

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. PAJAKSHAPPA
DATED 23rd DECEMBER 2020

Complaint No.	CMP/180302/0000532
Complainant:	Sri Sanjay M Ayare Smt. Anitha Ayare NO.262,4 th Main, 8 th Cross, Vijayanagara 1 st Stage Mysuru- 570002.
Opponent:	Srihari pathak and M/s Pathak Developers Pvt Ltd., 2997/2 Rukma Complex , Kalidasa Road, Mysuru- 570002. Rep. by Smt. H.H. Sujatha Advocate

JUDGEMENT

1. This Complaint is filed by the complainant against the developer seeking for the relief of refund of the amount paid by him towards purchase of flat. Now he is seeking for refund of the amount.
2. After registering the complaint notice has been issued to the parties, the complainant has appeared in person where as the respondent had appeared through his advocate before the Secretary and filed his objections.

[Handwritten Signature]
23/12/2020

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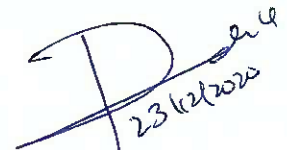
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3. Since this complaint was filed against the unregistered project the Secretary has made some interrogation by summoning the parties. Later the case was transmitted to Adjudicating Officer. After receipt of the same notice has been issued. This case was called on 21/01/2020 and on that day complainant has appeared. Advocate has appeared on behalf of the developer. The case was posted to 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 done. Further as per office note, the personal hearing was deferred and as such the parties have been called for hearing through Skype.
4. On going through the case papers 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 complainants prove that they are entitled for the relief as sought in their complaint?
 - b. If so, what is the order?
7. My answer is affirmatively for the following.

REASONS

8. This Complaint is filed by the Complainants seeking for the refund of the amount paid by them towards purchase of the flat.


23/6/2020

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Originally the Secretary has conducted some interrogation where the developer has appeared and filed his written submission dated: 11-07-2018 which is reads as under:

With reference to the discussion had in our office on 25/06/2018 you had claimed to pay us Rs.26,93,500/- (Rupees Twenty Six Lakhs Ninety Three Thousand Five Hundred only) for your margin contribution of Rs.13,00,000 paid to Pathak Developers. In addition to this amount you had availed a loan of Rs.25,00,000(Rupees Twenty Five Lakhs only) in which Rs.22,50,000 (Rupees Twenty Two Lakhs Fifty Thousand Only) was released by the bank to Pathak Developers. As you have not paid any monthly emi's to bank the account was turned to be non-profit asset to the bank (NPA). We have paid till date Rs.21,00,000 (Rupees Twenty One Lakhs Only) to your loan account no 6419398773. Now there is a balance of Rs.6,94,496 (Rupees Six Lakhs Ninety Four Thousand Four Ninety Six Only) in your loan account.

9. Further the developer has also filed his detailed written arguments which is follows;

It is true that the complainant had entered into an Agreement of Sale on 25th February 2016 for the Flat No:G1 out of 'PRATHAM LAKSHMI' Residential Apartment situated at Gokulam 3rd Stage, Mysore for Rs.41,00,000/-. It is true that the complaint had paid part sale consideration amount of Rs.13,00,000/- and applied for Housing Loan for Rs.25,00,000/-. Out of Loan amount of Rs.25,00,000/- only Rs.22,50,000/- has been released and the same was credited to our account

Dear U
23/12/2020

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as per the terms and conditions mentioned in the Tripartite Agreement executed between the Complainant, Respondent and S.B.I Housing Finance.

It is true that, from the date of sanction of the Loan Amount, the Complainant did not pay the remaining Sale Consideration amount of Rs.5,50,000/- and also not paid the E.M.I. to the Concerned Bank. The respondent had requested the complainant for several times to pay the E.M.I and also to pay the balance Sale consideration amount and also intimated to take possession of the property immediately after completion of the construction work but all the efforts of the respondent went in vain.

It is true that, the concerned bank had restricted the respondent to pay the E.M.I. as the complainant had not paid the installments in time. Accordingly, the respondent had repaid the Principle amount of Rs.22,50,000/- to the concerned bank and still need to re-pay the interest of Rs.6,94,000/-.

It is true that, the respondent had requested the complainant to pay the balance sale consideration amount as to complete the construction work of the apartment in time but the complainant not obeyed the instruction of the respondent and stopped making the payment and wanted to come out from the project.

It is true that, the complainant has lodged a case before the Real Estate Regulatory Authority as an aggrieved person and asked for compensation as he doesn't want to continue with the project. As per the direction given by the authority, the respondent has appeared and given the explanation as to why

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23/12/2020

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the compensation asked by the complainant was huge and exorbitant.

Prayer

The respondent has an intention to clear the payment hence request for extension of time till 26th March 2019. As its huge burden for the builder to pay the EMI of Bank along with interest. Builder has already paid the principal amount of loan taken to the bank.

10. The complainant has taken this complaint against the developer on the main ground that his flat has been sold by the developer. The same is not denied by the developer specifically. I would say that when the developer has disposed the flat immediately he ought to have returned the amount to the purchaser. In addition to it the complainant has given detailed facts for filing of this complaint.

