

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

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BEFORE ADJUDICATING OFFICER

PRESIDED BY SRI I.R. BIDARI

DATED 28th July 2021

Complaint No.	CMP/200611/0005968
Complainants:	Sri. Manish Dharmadhikari SAPPHIRE Park, Flat NO. A 101, Park Street Wakad Pune - 411057 Maharashtra (By: Rajesh Pandian Associates Advocates.)
Respondent:	Vivansaa Baalsam #88, 1 st Floor, 17 th Cross Road, 14 th Main Sector 4 , HSR LAYOUT, Bengaluru - 560102 (By: Sri. S. B. Tadahal Advocate.)

J U D G M E N T

Sri. Manish Dharmadhikari (here-in-after referred as complainant) has filed this complaint bearing No. CMP/200611/0005968, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent Vivansaa Baalsam (here-in-after referred as respondent) praying for return of amount with compensation.

2. The brief facts of the case are as under:-

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The respondent Vivansaa Baalsam is developing a Real Estate Project Vivansaa Baalsam (here-in-after referred as project) in a converted immovable land, item No.1 measuring 48 guntas out of 2 acres 6 guntas in survey No.82/2, and 38 guntas out of 2 acres 6 guntas in survey No.82/2 in item No 2, of Medhahalli Village, Anekal Taluk Bengaluru district, described as schedule 'A' property in agreement to sell cum construction agreement dated 25.08.2017. The complainant Manish along with his wife Smt. Smita, has entered into an agreement to sell cum construction agreement dated 25.08.2017 (here-in-after referred as agreement) with the respondent to purchase 2 bhk apartment bearing No.108 in Wing 'B', measuring 1095 sq.ft super built up area being constructed, on 1st floor, with a car parking area together with 520 sq.ft of undivided share in the aforesaid converted land described as schedule 'A' property in the agreement for consideration amount of Rs. 34,30,250/- mentioned in the agreement, subject to the terms and conditions enumerated there-in. The complainant alleged in the complaint that he has paid Rs.4,38,000/- towards part consideration of the apartment while booking. The parties have also entered into MOU dated 10.10.2017 with reference to tripartite agreement dated 19.08.2017 wherein the respondent has accepted to pay EMI of INR 25,870/- for the loan obtained from India Bulls Housing Loan. The developer has failed to pay the same and the purchaser has been paying till date. The purchaser till the date of filing the complaint had paid INR. 4,13,920/- to the banker and continuing to pay INR.25,870/-. These main grounds among others urged in the complaint prayer to direct the respondent to refund

INR.4,38,000/- and INR.4,13,920/- also INR 25,870/- which is being paid by the complainant every month for the loan borrowed for INR 35,00,000/-

3. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent appeared through its Advocate. The learned Advocate for the respondent filed the memo dated 30.09.2020 wherein it is stated that respondent denial the allegations made against it in the instant case. The respondent has not filed statement of objects.

4. I have heard Sri. R.P. Learned Advocate for the complainant through Skype. The argument of respondent taken as nil. The written argument is filed on behalf of complainant. Perused the records, materials and written argument.

5. The points that would arise for consideration are:

- (1) Whether the complainant is entitled for return of amount with compensation? If so, to what extent?
- (2) What order?

6. My findings on the above points are as under:

Point No.1: Yes, to the extent as shown in the final order.

Point No.2: As per final order, for following:-

REASONS

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7. Point No. 1: Sri. R. P. learned counsel for the complainant Manish Dharmadhikari drawn the attention of the Adjudicating Officer to the agreement Dt. 25.08.2017 entered between the parties and the documents produced on behalf of the complainant. The learned counsel submitted similar grounds urged in the written argument. The respondent though appeared through counsel but not filed statement of objection and no argument advanced on its behalf, as such, it is made clear that the version of the complainant and the argument advanced on behalf of the complainant remained unopposed. The copy of agreement dated 25.08.2017 discloses that the complainant along with his wife Smt. Smita, has entered into an agreement dated 25.08.2017 with the respondent to purchase 2 bhk apartment bearing No.108 in Wing 'B', measuring 1095 sq.ft super built up area being constructed, on 1st floor, with a car parking area together with 520 sq.ft of undivided share in the aforesaid converted land described as schedule 'A' property in the agreement for consideration amount of Rs. 34,30,250/- mentioned in the agreement, subject to the terms and conditions enumerated there-in. In the written argument the respondent's name has been mentioned as M/s Vijicon Properties partnership firm but in the agreement as well in the complaint the name of the respondent has been mentioned as Vivaansa Baalsam and project name is also mentioned with same name Vivaansa Baalsam. The copy of tripartite agreement (Builder subvention facilities) dated 19.08.2017 discloses that the complainant has borrowed Rs.35,00,000/- Housing Loan to purchase apartment in question from India Bulls Housing Finance limited under subvention scheme but whereas

