

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Shri K. Palakshappa
Adjudicating Officer

Complaint No. CMP/190216/0002145

Dated: 06th JUNE 2019

Complainant : Fuku Sahu
R/o No. 134/4, Ground floor,
Nagaraja building, yallamma temple
road, 14th cross, Nagavara palaya
C.V, Bengaluru- 560093
Represented by Smt. Sharada H.V.
Advocate

AND

Opponent : Skylark Ithaca,
Skylark Mansions Pvt. Ltd.,
No. 37/21, Yellappa Chetty Layout,
Ulsoor road, Bangalore – 560042
Represented by Smt. Lubna
Advocate

J U D G E M E N T

1. Mr. Fuku Sahu, 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/190216/0002145. The brief facts of the complaint is as follows:

"The applicant herein has booked a flat to be constructed on the part and parcel of the lands situated at kodigehalli village and kurudu

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sonenahalli village, flat bearing no. T-5- 1101, Apartment in tower no T-5 - 1101, Having a super built-up area of 1011 sq ft, 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 16.12.2016 with the respondent in respect of the afore mentioned flat for a total sale consideration amount of Rs.53,23,951/- .The complainant has paid an amount of Rs.47,50,687/- and the same is acknowledged by respondent towards the purchase of the said apartment from applicant. On payment of the initial amount the complainant 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 of apartment by September 2017 plus 6 months grace period i.e. by 31.3.2018, as such agreement was entered between the parties. But later on the respondent has stopped the construction. as on today after the payment of 95% of sale consideration amount the respondent has failed to handover the possession of the flat and committed breach of contract. further the construction has been stopped in the project for the past 1 ½ year and the construction work was being carried on by L & T Construction company and that the construction work is stopped and further L & T has put an Arbitration case and has secured a stay order as to the further progress in the project and that no one else also can develop the project and handover of possession is uncertain as to when it is going to happen. The complainant has paid huge amount to purchase the flat from respondent also has taken bank loan for the



payment towards the flat. Because of the uncertain situation complainant is suffering huge financial loss, mental agony and at a very uncertain situation of no clear date of handing over of possession. The complainant is paying EMI of Rs 36,422/- every month to the bank, which is both principal and interest amount. complainant has paid an amount of Rs.8,90,869/- from February 2017 to February 2019. towards bank loan there is a delay in handing over the possession of flat, construction work has been stopped since more than 6 months and there is no progress in the project. The applicant is not sure whether he will be able to get the possession of apartment anytime sooner. That as per the agreement terms the possession was to be handed over to the complainants on or before 31.3.2018 with grace period of 6 months. Further the construction activity has been stopped in the project since more than 1 ½ years 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 the project construction work is stopped. The complainant has paid amount to purchase the schedule flat by taking a bank loan. The bank has sanctioned bank loan for the same in the name of complainant and the complainant is paying an EMI as interest towards the bank loan in respect of the purchase of the schedule property. As per the Agreement between the complainant and the respondent, complainant has agreed to make the reimbursement of the EMI paid to the bank to the account of complainant and the respondent has failed to keep his promise, made to complainant. (iii) The respondent has failed to handover possession as promised under the agreement and the construction being half the way the complainant has lost the hope of getting Possession any where sooner. The compliant having invested his hard



earned money with the respondent is suffering by the default committed by the respondent. Thus the respondent has committed default & this default has caused grave financial loss and mental agony to the complainant. Apart from the payment being made by the complainant on as per the payment schedule, respondent even after receiving payments has failed to keep the promise as per the terms of agreement. (xi) I pray this Hon^{ble} court may be pleased to permit me to file the documents in the hard copies at the time of hearing.

