

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No.CMP/181028/0001573

Date: 28th FEBUARY 2019

Complainant : SANDEEP JAIN
S J R Brooklyn, A- 805,
ITPL Road,
Bengaluru – 560037.

AND

Opponent : Omar Shariff
Skylark Ithaca,
Skylark Mansions
Ithaca Estates Pvt. Ltd.,
Skylark Chambers,
No. 37/21, Yellappa Chetty
Layout, Ulsoor road,
Bengaluru- 560042.

J U D G E M E N T

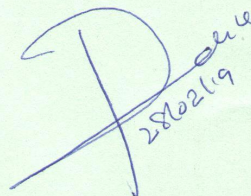
1. SANDEEP JAIN, complainant under complaint no. CMP/181028/0001573 has filed this complaint under Section 31 of RERA Act against the project “Skylark Ithaca” developed by Skylark Mansions Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

“Sir, This is with reference to Skylark Ithaca project developed by M/s Skylark Mansion Private Ltd. This is to bring to your kind notice that the builder has failed to meet up the completion of project timeline. The project was

agreed and assured for completion by 31-Mar-2017 with Grace period of 6 months (i.e 31st September 2017) (as per construction and sale agreement entered by M/s Skylark Mansion Pvt Limited). I would also like to highlight that the M/s skylark Mansion has not been sticking to their commitments. Also, as per the initial commitment as part of marketing it was updated that the project will be developed by L&T company. However half way with the progress, we are now getting to hear that project will be completed by some other construction company We had booked our flats in SKYLARK Mansions – ITHACA Project in Nov 2013. During the booking, we were provided with a chart which was linked with construction-based payments. However, at the time of agreement, the agreement was formed with construction linked to Time linked payment. We didn't have any option but to move ahead with Milestone linked payment as we had already paid initial booking amount. (enclosed is the sheet capturing payment linked with construction and time linked construction). The net effect of the above was that - almost 90% of the money was taken by M/s Skylark by Feb 2017 and we as buyers do not have a possession of the apartment still till date.

Relief Sought from REFA: Handover flat & compensation for opportunity loss"

2. On 11/12/2018, when the case was called the complainant was not present. The developer was represented by Smt. Lubna, Advocate, who sought time to file vakalath and objections. Hence the matter was posted to 10/01/2019.
3. Finally on 21/02/2019, 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. The developer has denied the claim of the complainant on the ground that Adjudicating Officer has no jurisdiction.

A handwritten signature in blue ink, followed by the date 28/02/19.

4. According to the developer the complainant has to approach the Civil Court as he is an investor as well as his prayer is for specific performance of contract. But I am not going to accept his argument because there is no truth in his submission.
5. 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 with respect to Section 12, 14, 18 and 19 and he has no power beyond the scope of this section.
6. Further it is the case of the developer the prayer made by the complainant is in the nature of enforcement of agreement and 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 empowers 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.
7. Further as per 79 of the Act, the civil court has no jurisdiction over the issues means the consumer has to approach this authority and hence, the submission made by the developer regarding jurisdiction has no force. The parties shall not approach the civil court since the relief sought by the complainant is well within the jurisdiction of this authority.

8. 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 the possession. As per S.18 it is the wish of the complainant either to continue with the project or to go away from the project. From the above discussion the dispute raised by the complainant is within the jurisdiction of the Adjudication Officer.
9. 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 came 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 with interest by the promoter 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. 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.

Peru
28/02/19

"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. Before passing 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 28/10/2018. 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/181028/0001573 is allowed by directing the developer to pay compensation on every month in the form of interest @10.75%P.A commencing from October 2017 on the amount paid by him towards purchase of flat in question till the notice of possession is issued.
2. The developer shall pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 28/02/2019)

K.PALAKSHAPPA
Adjudicating officer