

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190530/0003207

Dated: 31ST JULY 2019

Complainant : VISHNUPRIYA VENKATESAN AND
SATHISH KUMAR K
16E, 2ND Main, 1ST Cross. P&t Layout
Bangaluru-560036
Rep.by Sri Jaya Prakash, Advocate.

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

J U D G E M E N T

1. Vishnu Priya 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/190530/0003207. The facts of the complaint is as follows:

I have paid 10% amount of the total cost of apartment. As per the agreement, am supposed to get my buy back amount on March 2019 of what i have paid 10% along with the interest and will get EMI reimbursed by 7th of every month. But i havn't got any pre EMI amount for 18 months so far.

Relief Sought from RERA :Get my invested money back with interest.

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1. In pursuance of the summons issued by this authority the complainant was present through advocate. The developer was represented by advocate Smt. Lubna. Case was adjourned to 09/07/2019. On that day the developer has filed his objections.
2. Heard the arguments.
3. The point that arisen for my consideration was:
Is the complainant entitled for compensation in the form of Opportunity cost ?
If so what is the order?
My answer is affirmative for the following

REASONS

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 since she has to file a suit for specific performance. In this regard the developer has said in para 6 of his 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"

5. The developer has field the 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 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 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 RERA Act empowers 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 and 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.
8. The complainant is seeking benefit under the scheme which is called as Exit Option through Exit Option Agreement and the same was executed on 08/07/2016. According to clause the complainant shall avail this benefit within 30 months. It means on or before 08/01/2019 he ought to have exercise his willingness to take this option.
9. In this regard the complainant has got issued notice dated 26/07/2018 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 honor the

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same since it was agreed as such. The developer has no any other option to take any kind of new defense 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 30/05/2019. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties appeared on 20/06/2019. Hence, there is no delay in closing this complaint. With this observation I proceed to pass following order.

ORDER

The complaint no. CMP/190530/0003207 is allowed.

- a. The developer is directed to return amount of Rs.3,73,946/- to the complainant along with interest @ 10.75% P.A., from today till the realisation of the amount.
- b. The developer shall pay Rs. 2,83,326/- as opportunity cost after the end of 36 months.
- c. The developer is also directed to repay the amount of Rs. 3,97,177/- which was paid by the complainant towards EMI within one month from today. If not, it will carry interest at the rate of 10.75% from 31st day.
- 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 31/07/2019)

(K. Palakshappa)
Adjudicating Officer