

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

Cmp. No. 7919

PROCEEDINGS BEFORE THE AUTHORITY

Dated 20th MAY 2022

COMPLAINT NO: CMP/210423/0007919

COMPLAINANT.....

AMIT KUMAR GUPTA

D2604 Ashok Towers,
Dr. S.S. Rao Road,
Parel, Mumbai,
Maharashtra - 400012.
(By Sri. Prashanth M .V. Adv.)

V/S

RESPONDENT.....

**TOTAL ENVIRONMENT BUILDING
SYSTEMS PVT LTD.,**

No. 78 Imagine ITPL Main Road,
EPIP Zone Whitefield,
Bengaluru.
(By Smt. Sujatha H. H, Adv.)

This complaint is filed under section 31 of the RERA Act against the project "The magic faraway tree phase 2" for the relief of direction to the promoter/respondent to execute the Agreement of sale.

Brief facts of the complaint are as under:-

That the complainant booked an apartment in the project of respondent. It was a pre-launch reservation made in 2013 prior to project approvals. At that time he has paid initial amount of Rs.25,00,000/-. Subsequently, the allotment letter was signed in May 2017. The completion date as per the allotment letter was 31/12/2020. He also made payment as per request of promoter in 2017. Since 4 years the promoter has not sent draft Agreement of Sale for approval and thereafter registration. Now, the promoter is refusing to execute the agreement with completion. Hence, this complaint.

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After registering the complaint, in pursuance of the notice the respondent has appeared before the Authority through its advocate and filed objections as under.

Respondent has denied all the allegations made against it by the complainant. Respondent has contended that in the year 2013, the complainant and one Parvathi jointly booked the flat Rs.1,98,34,050/- by entering into a term sheet and paid token amount of Rs.25,00,000/-. As per term sheet dated 30/09/2013, the handover of the possession was shown as tentative and was dependant on the approvals and other terms and conditions as under.

It is also contended by the respondent that it was clearly agreed by the purchaser that the advance amount was only for the purpose of commitment into this project and actual allotment of the unit would be done later. This is only an advance offer and does not confer any rights to the title or on the project. Further this EMD amount is only for the purpose of booking the unit for the period of 1 month after the plans for the project have been sanctioned by the competent Authorities. Said advance amount shall be refunded after forfeiting an amount of Rs.5,00,000/- and the booking automatically cancelled if the first instalment of advance is not paid within 30 days.

The respondent has procured the building licence on 02/03/2016 from BMICAPA and building plan licence from BBMP on 03/10/2016. This project has been registered under RERA with the end date of project as 31/12/2023. Later the promoter has received COVID -19 extension for 9 months till 30/09/2024. The promoter has informed about the procurement of sanctioned plan and to make further payment to proceed to sign on the agreement. The complainant had booked the flat No.4024 in the ground floor in 2013 when the approvals were not in place. By the time of final approval, the flats started from the first level and after knowing the same the complainant agreed to enter into a one more term sheet on 26/05/2017

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for the proposed unit 4014. Upon several request of promoter, the complainant had paid Rs.6,00,000/- on 14/07/2017. Later the complainant neither paid the amount to enter into an Agreement of Sale and Construction Agreement nor approached the promoter to make necessary payments. He never shown his interest till August 2020 to pay the balance amount. Subsequently, the complainant has sent a mail dated: 02/08/2020 to the respondent stating that he had expressed his interest in encashing his investment and respondent advised him of potential change in the building design. But that is likely to affect his unit. The complainant had sent several mails to cancel the unit. Hence the respondent has sent him a cancellation note on 05/09/2020. But the complainant was not ready to accept the said offer and replied on 06/09/2020 demanding to pay Rs. 80,00,000/- wherein Rs.41,00,000/- towards booking amount and Rs.39,00,000/- towards the compensation. The respondent has not accepted this offer and after lot of oral discussions both the parties agreed to settle the issue for Rs.62,39,357/-

Accordingly, the respondent has sent a cancellation note and calculation sheet to the complainant on 16/10/2020 and intimated that the cheque for Rs.62,22,086/- with interest is ready and to collect the same. But the same was not accepted by the complainant. Hence the respondent had sent two demand drafts for Rs. 30,00,000/- and 32,22,086/- through courier to the complainant on 25/06/2021. Same was refused by the complainant on 29/06/2021. There was no such allotment letter issued in favour of complainant and no Agreement of Sale or Construction Agreement. Hence, prayed to dismiss the complaint.

