

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/181027/0001525

Dated: 25th FEBRUARY 2019

Complainant : MAHESH JAGIASI
B- 407, Rajshree Tower,
Kolbad Near pratap Talkies,
Thane West Maharashtra,
Thane – 400601.

AND

Opponent : OMAR SHERIEF
Ithaca Estates Private Limited
Skylark Ithaca
Skylark Mansions Pvt. Ltd.,
37/21, SKYLARK CHAMBERS,
Yellapachetty Layout,
Ulsoor Road, Sivanchetti Gardens
Bengaluru- 560042.

J U D G E M E N T

1. Mr. MAHESH JAGIASI, being the Complainant filed his complaint bearing no. CMP/181027/0001525 under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansion Pvt. Ltd., as he is the consumer in the said project. The complaint is as follows:

"I purchased Flat A-402 In skylark ITHACA PROJECT of M/s Skylark mansions pvt ltd under subvention scheme with home loan from HDFC Bank ltd. Builder had promised possession by March 2017 and also promised to pay all Pre EMI's till possession . Till date construction is not completed and builder has stopped reimbursing pre emi's from last 9 months . This is clear case of intentional cheating .I request RERA to kindly help me .

Relief Sought from RERA : Reimbursement of unpaid Pre EMI'S and flat possess"

2. In pursuance of the summons issued by the authority, on 11/12/2018 the complainant was not present. The developer was represented by Advocate Smt. Lubna. She undertook to file vakalath and objections on behalf of the developer. Hence, the case was posted to 10/01/2019.
3. Finally on 01/02/2019, the parties were present and the developer has filed the objection stating that the completion date has been given by the developer as 31/12/2019. The complainant is not entitled for relief since he has failed to make the installment payment properly and thereby he has breached the terms of the agreement. It was strongly opposed by the complainant and submitted that the developer has agreed to complete the project on or before 31/3/2017 with 6 months grace period and he is bound to pay EMI but it was withheld without any reasons
4. I find some force in his submission. As per Sec. 19 the developer can recover the installments with interest as applicable. But at the same time he is also bound by the terms of the agreement. The EMI cannot be withheld just because the complainant is irregular in making installments.

5. Therefore the complainant has approached this authority. The developer has utterly failed to give reasons for withholding the EMIs. The objections statement filed on behalf of the developer is not denying the liability to repay the EMI. I would say that the steps adopted by the developer to with hold the EMI payable to the bank has no meaning and the same is not supported by legal sanctity.
6. The consumer who is waiting for the flat has to pay the EMI along with rent for the present accommodation is only because of delay in completing the project. 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(1)(2)(c). But liability to pay the delay compensation or relief to the consumer in case of delay shall be borne by him. Accordingly the developer who was paying EMI shall pay the same till he completes the project. In view of the above discussion the developer has no reasons to withhold without any legally acceptable cause.
7. The developer has field the additional objection by taking shelter under section 72 of the Act. It is his argument that the Adjudicating Officer is having the jurisdiction for the only with respect to section 12, 14, 18 and 19 and he has no power beyond the scope of this section . further it is the case of the developer the prayer made by the complainant is in the nature of enforcement of agreement specifically in terms of the construction.

8. Therefore it is the case of the developer that the complainant shall approach the Civil Court but I am not going to accept his argument because section 18 of the RERA Act empower the complainant to approach this Authority. As per Section 18 in case of delay in delivering the possession the complainant is entitled for the compensation. Further section 17 prescribes regarding execution deed of conveyance. Section 19 determines the rights and Liabilities of developer as well as consumer.
9. Further as per 79 of the Act, the Civil Court has no jurisdiction over the issues hence, the submission made by the developer regarding jurisdiction has no force. The parties shall not approach the civil court. In order to comply with the terms of the agreement the developer has to pay the EMI as agreed in the agreement. As per S.19(3) the allottee is entitled to claim possession. As per S.18 it is the wish of the complainant either to continue with the project or go away from the project. From the above discussion the dispute raised by the complainant is within the jurisdiction of the Adjudication Officer.
10. 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 his complaint. The defence taken by the developer that the complainant is an investor has no force at all since there is no any evidence to show that he has invested the amount with an intention to make profit.

Deva
25/02/19

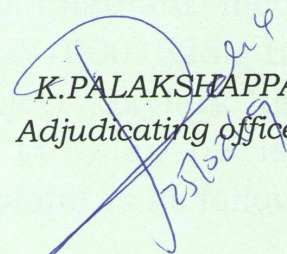
11. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 27/10/2018. As per SOP 60 days shall be computed from the date of appearance of the parties. In the present case, the parties have appeared on 01/02/2019. Hence the complaint is being disposed of within limitation. With this observation I proceed to pass following order.

ORDER

1. The complaint no. CMP/181027/0001525 has been allowed by directing the developer to clear all the pending EMIs on or before 15/03/2019 along with interest, if any. Further to regularize EMI commencing from April 2019 till the possession of the flat is delivered to the complainant.
2. The developer is directed to pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 25/02/2019)


K.PALAKSHAPPA
Adjudicating officer