

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/181029/0001577

Date: 16th JANUARY 2019

Complainant : Samira Kumar Patnaik
3rd floor, plot 56, JV Colony,
Near Kendriya Vihar,
Gachhibowli, Telangana- 500032

AND

Opponent : Skylark Ithaca,
Skylark Mansions Pvt. Ltd.,
No. 37/21, Yellappa Chetty
Layout, Ulsoor road, Bengaluru,
Karnataka,
560042

J U D G E M E N T

1. Samira Kumar Patnaik, complainant under complaint no. CMP/181029/0001577 has filed this complaint under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansions Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

"Skylark has failed to provide the possession of my flat as per the agreement (possession date March 2017 + 6 months? grace period). The structural work at site has stopped many times during construction phase and now it seems Skylark is not serious to complete the project as Full-fledged construction is not happening at site. In RERA

16/01/19

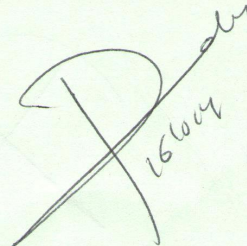
16/01/19

website, completion date is mentioned as December 2019 for Skylark Ithaca phase 1 which is wrong. Im enclosing the copy of my Agreement to rectify the same and handover the possession of my flat within 3 months with appropriate delay compensation or Exit from this project with penalty charges. What we need from RERA: The following are the grounds of compensation from Skylark OR for exit... 1. Delay compensation which is mentioned as 4rs /sqft /month in agreement is not acceptable for such delay of more than 1.5 years now. 2. Interest paid by customer during delay period to the bank loan servicing - 3. Opportunity loss of investing in some other property instead of Ithaca and related appreciation. 4. Rent paid due to non-possession... - around 25000 month in skylark Ithaca whitefield area for a 2 BHK flat 5. Legal fees of filing and running this case in RERA 6. GST input credit which needs to pass on due to GST implementations. 8. Increase in registration charges due to delay by Skylark... Guidance value going up by 20% 7. Mental agony of not having the property and having the uncertainty of the invested money 9. Loss of income tax benefits because of delay in construction
Relief Sought from RERA : possession of flat within 3 months /exit from it

2. On 11/12/2018, the complainant was present. The developer was represented by Smt. Lubna, Advocate, who sought time to file vakalath and objections. Hence the matter was posted to 09/01/2019.
3. Finally on 09/01/2019, both the parties were present and I have heard the arguments on both sides. The complainant is seeking delay compensation for the delay caused by the developer. The developer has filed his objection statement contending 2 important points. Firstly, the developer has denied the claim of the complainant on the ground that the complainant has paid the instalment, with delayed payment. Secondly, he is an investor.

D. S. S.
16/6/19

4. Whereas complainant submits that he is not an investor and has purchased the flat for his own purpose. He also denies that payments were promptly paid but there might be some delay which was not intentional.
5. I would say that it is not the case of the developer that the complainant has not all paid the instalments. As per his account statement itself, the complainant has paid the amount with little delay. In case of delayed payment a separate arrangement has been made by the developer by collecting the interest. So this reason will not be a hurdle in granting the relief sought by the complainant in this complaint. The defence taken by the developer that the complainant is an investor has no force at all since the developer has failed to bring any kind of evidence to prove the same.
6. The maximum deadline given by the developer was September 2017. Now he has given the completion date as 31/12/2019 without following the Section 19 (2) of the Act. The developer has kept the consumer in the dark and he has given the fresh date of completion by the virtue of induction of RERA as per S.4(2)(1)(c). But liability to pay the delay compensation or relief to the consumer in case of delay shall be borne by him. By that time this RERA Act has already come into force. Therefore the Authority has to decide the quantum of compensation per month as delay compensation. As per Section 18 (1) proviso the consumer who is not going to withdraw the project shall be paid by the promoter with interest including the compensation. During the course of calculating the delay compensation the Authority has to look into Section 72 of the RERA Act. The Developer has failed to complete the project on or before September


16/04/19

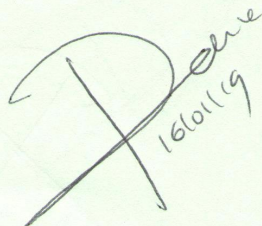
2017 but however the project is going on and will be completed as per the schedule given to the RERA. No allegation regarding the deviation of the amount to other project. As per sec.18 by the Act Delay Compensation has to be paid with interest as prescribed. As per rule 16, it is said under.

"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. Hence the complainant is entitled for delay compensation as per RERA commencing from October 2017 till the notice of possession is issued"

7. Before going to pass the final order I would say that 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 29/10/2018. 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 11/12/2018. Hence the complaint is being disposed of within limitation. With this observation I proceed to pass following order.

ORDER

The complaint no. CMP/181029/0001577 is allowed by directing the developer to pay

A handwritten signature, possibly 'D. Sene', is written over the date '16/01/19'.

compensation in the form of interest @10.75% commencing from October 2017 on the amount paid by him towards purchase of flat in question till the notice of possession is issued. The developer is directed to deliver the possession within time given to RERA.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 16/01/2019)

Adjudicating officer
K.PALAKSHAPPA

NOT AN OFFICIAL COPY