



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತದ ಸಂಖ್ಯೆ CMP.1606

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Shristy Shetty

Godrej Air.

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Cmp.1606

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

08/03/2022

As per request of the GPA holder of the complainant and Sri. Sandeep Lahiri Advocate for the respondent the matter in connection with execution proceedings is referred to Lok Adalat to be held on 12/03/2022.

Adjudicating Officer/Co-ordinator, Lok Adalat

K-RERA

CMP-1606

08.03.2022

As per the request of GPA holder of the complainant and Sri. Sandeep Lahiri Advocate for the respondent, in the above case, in connection with execution proceedings, is taken-up for amicable settlement, in the National Lok Adalat, to be held on 12.03.2022.

The GPA holder of the complainant and Sri. Sandeep Lahiri Advocate for the respondent present, in the Pre-Lok-Adalat sitting held on 08.03.2022. The matter is settled in terms of joint memo. The settlement entered between the parties is voluntary and legal one and as per which the complainant has no further claim against the respondent whatsoever and the claim of the complainant in the above case has been fully satisfied in terms of joint memo. The settlement is accepted and consequently the execution proceedings in the above case have been closed as settled between the parties in terms of above joint memo. For consideration of joint memo and award, matter is referred to Lok-Adalat to be held on 12.03.2022.

G. Narayana Shetty

Sandeep
Adv for respondent

Judicial Conciliator.

Sujatha
Advocate Conciliator.

BEFORE LOK-ADALAT IN THE KARNATAKA REAL ESTATE
REGULATORY AUTHORITY, AT BENGALURU

COMPLAINT NO. : CMP/181103/0001606

Complainants : SHRISHTY SHETTY

-VS-

Respondent : Godrej Housing Projects LLP


JOINT MEMO

The complainant through her father Sri. T Narayan Shetty who is her GPA holder and the respondent, through its learned Advocate Sri. Sandeep Lahiri in the above complaint jointly submit as under:

2. During the pendency of the above complaint, the complainant-allottee through her GPA holder and the respondent through their learned Advocate Sri. Sandeep Lahiri after due deliberation have got settled the dispute pertaining to the execution proceedings in the above case before the Lok Adalat.

3. In view of the same, they jointly request this Lok Adalat to dispose off the complaint as amicably settled before the Lok Adalat.

4. The complainant through her GPA holder and the respondent through their learned Advocate Sri. Sandeep Lahiri settled the dispute in connection with the execution proceedings in above case stating that the respondent/developer agreed to execute a registered Sale deed in-favor of the complainant in-respect of flat(Appartment) No.G-601, on 6th floor in project Godrej Air of the respondent referred in the complaint towards


(T. Narayana Shetty)

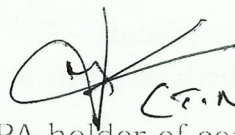

Adv for respondent

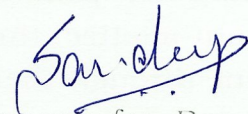
full and final satisfaction of the complainant's claim in this case and the complainant through her GPA holder agreed for the same. The parties further agreed that the respondent/developer shall have to execute a sale deed as aforesaid in favor of the complainant in between 18/03/2022 to 25/03/2022 and the complainant has to bear the registration charges of Sale deed. In case the respondent/developer failed to execute registered sale deed within the period as agreed in favor of the complainant, in that event, the complainant is at liberty to reopen the execution proceedings and to proceed to execute the same as per law.

5. Parties further request that this settlement be recorded in execution proceedings and the execution proceedings be closed in terms of the joint memo in Bruhath National Lok Adalat scheduled to be held on 12.03.2022.

Bengaluru:

Date:08.03.2022


C. Narayana Shetty
GPA holder of complainant


San. deep
Advocate for Respondent

Cmp.1606

12.03.2022

Before the Lok-Adalath

The case taken up before the Lok-Adalat. The joint memo filed by both the parties is hereby accepted. Hence, the matter settled before the Lok-Adalat as per joint memo.

The execution proceedings in the above case stands disposed off as closed accordingly.


Judicial Conciliator.


Advocate Conciliator.