5. Compensation(s) sought: In view of the facts mentioned above the applicants prays for the following compensation such as: 1) to cancel the agreement and refund the entire amount paid by complaint with interest and compensation as per sec.18 of RERA Act from the date of payment till the date of realization. 2) to clear the bank loan taken for the purchase of the said apartment and to repay the entire amount paid by complainant with interest and compensation. i) To pay the cost of filing this compliant/application to an amount of Rs.20,000/- ii) To grant or pass such other directions, orders etc., as this Hon^{ble} court deems fit to pass in the circumstances of the case and in the interest of justice and equity.

Relief Sought from RERA: Refund of entire amount with interest& compensation"

2. In pursuance of summons issued by this authority on 06/03/2019 but none were present. Hence, another notice was issued to appear on 21/03/2019, on that day Advocate Smt. Sharada representing the complainant has filed her vakalath and developer was present and undertook to file vakalath and objections.
3. On 24/04/2019, Advocates representing the developer as well as the complainant were present. The counsel representing the developer filed objections.
4. I have heard the argument.


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5. The points that arise for my consideration is whether the complainant is entitled for relief of Refund as prayed in the complaint?.
6. My answer is affirmative for the following

REASONS:

The complainant is the consumer who had entered into agreement with the developer on 16/12/2016 with respect to residential flat bearing no. T-5-1101. According to the complainant the developer has failed to deliver the possession as agreed in the agreement.

7. The developer has filed the objection statement stating that the complainant is not entitled for the relief since the complainant failed to honour the terms of the Agreement for sale and construction agreement and has defaulted making the payment.
8. Further the respondent submits that the delay in completion of the project is due to:

"it is submitted that the respondent has engaged the service of Larson and Turbo (L&T) to construct the residential units as part of its construction terms. However, to the utter shock and surprise of the respondent it has learnt that L&T have stopped the construction and has also filed a petition before the Hon'ble Civil Court in A.A No. 51/2019 praying for an injunction restraining the respondents from going ahead with the construction of the project by engaging any other contractors to complete the project. Thus, the hands of the respondent are tied and unable to go ahead with the construction of the project due to

the legal hurdle as stated above and any delay caused in the construction of the project is not within the control of the respondent"

9. For the objection filed by the developer, the complainant replied and specifies clause 1.4 of sale agreement which reads as follows:

"in the event of delay or default by the purchasers to pay the balance sale consideration as per Schedule F here to the builder shall be entitled to terminate this agreement by issuing a notice calling upon the purchaser/s to pay the arrears within 15 days from the date of issue of such notice, and if the purchasers fails to pay the arrears this agreement shall be deemed to have been terminated."

10. Therefore, if the complainant wants to go away from the project as the project has not been completed, there is no anything to doubt about his intention. As per Sec. 18, he may be permitted to withdraw from the project along with necessary compensation.
11. In addition to it is clear that the agreement shall have all the clauses to give all kinds of relief to both parties.
12. The agreement should have been executed with the minds of both parties and in the same spirit it shall have the choices either to continue with the project or to go away from the project. Otherwise the agreement amounts to one sided agreement which is not executable. Hence, as rightly pointed out by the complainant he is entitled for the relief of exit from the project.
13. Further as rightly pointed out by the counsel Smt. Sharada to the effect that respondent recently the respondent has also sent a

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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.

14. In view of the stand taken by the developer himself there is no meaning in rejecting the prayer of the complainant who is going out of the project. Further as per sec. 19(4) mandates the developer to return the amount in case he is unable to complete the project for any reason.
15. 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 presented on 16/02/2019. The parties have appeared on 21/03/2019. Hence, the complaint could not be disposed of within time. With this observation I proceed to pass the order.

ORDER

The complaint no. CMP/190216/0002145 is allowed.

- a. The developer is directed to return the amount paid by him of Rs. 9,80,228 to the complainant along with interest @ 9% P.A. for the respective amount paid on respective date prior to April 2017 and interest @ 10.75% P.A. from 01/05/2017 till the realisation of full amount.
- b. The developer is also to discharge loan amount along with all the EMI, interest and any incidental charges if any.

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