



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp. No: 1690 & 1710

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Mr. Narasimha Manja & Veena Manja
Zuari Infraworld India Pvt. Ltd.

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

The Complaint No: CMP/181203/0001710 and complaint No. CMP/181129/0001690 (clubbed cases)

01.08.2023

As per the request of the complainant Mr. Narasimha Manja complainant in complaint No. CMP/181129/0001690 who is also a GPA holder of Mrs. Veena Manja complainant in CMP/181203/0001710 and Mr. Srinivas B.S. authorised signatory of the respondent, these complaints are taken-up for amicable settlement in the National Lok Adalat to be held on 09.09.2023.

The complainant Mr. Narasimha Manja complainant in complaint No. CMP/181129/0001690 who is also a GPA holder of Mrs. Veena Manja complainant in CMP/181203/0001710 and Mr. Srinivas B.S. authorised signatory of the respondent are present, in the pre-Lok-Adalat sitting held today on 01.08.2023. The complainant Mr. Narasimha Manja has filed copy of GPA executed by the Mrs. Veena Manja complainant in CMP/181203/0001710 & Mr. Srinivas B.S. has filed a copy of board resolution of the respondent dated:04.08.2022. The aforesaid complaint Nos. CMP/181203/0001710 & CMP/181129/0001690 are settled in terms of the joint memo dated:01.08.2023 filed during pre Lok Adalat sitting held on 01.08.2023. The authorised signatory Mr. Srinivas B.S. of respondent handed over a DD of Federal Bank bearing No: 254351 dated: 31.07.2023 for a sum of Rs. 8,00,000/- (Rupees Eight Lakhs Only) of Koramangala Branch, during pre Lok Adalat sitting to Mr. Narasimha Manja, drawn in the names of complainants. The settlement entered between the parties is voluntary and legal one. The settlement is accepted and consequently above complaint Nos. CMP/181203/0001710 & CMP/181129/0001690 are closed as settled/compromised between the parties in terms of above joint

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For Zuari Infraworld India Lt

BS *[Handwritten Signature]*
Authorised Signatory



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp.No: 16904/1701

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ವಿಷಯ Mr. Narasimha Manja & Veena Manja
Zuari Infraworld India Pvt. Ltd.,

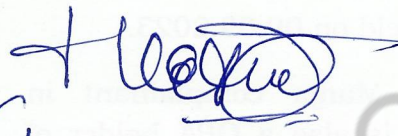
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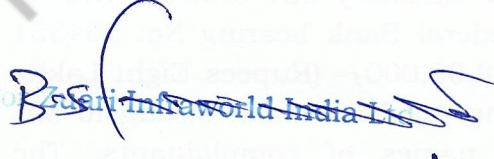
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memo. The parties have no further claims against each other in the above said complaints. The RRC's already issued in the above complaints are recalled and office is directed to issue intimation to the concerned DC about the recall of the RRC's in view of settlement/compromise of the aforesaid cases in the Lok Adalat. To draw the award the above matters are referred to Lok-Adalat to be held on 09.09.2023.


Judicial Conciliator.


Advocate Conciliator.


[Narasimha Manja]
For self and on behalf
of GPA holder Veena
Manja Complaint no 1710


[B.S. SRINIVAS]
Authorized Signatory

KARNATAKA STATE LEGAL SERVICES AUTHORITY
BEFORE THE LOK ADALAT
IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU

DATED: 09TH DAY OF SEPTEMBER 2023

: CONCILIATORS PRESENT:

Sri. I. F. Bidari Judicial Conciliator

AND

Ms. Likitha T. A Advocate Conciliator

COMPLAINT NO: CMP/181203/0001710 & CMP/181129/0001690

Between

1. Mr. Narasimha Manja
2. Mrs. Veena Manja
(In Person)

.... Complainants

AND

M/s. Zuari Infraworld India Limited
(By: Mr. Srinivas B.S. authorised signatory)


.....Respondent

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matters/cases, in terms of joint memo dated: 01.08.2023 filed during the pre Lok Adalat sitting held on dated: 01.08.2023, same is accepted. The settlement entered between the parties is voluntary and legal one.