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/181103/0001606

Dated: 6th August 2019

Complainant : SHRISHTY SHETTY
Flat No. B-002, Springfield, Sarjapur
Road. Opp HDFE Bank
Bengaluru-560102.
Rep. By Sri Jayarama Shetty Advocate

AND

Opponent : Godrej Housing ProjectsLLP
No. 80, Hulkul Ascent
2nd Cross, Lavelle Road
Bengaluru-560001

J U D G E M E N T

1. This complaint is filed by the complainant U/S 31 of RERA Act seeking the relief as withdrawal of payment of 16th floor. Complaint reads as under

Installment demanded for construction of an individual tower. However, the payment schedule (attached) does not mention individual towers, but refers to completion of the entire project. Eg. The project has 8 towers. The Builders have completed 16 floors on one tower and are demanding installments for 16 floors, while other towers are only completed up to 4th floor. The project as per agreement is to be completed by 31/12/2022 and Builder has already demanded 7 installments and has collected 5 installments without

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completion of remaining towers up to 16 floors which is unjustified and unethical and also against the agreement. Payment Schedule does not reflect payment to be demanded tower wise.

Relief Sought from RERA : Withdrawal of Payment Demand for 16 floor

2. Notice has been issued to the parties. Shri. H. Jayaramshetty advocate appeared on behalf of the complainant. The developer is represented by her father who is a GPA holder. Whereas the respondent is represented by his representative.
3. Objection have been filed by the parties
4. Heard the argument
5. The point that arise for my consideration is Whether the complaint is entitled for the relief as sought in his complaint?
6. My answer is affirmatively for the following

REASONS

7. The relationship between the complainant and the developer is admitted fact. The case of this complainant is that she has booked a flat in the project in G- Tower which is located in 16th floor. This issue is based upon payment schedule. In this regard the complainant said as under:
 - a. Complainant submits that the payment schedule given for the entire project is claimed to be payment schedule for individual towers by the respondent. It is also observed that the respondent demanded payment for the 4th floor Tower G on 17th May 2018 due on 4th June 2018, 8th floor on 4th July 2018 due on 22nd July 2018 and 12th floor on 22nd August 2018 due on 9th September 2018. However, it

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has been stated by the respondent's email on 5th October 2018 that the progress for the other towers of the project are as follows- Tower A, Tower-B, Tower-C. As per the above statement, the respondent is not following the payment schedule in the sale agreement. As per the sale agreement, the respondent is entitled to only collect till 4th floor slab. Instead the respondent is collecting the payment for 12th floor stating that construction of 12th floor slab is completed in Tower -G

- b. As per the respondent demand complainant required to pay 70% of total cost of the schedule flat on completion 16th floor within one year of completion of sale agreement date and complex will be ready by 31st December 2022.
- c. Complainant submits that collection of payment from individual allottee of the apartment is not done uniformly since all individual apartments will be handed over at the same time on completion of construction in all respects, including all amenities, and on receiving the occupancy certificate from plan sanction authority on or before 31/12/2018.
- d. Other builders spread the payment schedule over the entire period of completion of all apartment complex in equal instalments. The respondent is demanding payment according to the progress of construction G tower in particular. Complainant also submits that there is no objection in paying instalments based on progress of the entire project instead of individual towers.
- e. Complainant submits that the Tower G owners are paying 3-4 instalments in advance in comparison to other towers; Towers A,B,C,D,E,F and have paid until the 4th instalment whereas Tower G owners are paying until 6th-7th instalment which involves Rs.24,00,000 to 35,00,000/- in advance due to which complainant is penalized to pay interest on advanced payment of instalment to the bank

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amounting to Rs.24,000/ month when compared to owners of other Towers which is unjustified.

- f. Complainant submits as per sale agreement the project is scheduled to complete by 31/12/2022 whereas defendant is collecting the entire cost of the scheduled property within 18 months to 2 years from the date of agreement and hence respondent taking undue advantage if the respondent delivers the project as per scheduled time i.e 31/12/2022

8. This is the gist of the allegations of the complainant. Per contra the developer has said that as follows:

- a. As regard the claims of advance payment having been made by the complainant towards the apartment as aforesaid, we reiterate that the invoices raised to the complainant as on the date and payments collected thereto are in accordance with the terms of the said agreement for sale and the payment schedule and the claim of advance payment by the complainant is a fictitious thought cultivated out of the mala-fide made of the complainant and deserves to be dismissed in its entirety.
- b. We state that the complaint filed by the complainant is an abuse of process of law as he has no locus standi to question on the progress of construction of other towers of the project apart from Tower-G for the reasons elaborated hereinabove. Moreover, we state that the complainant has defaulted in making the payments within the stipulated time and is trying to take advantage of his wrong.
- c. The main prayer of the complainant was to withdraw the payment demand for 16th floor. However, during pendency of the complaint itself, the complainant has made the outstanding payment towards the said demand for 16th floor. Owing to the payment made by the complainant herself towards the 16th floor demand, the instant

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complaint becomes infructuous. The complainant is now trying all her luck to enrich herself by incorporating baseless additional prayers in the interim reply for which she is not entitled to.

d. In view of the submissions made here in above, we state that the complainant's prayers are false and baseless and if allowed wholly or partly, shall set a wrong precedent. We, therefore, request the Hon'ble RERA authority to dismiss the prayers of the complainant set out in the reply -3 dated NIL in limine.

