

BEFORE ADJUDICATING OFFICER RERA

BENGALURU, KARNATAKA

Complaint No. CMP/171025/0000163

Date: 11th OCTOBER 2018

Complainant : Manas Chakraborty &
Snigdha Das B -004,
Skylark Esta,
Seetharampalya, Hoodi Main
Road, Whitefield, Bengaluru -
560048

AND

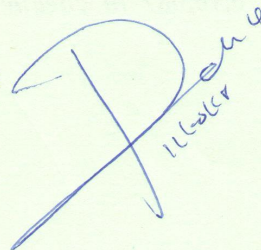
Opponent : Unishire Signature Belvedere
M/s Unishire Skyscapes LLP.,
No. 36, Railway Parallel Road,
Kumara Park West,
Nehrunagar, Bengaluru -
560029.

J U D G E M E N T

1. Manas Chakraborty & Snigdha Das, have jointly filed this complaint under Section 31 of RERA Act against the project "Unishire Signature Belvedere" developed by M/s Unishire Skyscapes LLP., bearing Complaint no. CMP/171025/0000163. The facts of the complaint is as follows:

My wife and I made the investment in UNISHIRE SIGNATURE BELVEDERE in December 2014. Between December 2014 and June 2015, we paid a total of INR 6,40,687 in cheque + 7000 in cash (towards

stamp paper cost) to UNISHIRE SKYSCAPES LLP towards advance of building our apartment unit. Our initial conversation and mutual agreement with UNISHIRE in December 2014 was to build a premium luxury property named UNISHIRE BELVEDERE SIGNATURE (with premium facilities & documents attached) and hand over possession within roughly 36 months. We paid INR 4,000,00 as initial booking amount, through cheque, in December 2014 and Jan 2015. Within 1 month of booking, UNISHIRE changed the specification of the apartment and downgraded it to lower specifications and renamed to UNISHIRE PALAZZO and with much higher apartment density. After further negotiations and discounts, we made payment of another INR 2,40,687 in June 2015 through cheque + INR 7000 in cash (towards stamp paper cost). Throughout this period from December 2014 until today (in roughly 3 years), there has barely been any progress in construction activity. The foundation had been created when I had invested in Dec 2014. It is still the same. No movement in 34 months. In September 2016, after rounds and rounds of the same conversations and false promises by UNISHIRE and revised timelines of possession of my unit to tentatively? September 2020 (instead of initial promise of December 2017), I was frustrated and demanded refund. In September 2016, UNISHIRE themselves offered saying that they are unable to build UNISHIRE PALAZZO and offered to move to another project. All other projects were either far from completion or were very expensive and didn't suit our budget. So I demanded refund. UNISHIRE agreed to refund in two instalments in Jan 2017 and Feb 2017, with minimal interest. Since then, they have made me run pillar to post, causing me mental distress, physical distress (resulting in spikes in my BP? I am an existing patient) and discord in my marital life. I have not been given my refund and in the last 2.5 months they have stopped responding to my continuous follow-ups. Relief Sought from RERA: Requesting refund with maximum interest+penalty.



2. Notice was issued to appear before Adjudicating Officer on 27/06/2018. On that day both the parties were present. The complainants have sought for refund of the amount with interest. Though the developer has agreed to return the amount in some instalments, but finally the developer has filed the objection statement by taking the stand as under Para No.04 as follows:

The respondent submits that as per the terms of the allotment letter issued in case of the cancellation, the respondent is entitled to deduct 20% of the amount paid and when the same was brought to the notice of the complainants, the complainants have turned otherwise and have refused to receive the same. It is only thereafter the complainants have come up before this Hon'ble Authority, making false allegations. The terms of letter of allotment is binding on both the parties and the complainants cannot escape from the terms and conditions contained therein.

3. It means the amount has been received at the time of booking form but the said booking form has not been produced. The clause of forfeiture has to be proved by the developer. In the absence of such evidence the clause of forfeiture cannot be applied. In addition to this the right of forfeiture cannot be exercised unless there is agreement of sale. In this regard I would like to take this following decision.

**NATIONAL CONSUMER DISPUTES
REDRESSAL COMMISSION**

NEW DELHI

REVISION PETITION NO. 4053 OF 2014

(Against the Order dated 17/07/2014 In Appeal No.
40/2012 of the State Commission Delhi)

Decide
11/10/18

VINOD KUMAR GANDHI

197 STATE BANK BAGAR, PASCHIM VIHAR,
NEW DELHI-110063

Versus

PURI CONSTRUCTION PVT. LTD.,

1208-1210, SURYA KIRAN BUILDING,
19 KG MARG, NEW DELHI

We do not find any merit in the contention of learned counsel for the respondent/opposite party because the aforesaid signed copy of indicative terms and conditions of provisional allotment letter is dated 28.12.2007 meaning thereby that at the time of taking of booking amount, signatures of the petitioner on the indicative terms and conditions was obtained. Subsequent to this, on 26.02.2008 provisional offer letter was sent with a condition that if the petitioner was agreeable to the terms and conditions he should sign the letter and indicative terms and conditions and send it to the respondent. The petitioner did not sign the provisional allotment letter and accompanying terms and conditions meaning thereby he did not accept the counter offer given by the respondent. Thus, it is clear that no valid contract between the parties came into existence and since the complainant was not agreeable to allotment of flat at 9th floor, he sought refund of his money which should have been refunded by the respondent without any deduction.

The respondent by deducting Rs.50,000/- has actually committed deficiency in service and this fact went unnoticed by the for a below. Thus, in our view the order of the for a below suffers from material irregularity and cannot be sustained.

4. From the above principle the claim of the developer is to be discarded. The developer also

failed to keep up his words to complete the project.

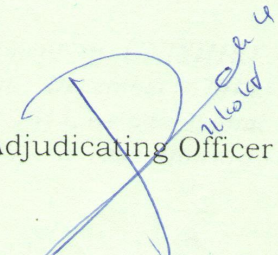
5. As per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 25/10/2017. But the project was approved on 16/5/2018. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the parties were present on 27/06/2018. The developer has taken much time to file a memo with regard to return of the money. Finally without adhering to the undertaken, the developer has submitted his objection and arguments. The attempt made by the authority under Section 32(g) has failed and hence there is a delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

The complaint filed by the complainant bearing no. CMF/171025/0000163 has been allowed by directing to refund the amount received from the complaints within 30 days from today. In case of failure the same shall be returned along with interest at the rate of 10.25% till the realisation of entire amount.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 11/10/2018)


Adjudicating Officer