

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Shri K. Palakshappa
Adjudicating Officer

Complaint No. CMP/190420/0002664

Dated: 5th July 2019

Complainant : Madhumala Manjunath
No. 35/43, Madilu, 7th cross, 5th Block
Bhuvaneshwari Nagar,
Banashankari 3rd phase
Bangalore -560085
Rep. by Smt. Sharada Advocate.

AND

Opponent : Skylark Ithaca
Skylark Mansions Pvt. Ltd.,
37/21, Yellapachetty Layout,
Ulsoor Road, Sivanchetti Gardens
Bengaluru- 560001
Rep. by Smt. Lubna Advocate.

J U D G E M E N T

1. Madhumala Manjunath, being the Complainant filed his complaint bearing no. CMP/190420/0002664 under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Ithaca Estate Pvt. Ltd., as she is the consumer in the said project. The complaint is as follows:

Dear
10/07/19

(i) The applicant herein has booked a flat to be constructed on the part and parcel of the lands situated at kodigehalli village and kurudu sonenahalli village, flat T-15, 701 with a 1011 sqft of super built up area in the project named as ? Skylark Ithaca?, which is situated at part and parcel of the lands situated at kodigehalli village and kurudu sonenahalli village, Bangalore east taluk, Bangalore dist. Bangalore, Bangalore dist. Bangalore

(ii) The complainant has entered into Agreement for Sale dated 16.5.2016 with the respondent in respect of the mentioned flat for a sale consideration. The complainant has paid an amount of 95% of the sale consideration amount and the same is acknowledged by respondent towards the purchase of the said apartment from applicant. On payment of the initial amount the complaint and respondent have entered into the Agreement for sale and construction agreement. The complainant states that while entering into the Agreement for sale and Construction agreement, the respondent has agreed to handover the possession by 31.3.2019.

Relief Sought from RERA :Exit/
cancellation, refund of entire amount & int

2. In pursuance of the summons issued by the authority, on 24/05/2019 the complainant was present and Smt. Sharada Advocate appeared on her behalf. The developer was represented by Advocate Smt. Lubna. She filed vakalath and objections on behalf of the developer. Hence, the case was posted to 20/06/2019.
3. On 20/06/2019, the parties were present and the developer has stated that the completion date has been given by the developer as

Deva
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31/12/2019. The complainant is not entitled for relief since this authority has no jurisdiction.

4. The developer has filed the objection stating that the completion date has been given by the developer as 31/12/2019 to RERA. The complainant is not entitled for relief since *the developer has taken shelter under Section 71 of the Act. It is his argument that the Adjudicating Officer is having the jurisdiction 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 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'm not going to accept his argument because Section 18 of the RERA Act empower 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.*
5. 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.
6. The complainant has rightly submitted in her written argument on these points. Further the learned counsel for the complainant has raised in her written arguments to the effect

"further it is a clear case that, respondent is a defaulter and has defaulted in handing over possession of apartment. The respondent has after receiving huge

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consideration amount has not completed the construction work and defaulted thereby causing huge financial loss and mental agony to complainant.

The complainant states that the respondent states that the respondent has admittedly stated that there is a delay in handing over the possession of apartment. Recently the respondent has also sent a detailed email to all the home buyers admitting that they are short of funds and making efforts to get the funds for resuming the construction work. Thus it is an admitted fact that the respondent has failed to handover the possession and put the complainants to suffer huge monetary loss and mental agony.

The contention of the respondent that this Hon'ble court does not have jurisdiction is vexatious. As the project being an ongoing project has been registered with the RERA. Thus the complaint being on the ongoing project is maintainable and this court has got all the jurisdiction to entertain.

Therefore the contentions of the respondent are all false without any basis and made only to reject the claim of the complainant in violation of the agreement terms.

7. However the decision given by the complainant is regarding the delay compensation but here he is seeking refund of his amount on the ground that the developer has not kept up his promise made in the agreement. The complainant has given the reasons for withdrawing from the project as under:

As on today after the payment of 95% of sale consideration amount the respondent has failed to deliver the apartment and committed breach of contract. Further there is a delay in handing over the possession the construction work has been stopped since more than 18 months and there is no progress in the project. The applicant is not sure whether he will be able to get the

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possession of apartment anytime sooner. That as per the agreement terms the possession was to be handed over to the complainants on or before 31.3.2019 with grace period of 6 months. Further the construction activity has been stopped in the project since more than 36 months and the complainant is burdened with heavy cost of EMI and House rent without possession and no possibility of getting possession any time sooner as construction work is stopped in project.

8. The complainant has chosen to withdraw from the project for the above said reasons and hence, as per S.18 he is entitled for the relief.
9. 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 20/04/2019. As per SOP 60 days shall be computed from the date of appearance of the parties. In the present case, the parties on presented on 24/05/2019. Hence, the complaint is being disposed with no delay. With this observation I proceed to pass following order.

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05/05/19

ORDER

The complaint no. CMP/190420/0002664 is allowed by directing the developer to pay Rs. 6,06,376 to the complainant with interest @9% p.a on the respective amount paid on respective date prior to 30/4/2017 and interest @10.75% p.a commencing from 1/5/2017 till the realization of full amount.

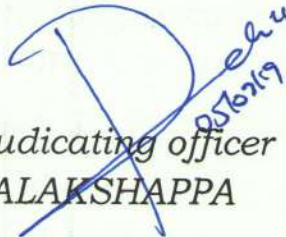
Further he is directed to discharge bank loan amount along with EMI and interest and any incidental charges, if any.

The developer is also directed to pay Rs. 5000/- as cost.

After receipt of entire amount, the complainant is directed to execute the cancellation of agreement of sale.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 5/07/2019)


Adjudicating officer
K.PALAKSHAPPA