9. According to developer the payment made by the complainant is in accordance with the payment schedule but it is the case of the complainant that developer should not demand for payment unnecessarily. The complainant has said that the developer shall demand the payment only when the progress of the whole project is growing up. This kind of submission has been made on the background that the developer is demanding for the payment whenever the progress of his tower has reaches the stage of completion. It is the case of the developer that the payment schedule is for the tower where her unit is housed.
10. Per contra the complainant has said that the developer cannot complete only the G tower since he has to complete the project along with his G-tower also. If not, it is his apprehension that the developer will collect more than 90% of the sale consideration even ahead of 2 years from the date of completion. It is an admitted fact that the date of completion of the project would be in the year 2022. But as per the recovery being made by the developer now he is going to collect 70% of the amount within one year and the

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11. As per the payment schedule the developer was expected to collect instalment of 16th floor slab Rs.11,72,810/- only after the completion of 16th floor of all the towers. According to this payment schedule 10% on completion of flooring, completion of internal painting the complainant was expected to pay Rs. 11,72,810/- each. This is the payment schedule payable by the complainant to the developer. According to the complainant the developer has to collect the instalment only after the completion of the entire project but it's his allegation that the developer is collecting the instalment regarding 16th floor alone of his tower.
12. I find some force in his submission because in payment schedule itself it is clear that Rs.1,00,000/- was booking amount, Rs. 10,72,810/- was 10% of the sale consideration and Rs.11,72,810/- was to be paid after the completion of excavation. He was expected to pay Rs.11,72,810/- immediately after completion of 4th floor slab, 8th floor slab, 12th floor slab and 16th floor slab. By looking into the payment schedule it refers to his unit bearing No.601. But it is his submission that the developer is demanding the payment even earlier to this schedule. Therefore it is his submission that the developer committed an error.
13. The complainant has sent mail along with the demand notice Where the developer has demanded for the payment of Rs,. 11,83.274.84/- and also another invoice has been raised demanding for payment. In view of the same the complainant has said in his written submission that :



Respondent threaten to cancel the registered sale agreement by issuing Pre-termination letter on 9th November 2018 and complainant replied on 10th November 2018. In spite of complainant request, respondent issued letter of termination of registered sale agreement dated 12/1/2018 for Godrej Air Flat No. G-601 on 11/12/2018 to avoid further complication complainant remitted 7th installment on 21/1/2019 under protest and reserved her right to claim interest on advance payment. After receiving the assurance from respondent to hold the cancellation of sale agreement if the amount is not remitted within 5 days on from 17th January 2019.

14. By comparing the relief sought by the complainant in her complaint and now in the representation given on 25/06/2019 which is totally different and it is beyond the jurisdiction of this authority. i.e. beyond the jurisdiction of Adjudicating Officer. In order to give the relief as sought in this application the clauses of the agreement has to be rewritten.

15. Now coming to the interest part is concerned the developer has said as under:

That the respondent states that the payment schedule agreed between the parties under the said agreement for sale is a 'construction based payment schedule'. The payment plan described under 'Schedule D' of the agreement for sale is specific to the tower in which the apartment booked by the complainant is located and as such, the allegations of the complainant that the payment plan is for the entire project is baseless and false. In addition to above, the invoice raised by the respondent is only after completion of sixteenth floor slab of Tower-G and

the same is in accordance with the agreement for sale executed between the complainant and the respondent.

The averments made in the said para are totally untenable for want of responsibility. We state that we collected the payments from the complainant in accordance with the terms of the said agreement for sale and the payment schedule and the same was against completion of construction of Tower-G and not the project. Further, as agreed, the project is due to be completed in December, 2022 and the delivery of possession of individual apartment units shall follow accordingly in due course. It may be noted that the payment schedules of Brigade and Prestige annexed with the Reply herein are time linked payment plans in contrast to the 'construction based payment plan' that is being followed by the respondent for Godrej Air. Without prejudice to the above, we state that the respondent is under no obligation to justify its payment schedule or any other practice when compared to other builder/developer.

