

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No.CMP/181027/0001533

Date: 27th FEBRUARY 2019

Complainant : ALANKAR GUPTA
HM Symphony, Flat 708, Accord
Block, Kasavanahalli,
off Sarjapur road,
Bengaluru -560035

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. Alankar Gupta, complainant under complaint no. CMP/181027/0001533 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:

"Sir, We have booked Unit T10-505 in SKYLARK Mansions ITHACA Project in 2013 under Subvention scheme (Builder to pay interest payment on home loan till possession). As per clause 6.1 in Construction Agreement, Project Completion Date is 31-Mar-2017 with Grace period of 6 months (i.e. 31st September 2017). But currently in RERA

website, completion date has been mentioned as December 2019 which is not correct. SKYLARK has mentioned that construction has been stopped for last 1.5 years because of demonetization and RERA. Now, even though RERA approval is also in place, construction has not been started and it has already delayed the possession by 1 yrs. As per clause 5.10 (b) in Construction Agreement, under proposed subvention scheme, SKYLARK should pay interest payment on home loan till possession, but SKYLARK has not reimbursed PRE-EMI on home loan for last 12+ months.

Relief Sought from RERA : Compensation for delay + Reimbursement of PRE-EMI"

2. On 11/12/2018, the complainant was present when the case was called. 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.
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.

6. The defence taken by the developer that the complainant is an investor has no force at all since the developer has not at all placed any evidence to prove the same.
7. The learned advocate Smt.Sharada filed her reply against the case made out by the developer. In her reply she submitted that

The complainants hard earned money is invested for buying the flat, apart from this while there is no progress in the construction of the apartment the respondent is asking the complainant to pay the remaining 5% of the amount. While the respondent has defaulted in making PRE EMI reimbursement and having received 95% of the payment from the complainants has put the complainants to huge financial loss and mental harassment.

The Complainants state that the works in the project have been stopped and as such the possession will also not as per the agreed terms. That the complainants have invested huge amount to purchase the flat in the above mentioned project by taking bank loans and are paying EMI to the one side and also paying rent to the house and are suffering mental agony and monetary losses without reimbursement of EMI and also are in the verge of losing their hard earned money having invested to buy a house from respondent. That the applicants have been bearing double cost and expenditure even after payment being made as per the terms of agreement.

The complainants state that respondent has defaulted in his promises made by him and even after receiving the huge amount from home buyers. Thus the complainants having no other alternative remedy have approached this authority seeking for the reliefs of compensation.

- i. *To reimburse the EMI due for the past several months with interest at the rate of SBI lending rate plus two percent from the date of default of reimbursement to till the date of realization.*
- ii. *To make reimbursement of the EMI payment to the complainants account every month without any delay by 10th of every month.*
- iii. *To pay the cost of filing this complaint/application to an amount of Rs.20,000/-*
- iv. *To grant or pass such other directions, order etc., as this Hon'ble court deems fit to pass in the circumstances of the case and in the interest of justice and equity.*

8. The maximum deadline given by the developer was September 2017. Now he has given the completion date as 31/12/2019 without following Section 19 (2) of the Act. The developer has kept the consumer in 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 as delay compensation.
9. 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 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".

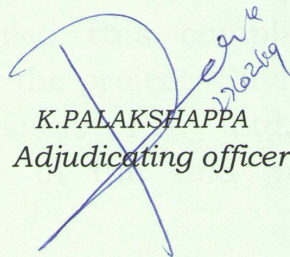
10. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 27/10/2018. As per SOP 60 days shall be computed from the date of appearance of the parties. In the present case, the parties have appeared on 11/12/2018. Hence the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

ORDER

1. The complaint no. CMP/181027/0001533 is allowed by directing the developer to pay all the EMI pending on or before 15/03/2019.
2. The developer is also directed to pay regularly EMI on every month on or before 10th of each month.
3. 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 27/02/2019)


K.PALAKSHAPPA
Adjudicating officer