Thereon during the course of discussion as the Developer/ respondent no 1 having accepted the Malafide intention of cheating and playing fraud and confirming the tampering of the sharing agreement and such other vital records and also admitted the fraudulent act carried out by Respondent and there have committed as attorney holder and he has done so as per the directions of the owner of the property as they wanted to carry out due amendment to their agreement and all these facts where wellbeing within the knowledge of the bank and their officials have been duly extended support for this wrongful act and the bank having complete knowledge of the said acts have failed to initiate any legal action in spite of the written request having been placed by my client, so far no legal remedial act is take nor any kind of legal actions initiated for freezing of the M/s. Patak

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23/4/2020

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Developers Pvt. Ltd. And their family members accounts under general lien nor placing his name in the black hit list which clearly confirms the close association and understanding of the bankers with that of the developer and even we had personally requested to settle-down the entire payment of amount received by the developers and also the interest and charges so claimed by the state bank of Mysore, thereon they placed a point of mediation and promised the complainant to provide an alternative flat but even that failed as the said project was also holding lot of issues and the flat was already sold by the owner to a third party thereon as per the call given by M/s. Patak Developers Pvt. Ltd. The respondent herein At this juncture the MR. Jayaram Pathak Being the back bone of all these acts which were carried out with the assistance of his son Mr. Shrihari Pathak, and daughter Smt. Shraddha Pathak who also have an active role in the Pathak group of companies and in particular in Pathak Developers promised us that they shall solve the issue and assured us to repay the entire amount through 3 cheques but so far nothing is settled off. We have already got issued already notice to the State bank of India (before merger State Bank of Mysore) and they have given a reply however the respondent no 1 and 2 have not given any kind of reply for the legal notice in spite of service and the respondent no 1 and 2 are not making any positive effect to settle the issue either giving the flat nor repayment of the amount. On the other hand the respondent no 2 has issued paper notification calling for buyers of the flat. This complainant is not able to get the flat so identified by them now able to secure the amount so paid by them and the dream of owning a own house has

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23/12/2020

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completely gone in drain and the Developer/ respondent no 1 has played fraud and the Second respondent who is fully aware that the Complainant who intends to buy the flat has availed housing loan and have suppressed the fact to the Complainant at an early time itself and now they have enjoyed the Complainant amount for their benefits and accordingly they are jointly and severally bound to discharge the responsibility as principal and agent under the principals of law of contract and they are bound to pay damages further more for no fault on the complainant the complainant financial report and status is so damaged in the CIBIL report and under CERSAI and they has lost the claim of housing loan option and their business being hit because of the forcibly declaration of their Bank account as NPA and they have lost all the benefits available under income tax rebate as whenever the complainant goes any loan facilitates their Banking reputation is demarked as negative so this has resulted in huge loss for the complainant lively hood and better prospects of life and these needs to be compensated by the Respondents, It is respectfully submitted that still this apartment is not yet completed and no completion report is issued nor individual flat Khatha is generated and the Respondent s are willful defaulters and they have playing fraud 5. Compensation(s) sought: The total amount received by the Respondent's for their project from the hands of the Complainant is of Rs 26,61,833.00/- and the interest paid on these amounts to State bank of Mysore on the portion of the loan amount so sanction and claim as per state of account and further the Margin amount paid by the Complainant as part of his share being Rs

[Signature]
23/12/2020

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13,50,000 /- in all Rs40,11,833/- is already paid amount along with its interest calculated on the merging amount paid by the complainant Rs 10.00 % p.a thus the amount due for payment is of RS 40,11,833/- and the amount payable as Metal agony and damages is of Rs 15,00,000/- in all a sum of Rs 55,11,833/- .

11. By going through the same it reveals that there is full force in the allegations made by the complainant. Apart from this aspect the developer has admitted the transaction and also liability. Further it is not the case of the developer that he has obtained the occupancy certificate. When a project which was commenced prior to 01/05/2017 but failed to obtain the occupancy certificate means it was an ongoing project as on the commencement of this Act. When that being the case the developer ought to have registered the project with this Authority. If not means, he has violated Section 3 of the Act. Further the developer who failed to perform his part of agreement has to refund the amount with applicable interest. Therefore this complaint has to be allowed.
12. 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 02/03/2018. Originally the case 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 21/01/2020. When the case was posted to 27/03/2020 physical hearing of the case 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.

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23/12/2020

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ORDER

- a. The complaint no. CMP/180302/0000532/ is allowed in part.
- b. The developer is directed to return Rs.13 Lakhs to the complainant.
- c. The developer is liable to pay simple interest @ 9% per annum on the respective amount paid on the respective date till 30/04/2017 and @ 2% above the MCLR of SBI commencing from May 2017 till realization. The amount returned by the developer to be deducted at the appropriate time while calculating the interest.
- d. The developer also shall return Rs.1 Lakh to the complainant which was paid by him towards loan amount.
- e. The developer is also directed to discharge the bank loan with interest including any other statutory charges.
- f. The developer is also liable to pay cost of Rs.5, 000/- to the complainant.
- g. The complainant may file memo of calculation as per this order after 60 days in case the developer has failed to comply with the same to enforce the order.
- h. Intimate the parties regarding this order.
(This Order is Typed, Verified, Corrected and pronounced on 23/12/2020)

K.PALAKSHAPPA
Adjudicating officer

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