16. In addition to it; the agreement executed by the complainant in favor of the developer has been cancelled. Even then the developer has sent demand letter for the future payments and the complainant is paying the same. It means the agreement is in force but the prayer made by the complainant regarding the enforcement of the agreement, directing the developer to collect installment only after the progress in the whole project and other reliefs cannot be granted since, they are all different from the original reliefs sought by the complainant in her complaint.

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17. I would like to say that this is a contract between the developer and the complainant. As per the stand taken by the developer that the terms of the agreement are for the tower where the unit of the complainant is housed. It is the firm stand of the developer that the demand made by him is in accordance with the agreement. But it is the case of the complainant that the demand made by the developer is illegal since he is not developing the project but only developing the tower. I find some force in his submission since as per Section 19 of the RERA Act there are some obligations both on the developer as well as on the consumer. The agreement of sale should not have the condition against the RERA Act.

18. In view of the above discussion I would say that it is the duty of the developer to develop the project. By going through the case of the parties it is clear that, the complainant has agreed to purchase a flat in G Tower. As per the payment schedule he has paid the amount whenever the developer has demanded. Even then this complaint is filed mainly on two reasons. Firstly the developer shall not demand for payment unless the entire project is developed by him. Secondly in case the developer wants to demand for payment then he should be directed to complete the G Tower and to give the possession on or before end of 2020. But the same was strongly opposed by the developer by saying that the complainant has agreed to make payment as per the schedule for the development of his tower. Therefore, it is said that as per the terms of the agreement coupled with payment schedule, the complainant has to make payment regularly.

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19. He also drew my attention by stating that the agreement was terminated once since the complainant has failed to make payment.
20. By taking into consideration of the claim and counter claim, it is clear that the issue is involved as per the contractual agreement and parties are bound by the terms of the agreement. This authority cannot give any other meaning except what the meaning is given by the terms. Why I am saying this point, because there is a provision under RERA to complete the project on phase wise and Rule 4(1)(v) says that the developer can obtain Partial Occupancy Certificate.
21. I have already said that, it is the apprehension of the complainant that, the developer is going to collect the entire consideration amount of his unit either by end of this year or by the end of 2020. But as per the agreement the completion date is 2022. Hence, his apprehension is that the developer is going to collect the whole amount much ahead to the completion date. Therefore, he makes a prayer to this authority to direct the developer to complete the project within the year 2020. Again, it is a matter of contractual obligation.
22. As rightly pointed out by the complainant the developer cannot insist upon the complainant to pay the installment only by developing her tower. Why I am saying this because in model ASF released by the Central Government there is a clause for collection of amount from the consumer depending upon the percentage of work done by the developer. The developer who is issuing demand notice has not said the percentage of work done by him.

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23. Further the developer cannot cancel the agreement of sale without any proper reasons. In case the developer does so, the complainant certainly seeks appropriate remedy.

24. But now the prayer of the complainant is that the developer is demanding the instalment only by showing the progress in the tower but not to the project. Again it is a matter of interpretation of clauses of the agreement. As per the discussion made by me the collection of instalments may be for tower but it is the responsibility of the developer to complete the project on or before 2022. The complainant has no any grievance regarding completion of the project by the year 2022 but it is her grievance that the developer is collecting the instalments by wrongly interpreting that he is at liberty to complete the tower but not the project. In this regard I would say that as per S.19(6) of the Act, though it is the duty of the allottee to give the instalments to be paid with respect to his apartment or plot but at the same time as per S.19(2) of the Act, a right is given to the allottee to know the stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed. Of course the counsel for the developer submitted that he is demanding for instalments for his tower but the same is not in compliance of S.19(2) of the Act. The demand letter does not showing any kind of compliance of S.19(2) and as such the developer shall comply S.19(2) along with S.19(6). If not the same amounts to unfair trade practice and also one sided agreement. With this observation I pass the following order.

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ORDER

1. The Complaint filed by the complainant bearing No. **CMP/181103/0001606** is allowed by directing the developer to comply with S.19(2) of the Act before demanding the installments as per S.19(6) of the Act.
2. In case of failure on the part of the developer the complainant is entitled for compensation in a separate proceeding.
3. Further the developer shall also pay Rs. 5,000/- as cost of the petition.

Intimate the parties regarding the order.
(Typed as per dictated, corrected, verified and pronounced
on 06/08/2019).

(K. PALAKSHAPPA)

Adjudicating Officer