of the home buyers in a real estate projects and to allow them a statutory status in the insolvency resolution process. Unfortunately by the time that the ordinance came into being on 6 June 2018, the period of 270 days had expired; the resolution plan of **Lakshdeep** was rejected and the IRP informed NCLT that no resolution plan had been approved within the extended period of 270 days on 12/5/2018. Having regard to the material change which has been brought about by the amendment of the IBC by the*

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ordinance and the fact that this court has been in sessions of the proceedings to ensure that the home buyers are protected, we are of the view that it is but appropriate and to do complete justice to secure the interest of all concerned that CRIP should be revived and COC reconstituted as per the amended provisions to include the home buyers.

14. By highlighting this point, it is submitted that the ruling given by Apex court would be law of the Land. By virtue of the moratorium order passed by NCLT the whole project is now under control of IRP. It further means the developer who was responsible to answer to the claim is not empowered with the financial transactions. As per the order passed by NCLT the interim arrangement has been made to take the stock of the developer's project. In view of the order passed by the NCLT the whole structure and administration has been taken over by the officer who was appointed by the NCLT.
15. I would like to say that even then the authority has to give its finding since this authority is independent but in order to resolve the dispute between the consumer and the developer a competitive authority has taken over the entire administrative power. That being the case it is not correct on the part of this authority to go ahead with the proceedings pending before this authority.
16. However, the learned counsel for the complainant submits that as this RERA is a special Act and as per S.18 the consumer is entitled for relief in case of non completion of the project. Therefore he submits that a finding has to be given by this authority. I find some force in his submission. Being the special Act on disputes under real estate sector the authority has to give its finding about the entitlement of the relief. And a direction may be ordered to the complainant to take the realization of the same approaching the

Deaw
11/03/2020

NCLT authority since the respondent against whom this complaint is filed is now not in a position to realize the award. The entire system is now handled by the IRP and therefore I say that the complainant may direct to approach the authority for realization of award. Hence I proceed to pass the following order.

ORDER

- a. The complaint bearing No.CMP/190806/0003434 is allowed.
- b. The developer is hereby directed to pay the amount of Rs. 22,52,800/-together with interest @ 9% on the respective amount paid on the respective date till 30/04/2017 and @ 2% above the MCLR of SBI as on today till the realisation.
- c. Further the developer shall pay the bank loan amount with its interest and any other statutory charges.
- d. The developer may approach the NCLT for the execution of the same.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 11/03/2020).

K. PALKSHAPPA
Adjudicating officer

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