

BEFORE ADJUDICATING OFFICER RERA

BENGALURU, KARNATAKA

Complaint No. CMP/180325/0000617

Presided by:- Sri. K.PALAKSHAPPA

Adjudicating Officer.

Date: 27th NOVEMBER 2018

Complainant : POOJA MAHAJAN
F6 Hara Vijaya Valley View 5,
Ravi Hill Layout, Ittamadu,
BSK 3rd stage, Bengaluru -560085

AND

Opponent : PRATAP KUNDA
GOLDEN IRA,
BHAGYA LAKSHMI HOME LLP,
No. 531/A, "KML Arcade", 1st Floor,
8th Block, Koramangala,
Bengaluru - 560025.

J U D G E M E N T

1. **Pooja Mahajan**, has filed this complaint under Section 31 of RERA Act against the project "**GOLDEN IRA**" developed by M/s BHAGYALAKSHMI HOME LLP., bearing Complaint no. CMP/180325/0000617. The facts of the complaint is as follows:

I bought a 30 X 50 sq. ft. plot in the project Golden IRA (Doddaballapur) by Bhagyalakshmi Homes LLP in March 2015. I made a upfront payment of Rs. 19,50,000 by cheque. The purchase was made under buyback guarantee offered by the developer under

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which the investment was indemnified by way of buy back option after 18 (Eighteen) months. The developer issued a post-dated cheque towards the guaranteed value of the plot for Rs. 29,25,000 dated 01st Oct 2016 drawn on Axis Bank, Koramangala. As per the agreement, I was at liberty to either retain the plot or exercise the buyback on completion of 18 month from the date of the agreement. Further, in case of delay in redemption of the assured buyback amount, the developer has a grace period of 3 (three) months beyond the 18 (Eighteen) months period. Developer shall compensate the buyer, at the rate of 18% p.a for the delayed period, calculated on the principal amount remitted. I sent a mail on 18th Jun 2016 expressing my desire to opt for the buyback. This was acknowledged by the developer in a letter dated 18th July 2016 (attached Acknowledgement). The check dated 01st Oct 2016 for Rs. 29,25,000 was deposited in Dec 2016 and it bounced due to insufficient funds. The developer issued a new set of checks for the total amount of 29,25,000 spread over the next 6 months, but that cheque also bounced. Subsequently, an amount of Rs. 10,00,000 was paid on May 12th 2017 by the developer.

Relief Sought from RERA : Rs 2500000 + Legal cost + mental trauma

2. After registration of the case notice has been issued to the parties on 31/07/2018 the Complainant was present through his advocate. The Developer did not appear till the conclusion of the trial. On 10/10/2018 the Complainant has filed a memo wherein he has claimed the payment of Rs. 27,56,452/- from the Developer with interest at the rate of 12% per annum. This authority has directed the Complainant to send a soft copy of the said memo to the Developer to say on this memo also since the developer had not appeared to the notice. The developer did not say on this memo also. It means there is no any denial with regard to the claim made by the Complainant. The Complainant has sought for refund of the amount as per calculation made in the memo. The Complainant has paid Rs. 29,25,000/- in the month of October 2016.

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3. In the month of May 2017 the Developer has repaid Rs. 10,00,000/- by leaving balance amount of Rs. 19,25,000/-. It means the Developer has acknowledged the receipt from the Complainant.
4. Of course the Complainant has calculated the interest at the rate 18% per annum from 01/10/2016 to 30/09/2018. But there is no agreement to the effect even though the Developer has not denied the case of the Complainant the authority has to consider the prayer as per Section 18 of the RERA Act. So far as refund of amount as per Section 18 is concerned authority has to look into some procedural aspect.
5. As per Section 18 of the RERA Act, it is the wish of the consumer to be with the project or to go out of the project. The wordings used in Section 18 are as under:
- “ in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act”*
6. As per S.18 of the Act, the developer has to pay the compensation while returning the amount to the buyer but it is in accordance with agreement of sale. In this case the consumer had paid the amount of Rs. 29, 25,000/- in the month of October 2016. The developer has returned Rs.10,00,000/-2017. In view of the same, the developer is liable to pay the interest at the rate of 10.25% commencing from 12/05/2017

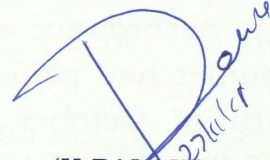
7. As per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 25/03/2018. The above said project was approved on 27/06/2018. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the Complainant was present on 31/07/2018, but the developer did not appear. Hence the case is disposed off within the time. With this observation I proceed to pass the order.

ORDER

1. The Complaint No. CMP/180325/0000617 is allowed by directing the developer to pay the amount of Rs.19,25,000/- together with interest @10.25% P.A commencing from 12/05/2017.
2. The developer also directed to pay interest @ 9% as per Karnataka apartment ownership Act, 1972. On Rs.29,25,000/- from 01/10/2016 till 11/05/2017.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 27 /11/2018.


(K.PALAKSHAPPA)
Adjudicating Officer