

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAK SHAPPA

Adjudicating Officer

Complaint No. CMP/190128/0001974

Dated: 22nd MAY 2019

Complainant : SANBIT ROY
Rakunthapur, Sankarpur(p.o),
Laspur, West Bengal- 721211
Rep. by Sri Kadappa Advocate

AND

Opponent : Skylark Ithaca,
Skylark Mansion Pvt. Ltd.,
37/21, Skylark Chambers yellapachetty
layout, Ulsoor road, Sivanchetti Gardens
Bengaluru - 560042
Rep. by Smt. Lubna Advocate

J U D G E M E N T

1. Mr. Sanbit Roy, 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/ CMP/190128/0001974. The facts of the complaint is as follows:

Dear Sir, I have booked a property in Skylark Ithaca which is developed by Ithaca Estates Private Limited. The unit number of the project is T15 901. It is a RERA approved project - PR/KN/170731/000308. I had made the booking on 27/01/2016 and the construction agreement and sell agreements were executed on 21/03/2016. Till date I

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have paid more than 90% of the total amount which includes housing loan released by bank and my own investment. I have taken the housing loan from Indiabulls Housing Finance Limited and my Loan Agreement number is: HHLBAN00268557. The amount financed under the loan agreement is INR 4,961,595.00 and the amount disbursed till date is INR 4,319,771.00. As per the construction agreement the possession date of the property is on or before 31/03/2019 with 6 months grace period. The agreement also clearly specify that the builder is obliged to refund the pre-construction interest payment made by us to the bank (IHFL).


Relief Sought from RERA : Refund of Pre-EMI with interest & Exit Option."

2. In pursuance of the summons issued by this authority the complainant was present on 27/02/2019 through his advocate. The developer was represented by advocate Smt. Lubna. Case was adjourned to 25/4/2019. 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 additional objection statement which states as follows:

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

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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 jurisdiction only with respect to Section 12, 14, 18 and 19 and he has no power beyond the scope of these Sections. Further it is the case of the developer that the prayer made by the complainant is in the nature of enforcement of agreement specifically in terms of the 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 RECA Act empowers the complainant to approach this Authority. Section 18 says that in case of delay in delivering the possession of the flat, plot or building the complainant is entitled for the compensation in case he wanted to go with the project. Further Section 17 prescribes regarding execution deed of conveyance. Section 19 determines the rights and Liabilities of the developer as well as the consumer.
6. Therefore as per 79 of the Act, the Civil Court has no jurisdiction over the issues and hence, submission made by the developer regarding jurisdiction has no force. The parties shall not approach the Civil Court since this Act covers everything. 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 go away from the project. From the above discussions the dispute raised by the complainant is within the jurisdiction of the Adjudication Officer. Hence, the developer has no proper defence. The complainant has rightly submitted in his written argument on these points.


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7. In this case the complainant has produced the Exit Option Agreement wherein the developer and complainant have entered into an agreement under a particular scheme. In the said agreement the complainant is having option to go out of the project by receiving amount 5,92,086/- along with opportunity cost of Rs. 4,48,690/-. It means the complainant can exercise the option within 30 months. Under this background now I am going to consider this matter. In this case the agreement was executed on 21/03/2016, within 30 months from this date; he has to opt for the exit option. It means on or before September 2018, the complainant has to opt for the said scheme.
8. In this regard the complainant has sent a mail dated July 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.
9. 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 complaint was filed on 28/01/2019. The parties have appeared on 27/02/2019. Hence, the complaint could not be disposed of within time. With this observation I proceed to pass the order.


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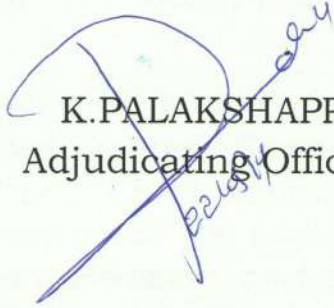
ORDER

The complaint no. CMP/190128/0001974 is allowed.

- a. The developer is directed to return amount of Rs.5,92,086/- to the complainant along with interest @ 10.75% P.A. from today till the realisation of the amount.
- b. The developer shall pay Rs. 4,48,690/- as opportunity cost after the end of 30 months and to pay any incidental charges.
- c. The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
- d. Rs.5,000/- to be paid as cost of the petition by the developer.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 22/05/2019)


K.PALAKSHAPPA
Adjudicating Officer