The complainant has produced in all 6 documents in support of his claim such as copy of pre-launch term sheet, copy of commencement certificate, copy of building license, copy of cancellation note, copies of postal acknowledgement, copies of 13 email.

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The Respondent has produced in all 6 documents in support of his defence such as copies of pre-launch term sheet, commencement certificate, building license, 4 emails, cancellation note, and postal acknowledgement.

Heard both parties. Complainant and the respondent have submitted written arguments.

On the above averments, the following points would arise for our consideration.

1. Whether the complainant is entitled for direction to respondent to execute Agreement of Sale?
2. What order?

Our answer to the above points are as under:-

1. In the Affirmative.
2. As per final order for the following

REASONS

Our Answer to Point No.1:- The complainant has sought for direction to respondent for execution of Agreement of Sale. His grievance is that, in the year 2013 itself he had paid initial deposit of Rs.25,00,000/- reserving a flat in the project yet to be approved. Allotment letter was signed in the year 2017 and he had paid the amount as per the demand of the promoter. Now the promoter is refusing to execute the Agreement of Sale.

As against this, contention of respondent is that the allotment made in favour of complainant was only tentative and subsequently at the instance of complainant himself the allotment came to be cancelled vide note dated: 05/09/2020. At that time complainant had demanded Rs.80,00,000/- to accept such offer of cancellation of allotment. After negotiations the complainant agreed to cancel the booking on payment of Rs.62,39,357/- by the promoter to the complainant.

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All these aspects are forthcoming from the correspondence between the parties through emails. It is also evident from these emails that complainant had refused to accept the demand draft sent by respondent for Rs.62,22,086/- and now he has come up with present complaint. The facts of the present case reveal that complainant has agreed for cancellation of allotment on payment of certain amount agreed between the parties.

On perusal of cancellation note dated:15/10/2020 there is a note by the complainant that this cancellation consent is void if the total amount payable that is Rs.62,39,357/- is not paid by 07/11/2020. Subsequently, the respondent had sent an email on 06/05/2021 informing the complainant that they have made arrangement to refund the amount with interest which comes Rs.63,91,877/-. Further, the complainant has replied through a mail to the respondent that he had executed a cancellation note with the express condition that the payment must be completed within 2 months that is before 07/11/2020, failing which the cancellation would be void. Later, the respondent has sent 2 demand drafts for Rs.30,00,000/- dated: 01/02/2021 and Rs.32,22,086/- dated: 26/03/2021 through courier to the complainant on 25/06/2021 and same was refused by the complainant on 29/06/2021. The transaction between the parties and the exchange of emails make it clear that there is valid contract between the parties as to cancellation of booking, subject to the condition of promoter ensuring the payment within the timelines agreed to by the parties. Having accepted the said term as to stipulation of time for refund of amount, the respondent cannot insist upon cancellation of booking. Even though the amount agreed to be refunded was not honoured as per the stipulated timelines. Consequently, the only course open to the respondent is to execute the Agreement of Sale and after completion of the project to execute the Sale Deed by receiving balance sale consideration as per the payment plan. Further, respondent is at liberty to collect the interest as per RERA Act and Rules on the balance amount payable by the complainant, in accordance with the payment plan.

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Therefore, in the considered opinion of this Authority, complaint deserves to be allowed. Accordingly, Point No.1 is answered in the Affirmative.

Our Answer to Point No.2:- In view of the above discussion, we proceed to pass the following

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.CMP/210423/0007919 is hereby allowed. Respondent is directed to execute the Agreement of Sale and after completion of the project, it has to execute the sale deed by receiving balance sale consideration, as per the payment plan. Respondent is at liberty to charge interest as per RERA Act and Rules on the balance amount from the complainant, in accordance with the construction progress linked payment plan.

No order as to costs.

(Neelamani N Raju)

Member-2
K-RERA

(D. Vishnuvardhana Reddy)

Member-1
K-RERA

(H.C. Kishore Chandra)

Chairman
K-RERA