

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/180910/0001255

Dated: 18th MARCH 2019

Complainant : SHARATH SHANTH
Flat C Wilocrisa Apartment
No. 14 Rest House Crescent Road,
Off Chruch Street
Bengaluru - 560001

AND

Opponent : The Presidential Tower
Best Golden Developers Pvt. Ltd.,
No. 8 Tumkur Road,
NH 4, Yeshwantpur
Bengaluru - 560022

J U D G E M E N T

1. Mr. SHARATH SHANTH, has filed this complaint under Section 31 of RERA Act against the project "The Presidential Tower" developed by Best Golden Developers Pvt. Ltd., bearing complaint no. CMP/180910/0001255. The brief facts of the complaint is as follows:

I entered into an Agreement of Sale dated 24.09.2014 with Best Golden Developers Pvt. Ltd. (?Builder?) for the purchase of an Apartment unit bearing number PA-2504

with super built-up area of 2310 sq. ft. along with 520 sq. ft. of undivided share in land and 2 car parks for a sale consideration of Rs. 2,17,42,500/- in the Presidential Tower. The payment was required to be made in installments upon completion of certain slabs of work. I have paid a total consideration of Rs. 91,31,480/- towards the construction and sale of the Apartment in a timely manner and as demanded by the builder. As per the Agreement, I was expected to be handed over possession of the apartment on 31.07.2017. Even with the grace period, which is 4 months, from the date of delivery of possession as per the Agreement of Sale, the building is nowhere close to completion and there has already been enormous delay in the completion of the Project. I had time and again made representations informing the builder about the extent of delays in the construction of the Project. The builder made numerous representations and assured me that the building will be completed in time. However, despite such assurances, the builder took no action.

I had via email dated December 15, 2017, informed the builder to either cancel my reservation of the Apartment unit and refund the payments made with compensation or in the alternative suggested a new payment structure for all sums due towards the construction of the Apartment. Upon continuous follow up via email, the builder on December 29, 2017 accepted my request for cancellation of the Apartment and agreed to refund the money that I had already paid. I have however not been refunded any amounts due and owed to me by the builder till date.

Relief Sought from RERA : Refund of money paid along with compensation

2. In pursuance of the notice issued by the authority, the Advocate representing the complainant was present on 3/10/2018. None was present on behalf of the developer at the first instance and later an advocate ~~has~~ represented the developer but failed to defend the case.

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3. Hence, I have heard the argument of the complainant on 13/12/2018 and reserved for judgment. On 02/01/2019 the learned counsel for the complainant has filed a memo to take the case on board. Accordingly the case was called on 02/01/2019 and on that day the complainant has filed some additional documents. He was asked to send the additional documents to the developer for which on 07/01/2019 the developer has appeared through his counsel. But later the developer has not all filed any objection statement and failed to represent the case and hence the matter is reserved for judgment finally on 18/02/2019.
4. The grievance of the complainant is that he has entered into an agreement on 24/09/2014 agreeing to purchase a flat bearing No. PA 2504 for a total consideration of Rs. 2,17,42,500/- . Towards it, the complainant has paid Rs. 91,31,480/- as demanded by the developer.
5. According to the agreement the developer was to deliver the possession of the flat on 30/11/2017 including the grace period but till today the project has not been completed. In the RERA application the developer has given the completion date as 30th June 2021.

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6. 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"

7. By reading the above, it is clear that the Act does not make any specific ground to go out of the project. However the parties have entered into agreement on 20/6/2014 with number of clauses, they are all binding upon each other.

8. The complainant sought the relief against the developer stating that the developer be directed to pay principal consideration amount of Rs.91,31,480/-. Further he also sought towards interest @18% P.A. In this regard he has given a citation reported in 2004(5) SCC page 65 (Ghaziabad development authority vs Bal Bir Singh)

9. But 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.*

10. 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. It means he has paid the amount to the developer even before delivery of possession. Therefore the complainant is entitled for compensation @9% as per Karnataka Apartment Ownership Act, 1972 till coming into force of RERA Act,
11. However, the counsel for the developer has drawn my attention to the forfeiture clause at 13.1 in sale agreement where it says that the developer can forfeit of the total consideration amount in case the complainant has cancelled the agreement. Therefore he says that the complainant is not entitled for compensation. Per contra the complainant has filed the Judgement of Maha RERA to support his contention. In this case the complainant has paid the amount commencing from the year 2014 and he has paid 95% of the amount payable to the developer.
12. The respondent developer has made his representation stating that is ready to refund the amount redirecting cancellation charge of rupees 10 lacs. This response has been made by the developer as a response to the notice issued by the complainant. The main reason for the cancellation of the unit is delay caused by the developer. The developer has undertaken to refund the amount in the month of September 2018. Of course with the deduction of rupees 10 lacs, But till today it has not been materialized. The complainant was forced to file his complaint for the relief.

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13. I would say that the developer has received the amount in the year 2014. In spite of it he wanted to say that as per the agreement clause rupees 10 lacs will be deducted towards cancellation charges. I would say that the clauses of the agreement are binding upon both. In case of delay the developer has to pay compensation to the complainant. He never talks about the same. The developer wanted to rely upon the cancellation allotment made by the complainant. But why the complainant wanted to cancel the agreement has not been appreciated by the developer. In fact in the month of December 2017 itself the developer has referred to cancellation of flat and undertaken to process with regard to refund of the amount. The same is also not honoured by himself. He has made use of the amount paid by the complainant. He has taken the benefit from the amount paid by the complainant. Five years have already been elapsed.

14. The complainant is neither having the money nor a flat. The developer has given the completion date as 2021 which is very much contrary to the date mentioned in the agreement. As per the induction of this act he might have given his own date for completion of his project. But the complainant who has paid the amount in the year 2014 may or may not wait till the completion of the project. He was forced to issue a legal notice and made him to take law into force.

15. The developer is aware that the complainant has made the demand of refund of the amount but the same was not honoured by him and dodged for his own reasons. For the said reasons the stand taken by the developer with regard to cancellation charges has no force at all. I have no any hesitation to say that the complainant is entitled for the amount paid by him along with interest as discussed by me.

16. AS per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the developer has appeared for the first time only on 07/01/2019 and hence the complaint is being disposed is little delay within limitation. With this observation I proceed to pass the order.


(1763169)

ORDER

1. The complaint no. CMP/180910/0001255 is allowed by directing the developer to return the amount of Rs. 80,25,388 along with simple interest at the rate of Rs.9% P.A. on the respective amount of respective date till April 2017 and @Rs. 10.75% P.A. till the realisation of entire amount.
2. The developer is also directed to discharge loan amount of Rs. 11,06,092/- along with all the EMI and interest, if any
3. The developer shall deduct the GST amount out of the amount payable to complainant and hand over the necessary documents to the complainant in case he has paid GST to the Government to enable the complainant to claim that amount.
4. The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
5. The developer also directed to pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and
Pronounced on 18/03/2019)

K.PALAKSHAPPA
Adjudicating Officer