

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by:- Sri. K.PALAKSHAPPA
Adjudicating Officer.

Complaint No. CMP/181009/0001433

Date: 01th JANUARY 2019

Complainant : GYANA RANJAN SAHOO
D3 – 208, SNN Raj Serenity,
Begur Koppa Road, Yelenahalli,
Bengaluru - 560068.

AND

Opponent : Shalini S
SKYLARK ITHACA,
ITHACA ESTATES Pvt Ltd.,
No. 37/21, Skylark Chambers,
Yellappachetty Layout,
Ulsoor Road, Bengaluru -560042.

J U D G E M E N T

1. Gyana Ranjan Sahoo has filed this complaint under Section 31 of RERA Act against the project "SKYLARK ITHACA" developed by ITHACA ESTATES Pvt Ltd., bearing complaint no. CMP/181009/0001433. The brief facts of the complaint is as follows:

Initially was to handover in march 2017, extended to Sep 2017 and then extended to Sep 2018 and now to March 2019 causing lot of waste of my EMIs which is applied to full disbursement. Lot of financial loss due to huge interest and not occupying house is making me depressed. I am not in a position to pay EMIs further as currently I am in rented house too. My flat number is T4-101

Relief Sought from RERA : Please have refund my payment with interest

2. On 09/11/2018 parties were present when the case was called. 28/11/2018 arguments were heard on both sides. The Complainant has sought for repayment of the amount paid by him. For which the Developer has stated that though the Developer has given the completion date as 31/12/2019 but he is ready to handover the possession by the end of March 2019.
3. The stand taken by the Developer is not correct for 2 reasons. As per the agreement the Developer was to complete the project by the end of September 2017. It is now extended till 31/12/2019 when the RERA came into force. As sec 19(2) the Developer has failed to intimate the progressive work of the project.
4. The promise made in the objection statement that he is going to deliver the possession on or before 31/03/2019 without obtaining OC is not correct. It is not the case of the Developer that he has obtained the OC, because Sec 17(2) makes it clear when possession has to be given to customer. In view of the same the customer wanted to go out of the project.

Deve
01/01/19

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. By reading the above, it is clear that the Act does not make specific ground to go out of the project. However the parties have entered into agreement with number of clauses, they are all binding upon each other. In the said agreement it is said that the developer will have to pay the delay compensation. As per S.18 where in it is said that if the consumer wants to go out of the project then his amount shall be returned with interest including the compensation. In this background I would like to discuss regarding the interest and compensation for which the complainant is entitled.
7. As per sec.18 by the Act delay Compensation has to be paid at the rate of interest as prescribed. As per rule 16, it is said under.

Rate of interest payable by the promoter and the allottee:- The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.

8. Coming to section 18 of RERA, the complainant who is going away from the project is entitled for refund of amount with interest @10.25% P.A from 01/05/2017. Therefore the complainant is entitled for compensation @9% as per Karnataka Apartment Ownership Act, 1972 till coming into force of RERA Act.
9. 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 09/10/2018. As per SOP 60 days shall be computed from the date of appearance of the parties. In the present case, the parties have appeared on 09/11/2018. As such there is no delay in disposing off this complaint. Hence. I proceed to pass the following Order;

ORDER

- a) The Complaint No. **CMP/181009/0001433** is allowed.
- b) The developer is hereby directed to return the amount together with interest @ 10.25% from 1/05/2017 along with interest @ 9% on the sum received from time to time prior 30/04/2017.
- c) In case the developer has paid the GST, then the developer has to give necessary documents to the complainant to enable him to claim the same from the concerned department.
- d) The complainant shall execute the cancellation deed in favour of the developer after realisation of entire amount.
- e) Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 01/01/2019)

(K.PALAKSHAPPA)
Adjudicating Officer