

**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Complaint No. CMP/190408/0002605**

**Dated: 29<sup>th</sup> August 2019**

Complainant : Vikas K Sharma,  
Flat No.A 603, Dwarka Sai Heritage,  
Shiv Sai Road, Pimple Saudagar,  
Pune, Maharashtra-411027

**AND**

Opponent : 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. Vikram K. Sharma 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/190408/0002605. The facts of the complaint is as follows:

The Respondent offered a ?Scheme of Acquisition with Exit Option? (?Scheme?) to prospective purchasers of its apartments in Skylark Ithaca. The Applicant along with his wife Kirti Sharma subscribed to the said Scheme and accordingly, the Applicant, Mrs. Kirti Sharma and the Respondent entered into the following agreement with respect to the Apartment No. T13-202: (?Agreements?) a. Agreement to Sell dated 19.03.2016 b. Construction Agreement dated 19.03.2016 c. Exit Option

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? Memorandum of Understanding dated 19.03.2016 (?Exit Option MoU?). ii. As per the terms of the aforementioned agreements the Applicant paid advance on the sale consideration i.e. Rs. 6,01,976/- to the Respondent (Advance Consideration). Applicants also availed home loan of upto Rs. 42,13,416/- from Indiabulls Housing Finance Limited as required under the Exit Option MoU. iii. By virtue of executing the Agreements and performing their obligations, the Respondent is liable to the Applicant for the following under the Exit Option MoU: a. To reimburse the pre-emi interest on the loan availed by the Respondent by the 7th day of every month; b. If the Applicant chooses to invoke the exit option within 30 months of the booking date, the Respondent shall be liable to perform the following obligations upon the completion of 35 months from the booking date and within 36 months of the booking date: 1. Refund the sum of Rs. 6,01,976/- paid as advance consideration. 2. Pay the sum of Rs. 4,55,853/- as opportunity cost. 3. Discharge the home loan availed by the Applicants and to have all securities issued by the Respondents released from the lender. iv. The Respondent defaulted in reimbursement of the pre-EMI against the loan availed on the Apartment by the Applicant since August, 2017. As a result, a sum of Rs. 6,73,914/- has been paid by the Applicants till date, which sums are to be reimbursed by the Respondent along with interest calculated from the date of payment of each pre-emi till date. v. The Applicant invoked their Exit Option under the MoU vide letter dated 16.08.2018 which was acknowledged by the Respondent vide email dated 30.08.2018. However till date, the Respondent has not performed its obligations listed above, despite several calls, emails and meetings with the Respondent. vi. Hence this complaint for the payment of sums as prayed below: 1. Reimbursement of Rs. 6,73,914/- along with interest from the dates of default of each Pre EMI from August, 2017. 2. Refund of the sum of Rs. 6,01,976/- paid as advance consideration with interest from the date of default till date of payment. 3. Payment of the sum of Rs. 4,55,853/- as opportunity cost paid as advance consideration with interest from the date of default till date of payment. 4. Discharge of the home loan availed by the Applicants and to have all securities issued by the Respondents released from the lender.

Relief Sought from RERA : Payment of sums with interest & discharge of loan

2. In pursuance of the summons issued by this authority the developer was represented by advocate Smt. Lubna who filed vakalath and objections. The complainant has appeared.
3. Heard the arguments.

  
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4. 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**

5. 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.
6. 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.
7. 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.

8. 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.
9. The complainant is seeking benefit under the scheme which is called as Exit Option and the same was executed on 19/03/2016. According to clause the complainant shall avail this benefit within 30 months. It means on or before 19/09/2018 he ought to have exercise his willingness to take this option.
10. In this regard the complainant has got issued notice for which the developer has given the reply through mail dated 30/08/2018 stating as under:
- "Dear Mr. Vikas,*
- Greetings from Skylark*
- This is to confirm you that we have received your request letter. We shall proceed the buy back as per the exit option agreement terms and conditions."*
11. As per the agreement it is the duty of the developer to honor the 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.



12. 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 08/04/2019. In this case the parties have appeared on 09/07/2019. Hence, there is no delay in closing this complaint. With this observation I proceed to pass following order.

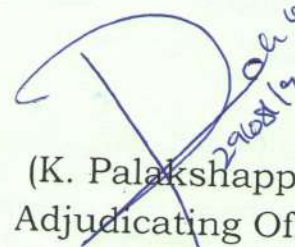
**ORDER**

The complaint no. CMP/190408/0002605 is allowed.

- a. The developer is directed to return amount of Rs. 6,01,538/- to the complainant along with interest @ 2% above the SBI marginal lending rate of interest on the Home Loans from today till the realisation of the amount.
- b. The developer shall pay Rs. 4,55,853/- 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 29/08/2019)

  
(K. Palakshappa)  
Adjudicating Officer