The complaints are stands disposed off in terms of the joint memo dated: 01.08.2023 and joint memo is a part and parcel of the award.


Judicial conciliator


Advocate conciliator

Complaint No. 1690 & 1710

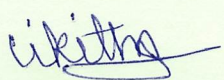
09.09.2023

Before the Lok-Adalat

The above cases are taken up before the Lok-Adalat. The joint memo filed by both the parties is hereby accepted. Hence, the matters/cases are settled before the Lok-Adalat as per joint memo. The joint memo filed by the parties shall be part and partial of award/order.

The complaints stands disposed off accordingly.


Judicial Conciliator.


Advocate Conciliator.

COMPLAINT No. CMP/181129/0001690

Between:

Mr. Narasimha Manja,
S/o Mr. Shivarama Manja,
Aged about 60 years,
Residing at No. 201, Pariwar Shanbhag,
Satyabhamangar, Vijaya Bank Layout,
Banerghatta road, Bengaluru – 560076.

COMPLAINT No. CMP/181203/0001710

Mrs. Veena Manja,
W/o Mr. Narasimha Manja,
Aged about 54 years,
Residing at No. 201, Pariwar Shanbhag,
Satyabhamangar, Vijaya Bank Layout,
Banerghatta road, Bengaluru – 560076.

... **COMPLAINANTS**

AND:

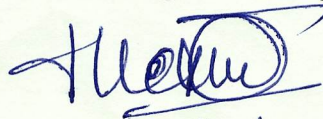
M/s Zuari Infracore India Limited,
A Company Incorporated under Companies Act, 1956,
having office at Adventz Centre, 1st floor,
No. 28, Cubbon Road, Bengaluru- 560001.

... **RESPONDENT**

JOINT MEMO

The Complainants and the Respondent in the above Complaint jointly submit as under:

1. It is submitted that both the above Complaints were filed by the Complainants with respect to the same unit and hence both the Complaints were clubbed together. The said Complaint came to be allowed on 02.04.2019 by the Hon'ble RERA Authority. Later being aggrieved by the judgement and decree dated 02.04.2019 passed by the Hon'ble RERA Authority, the Respondent had preferred an appeal bearing RERA Appeal No. 81/2019 before the interim



Complainant in
CMP/181129/0001690



Complainant of CMP/181203/0001710
represented by GPA Holder
Mr. Narasimha Manja.

Tribunal which was subsequently transferred to RERA Tribunal which was numbered as K-REAT No. 79/2020. In the said appeal the Respondent had deposited the principal amount paid by the Complainants i.e., Rs. 49,43,428/- as under:

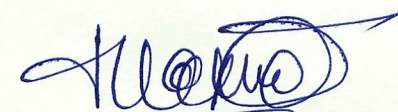
- a. Rs. 21,36,344/- as pre-deposit amount for filing the appeal before Hon'ble Interim Tribunal.
- b. Rs. 24,75,784/- on 30.06.2020 vide DD before Hon'ble RERA Tribunal.
- c. Rs. 3,31,300/- on 27.07.2020 vide DD before Hon'ble RERA Tribunal

The above said amount of Rs. 49,43,428/- is already withdrawn by the Complainants herein.

2. It is submitted that the said appeal K-REAT No. 79/2020 was dismissed vide judgment and decree dated 24.02.2021. Aggrieved by the judgment and decree dated 24.02.2021 in K-REAT No. 79/2020 the Respondent preferred RERA Appeal No. 8/2021 before the Hon'ble High Court of Karnataka wherein the judgment and decree dated 24.02.2021 in K-REAT No. 79/2020 passed by the Hon'ble RERA Tribunal and judgement and decree dated 02.04.2019 passed by the Hon'ble RERA Authority was set aside and the matter is remanded back to this Hon'ble Authority for fresh consideration.
3. The Complainants and the Respondent in order to put aside their differences, and to amicably settle all mutual claims, the parties have reached consensus through their well-wishers pertaining to the subject matter of the Complaint and have settled amicably before the Lok Adalat.
4. In view of the same, they jointly request this Lok Adalat to dispose of the complaint as amicably settled before the Lok Adalat since the Complainants have received a total amount of Rs. 57,43,428/- wherein Rs. 49,43,428/- is already withdrawn by the Complainants from Hon'ble RERA Tribunal which amount was deposited by the Respondent herein. The interest amount of Rs. 8,00,000/- (Rupees Eight Lakhs Only) is now handed over to the Complainants by the Respondent vide Demand Draft bearing No. 254351 dated 31.07.2023, Federal bank, Koramangala branch and the Complainants have acknowledged the receipt of said sum of Rs. 8,00,000/- (Rupees Eight Lakhs Only) towards interest.
5. The claim of the Complainants is being fully satisfied and the Complainants have no further claim whatsoever against the Respondent. Both parties to the