builders name is mentioned as Vijcon Properties. The copy of assured return MOU (here-in-after referred as MOU) dated 10.09.2017 entered between the parties in-respect of apartment in question with regard to buy-back scheme is also produced. The complainant claims that he has paid EMI of Rs.25,870/- and also paid Rs. 4,13,920/- towards loan and Rs.4,38,000/- while booking but except mentioning of Rs. 4,38,000/- paid by the complainant while booking to the respondent, no documents are produced to prove the rest of the payment much less as claimed by the complainant. As per the terms of the aforesaid tripartite agreement of house loan the purchasers are primarily liable to re-pay the loan and builder was agreed to pay the interest of EMI for limited period mentioned therein, which period has already over. Under the MOU the purchasers ought to have intimated their intention to the builder, to not to retain or continue with the apartment in question on or before 19.04.2020, otherwise it will be construed that purchasers have retained the apartment and MOU stands cancelled. Admittedly the complainant has not produced materials to show that he has intimated his intention to opt for buy-back scheme under MOU as time prescribed for the said option was 32 months from the date of booking of the apartment i.e., up to 19.04.2020, which period has already over. Therefore, the complainant deemed to be a purchaser or allottee of the apartment in question, as such, necessarily complainant has to seek the remedy of refund of amount with compensation under section 18 of the RERA Act and accordingly he has claimed same under section 18 of RERA Act. As per the terms of the agreement

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the apartment was to be handed over to the purchasers on or before 31.07.2019 and with 6 months grace period after said period. Under the circumstances the respondent ought to have been handed over apartment to the complainant on or before January 2020, including 6 months grace period from 31.07.2019. The fact of paying an amount of Rs.4,38,000/- by the purchasers to the respondent at the time of booking of the apartment is mentioned in the agreement. The materials on record prove that the complainant as on date of filing of the complaint had paid part consideration towards purchase of aforesaid apartment from the respondent. At the cost of repetition it be stated that version of the complainant is remained unchallenged under the circumstances I am constrained to believe the version of the complainant as same is supported by documentary evidence. The materials on records prove that there is a delay in handing over possession of the apartment to the complainant more than 1 year as due date for handing over possession of the apartment was on or before January 2020. Therefore there is no hesitation to hold that the complainant is entitled for the refund of amount paid to the respondent with interest by way of compensation because of delay in handing over possession of the apartment. Thus I hold point No.1 accordingly for consideration.

8. As per the provisions contemplated U/sec. 71(2) RERA Act, the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 11.06.2020, thereafter notices issued directing the parties to appear through Skype for



hearing as because of COVID-19 pandemic the personal hearing before the Adjudicating Officer not yet commenced. The parties given the reasonable opportunities to contest the case, but in-spite of that respondent remained absent, as such; the judgment is being passed on merits, with some delay.

9. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

ORDER

- (i) The complaint filed by the complainant bearing No.: CMP/200611/0005968 is partly allowed.
- (ii) The respondent is hereby directed to refund the part consideration amounts received by him from the complainant on different dates and to pay compensation to the complainant by way of interest @ 2% above the MCLR of SBI, on the respective amounts, from the respective dates of receipt of such amounts till payment of the entire amount.
- (iii) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (iv) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with the same to enforce the order.
- (v) Intimate the parties regarding this order.

(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced by me on 28.07. 2021)


I.F. BIDARI

Adjudicating Officer-1

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