

BEFORE ADJUDICATING OFFICER, RERA  
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Complaint No. CMP/180909/0001251

Dated: 29<sup>th</sup> APRIL 2019

Complainant : Puppala Jayasimha  
No. 3, 1<sup>st</sup> floor, Sanjeev Reddy Street, 3<sup>rd</sup>  
Cross, Subbayanapalya Layout, M S  
Nagar post, Bengaluru- 560078

AND  
Opponent : Skylark Ithaca,  
Skylark Mansion Pvt. Ltd.,  
37/21, Skylark Chambaras yellapachetty  
layout, Ulsoor road, Sivanchetti Gardens  
Bengaluru - 560042

**J U D G E M E N T**

1. Puppala Jayasimha, has filed this complaint under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansion Pvt. Ltd., bearing Complaint no. CMP/180909/0001251. The facts of the complaint is as follows:

*"The complainants Mrs. Gottipati Bhavani & Mr. Jayasimha Puppala humbly submits as follows; 1. The complainants had raised a RERA complaint No. CMP/180510/0000822 however the builder / opposite party violated the mutually agreed settlement which was arrived at, when the complaint was withdrawn by the complainants, hence this complaint with new facts and circumstances. 2. The complainants came to know about the ?Skylark Ithaca? project located at Kurudu Sonnanahalli Village Bangalore through newspaper advertisements and ? M/s. Squareyards? which is the marketing agency for ?Skylark Ithaca Pvt Ltd?. The complainant booked one unit (Flat) ie; T13-301 for total*

*P. Jayasimha*  
29/4/19



consideration of Rs.48,52,800/- 3. Thereafter the complainants entered into three agreements with M/s.Skylark Mansions Pvt Ltd & M/s.Ithaca Estates Pvt Ltd ie; a) ?Agreement to sell? b) ?Construction Agreement? c) ?Exit Option ?Memorandum of Understanding? . As per the scheme of the builder ( M/s.Skylark Mansions ) the complainants has to communicate their option to exit within 30 months from the date of first loan disbursement from bank the earlier the builder has promised to give 76% returns on advance amount ( Rs.5,94,774/-) amount paid and also close the loan on the expiry of 35 months from the date of first disbursement. The complainant has communicated their intention to exit on August 31 2018. 4. Through M/s.Skylark Mansions and M/s.Squareyards the complainants has taken a loan from ICICI on above said Unit ie. T13-301 loan account No. LBBNG00003108105 total disbursed amount is 41,63,422.. 5. The complainants has paid an advance of Rs. 5,94,774 for T13-301 . 6. The complainants has paid Rs. 5,46,743 as EMI for above said unit out of which the builder has reimbursed Rs.3,04,811/- therefore as on this date the builder has not reimbursed Rs.2,41,932/-. The builder continuously defaulted PRE-EMIs reimbursement for the past 9 months. 7. When complainants visited the location recently (2weeks ago) they are shocked to see that there is no construction started at all even after paying 100% of the consideration amount hence the complainants has exited as per agreements above said.

Relief Sought from RERA : Termination of the agreement and relief from fraud"

2. In pursuance of the summons issued by this authority the complainant was present on 23/11/2018. Sri Abhilash P.V advocate filed vakalath on his behalf. The developer was represented by advocate Smt. Lubna. Case was adjourned to 11/01/2019. On that day the developer has filed his objections.

3. Heard the arguments.

4. The complainant is seeking exit from the project under the Exit Option Agreement. The developer filed his objection to the same. According to the developer, the complainant is not entitled for the relief on the ground that the Adjudicating Officer has no jurisdiction to pass the order based on this kind of agreement. In this regard the developer has said in para 3 of his objection statement which states as follows:

"it is submitted that the complainant has not made payments as per the

*Devi*  
*Prasanna*



schedule and the complaint filed with the sole intention of harassing the respondent and making illegal monetary gains at the cost of the respondent based on false, frivolous and vexatious contentions. It is submitted that all averments made by the complainant against the respondent are denied as false unless specifically admitted by the respondent herein.

5. The developer has filed the additional objection by taking shelter under section 71 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 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 empowered the complainant to approach this Authority.
6. 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 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 the possession. As per S.18 it is 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.

*Don't*  
*know*



8. The complainant is seeking benefit under the scheme which is called as Exit Option and the same was executed on 18/11/2016. According to clause mentioned in the said agreement; the complainant shall avail this benefit within 36 months. It means on or before May 2019 he ought to have shown his willingness to take this option.
9. In this regard the complainant has got issued a letter dated 2/8/2018 claiming the benefit under the scheme. It means the complainant has opted for the benefit within the time. As per the agreement it is the duty of the developer to honour the same since it was agreed as such. The developer has no any other option to take any kind of new defence to defeat the interest of the parties who have entered into. In view of the same the contention taken by the developer loses its importance and the developer is liable to return the amount.
10. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the complaint was filed on 09/09/2018. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties appeared on 23/11/2018. Hence, there is some delay in closing this complaint. With this observation I proceed to pass following order.

### ORDER

The complaint no. CMP/180909/0001251 is allowed.

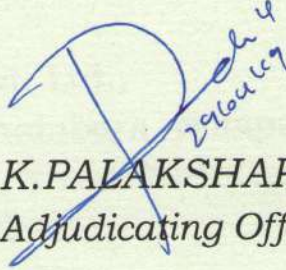
- a. The developer is directed to return amount of Rs.5,94,774/- to the complainant along with interest @ 10.75% P.A., from today till the realisation of the amount.
- b. The developer shall pay Rs. 4,50,727/- as opportunity cost after the end of 36 months.



- c. The developer is also directed to discharge loan amount along with all the EMI and interest, if any attached to the said loan amount.
- d. Further the developer shall pay Rs. 5000/- as cost.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 29/04/2019)

  
**K.PALAKSHAPPA**  
Adjudicating Officer