For Zuari Infraworld India Ltd.
Bs. 
Authorized Signatory
Respondent.


Complainant in
CMP/18/203/0001710


Complainant of CMP/18/203/0001710
represented by GPA Holder
M. S. Srinivasan Murthy.

proceedings have no claim whatsoever against each other in respect of the subject matter of the above Complaint, ^{Nos. CMP/18/129/0001690 and CMP/18/1203/0001710.} If there is any claim by either parties to this Complaint against each other before any forum or Court relating to the subject matter of the above Complaint, they have agreed that the same be disposed of as settled by either party filing an appropriate memo in such cases.

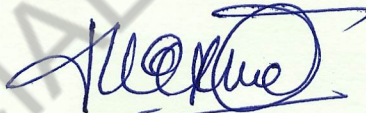
6. Parties further request that this settlement be recorded.

7. It is submitted that complainant in CMP/18/1203/0001710 i.e. Mrs. Veena Manja has executed General Power of Attorney dated 29/02/2020 in favour of Mr. Narasimha Manja

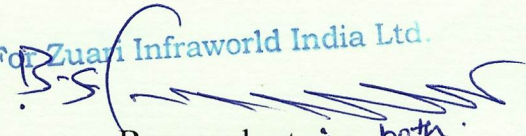
Place: Bengaluru.

Date: 01/08/2023.


in CMP/18/129/0001690.
Complainant/Allottee No. 1 1/8/2023


in CMP/18/1203/0001710.
Complainant/Allottee No. 2 1/8/2023

For Zuar Infraworld India Ltd.


Respondent in both.
CMP/18/129/0001690 and CMP/18/1203/0001710

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/181217/0001770

Dated: 14th MARCH 2019

Complainant : PANUSMITA DASH,
No. 43, TNT Towers, Unit No. S-2,
Infantry Road
Bengaluru- 560001

AND

Opponent : Omar Sheriff
Skylark Ithaca,
Skylark Mansions Pvt. Ltd.,
No. 37/21, Yellappa Chetty Layout,
Ulsoor road, Bengaluru, -560042

J U D G E M E N T

1. Mr. Ranusmita Dash , 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/181217/0001770. The brief facts of the complaint is as follows:

"1. The Complainant herein entered into an Agreement to Sell dated 24th March, 2017 for a sum of Rs. 18,81,688/- for purchase of Residential Flat bearing no. T-17-704 built on Eight Floor of Tower 17 of Respondent's project ?Skylark Ithaca? measuring 1610 sq feet along with

Deny
14/6/21

483.527 sqft of undivided share in the project being built by the Respondent. 2. The Complainant herein entered into a Construction Agreement dated 24th March, 2017. The total cost of construction was agreed Rs. 56,45,063/-. The booking date herein for the project was on 12th February, 2017 3. The Complainant has paid the following amounts towards the unit: Amount paid by Complainant Rs. Rs. 5,62,000 Amount released by the Banker to Respondent Rs. 64, 61,134 TOTAL Rs. 70,23,134 4.

Relief Sought from RERA : Exit Option, Amount Repayment Cancel RERA Reg.

2. In pursuance of summon issued by this authority on 11/01/2019 the complainant was present through his advocate. Smt.LF, Advocate representing the developer filed vakalath and objections.
3. I have heard the argument.
4. The points that arise for my consideration is whether the complainant is entitled for relief of exit option as prayed in the complaint?.
5. My answer is affirmative for the following

REASONS:

The complainant is the consumer who had entered into agreement with the developer on 24/03/2017 with respect to residential flat bearing no. T-17-704. According to the complainant the developer has failed to deliver the possession as agreed in the agreement.

6. The developer has filed the objection statement stating that the complainant is not entitled for the relief since he is an investor. Another stand taken by the developer is that the complainant is not entitled for exit option since he is due payable to the developer.

[Handwritten signature]
14/03/19

7. I would like to say that the complainant cannot be called as investor because the Term "Investor" is not defined either in Agreement or nowhere defined under RERA. Any purchasers of the apartment is an allottee as per Sec.2(d) of RERA Act. Thus the connection of respondent that complainant is an Investor will not holds good to the facts of the case and it is neither sustainable on facts or in the Eyes of the Law. The concept of Investor is applicable under Consumer Protection Act and Not under RERA Act. Under RERA Act any buyer is an allottee. Since the project is registered under RERA, only the provision of the RERA act will be applicable, the provision of other laws will be applicable in coordination and not is derogation to defend the main object of the Act. Thus the concept of the Investor is not applicable under RERA and as such more specifically to the complainant.
8. For the kind perusal and reference – Few NCDRC judgments have been mentioned which cases are clearly held by the Apex forum that what amount to investor and who is a Costumer. An investor is defined as under:

An investor is a person that allocates capital with the expectation of a future financial return. **A person who puts money into something in order to make a profit or get an advantage.** That is, someone who provides a business with capital and someone who buys a stock are both investor. An investor who owns a stock is a shareholder.

9. From the above principle the developer has to prove something more than what he contended in his objection statement. Absolutely no evidence is placed by the developer as to the intention of the consumer regarding his investment. Hence, I hold that the developer has utterly failed to prove that the complainant is an investor and hence the same may be discarded.
10. The developer has filed the additional 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 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 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 the RERA Act empowered the complainant to approach this Authority.
11. 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.

12. Further as per 79 of the Act, the Civil Court has no jurisdiction over the issues 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.

13. For these objection of the developer, the complainant filed his reply where in he submitted that another important ground for seeking exit is because:

The complainant submits that the respondent have also breached their obligation under Section 12 by falsely advertising that they have hired the construction service of L&T as a stand, alone contractor for the project, but to the utmost shock of the complainant, the project was given to NCCL rather than L&T. The goodwill attached to L&T was one major deciding factor for the complainant to choose the project. Respondent by this act has ensured that, they have committed an error of deceptive marketing.

The complainant submits that since the inception of the project, the respondent have been deceiving prospective customers and have consistently failed in executing their duties. The complainant has been facing constant financial hardship due to the negligence and failure of the respondent in dispersing their duties and responsibilities."

14. The intention behind it is very clear that the developer may not complete the project because of the above said reasons. Further the complainant also submitted photos showing the progress of Tower 12. By looking into photos, it appears that the completion of the project may not be within the nearing date.
15. As per Sec. 19(4) developer is bound to compensate the consumer in case of default for any reason. Therefore the complainant is entitled for delay compensation.
16. The learned counsel for the complainant has given some citation in support of his argument. The reasons given by the complainant for going away from the project are sufficient to hold that he is going away only because of the fault on the part of the developer. In addition to it is clear that the agreement shall have all the clauses to give all kinds of relief to both parties. 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.
17. As per Section 19(4) developer is bound to compensate the consumer in case of default for any reason. Therefore the complainant is entitled for delay compensation.

18. 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 17/12/2018. The parties have appeared on 11/01/2019. Hence, the complaint could not be disposed of within time. With this observation I proceed to pass the order.

ORDER

The complaint no. CMP/181217/0001770 is allowed.

1. The developer is directed to return the amount of Rs.5,62,000/- to the complainant along with interest @9% P.A. for the respective amount paid on respective date prior to 30/04/2017 and @10.75% P.A. from 01/05/2017 till the realisation of entire amount.
2. The developer is also directed to discharge loan amount of Rs. 64,61,134/- along with clearing all the EMI and Interest, if any.
3. The developer is hereby directed to hand over the necessary documents to the complainant in case he has paid GST to the Government to enable the complainant to take back that amount.
4. The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
5. The developer has to pay Rs. 5000/- as cost of the petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 14/03/2019)

K.PALAKSHAPPA
Adjudicating Officer