

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

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Complaint No. CMP/190203/0002046**

**Dated: 14<sup>th</sup> MAY 2019**

Complainant : Mr. Girish Rao Thokur, and Mrs.  
Sangeetha Rao  
No. 3-2-27, B -1, Jyothsna,  
Sathyasai Road, Udupi - 576101  
Rep. by Sri. Dange, Advocate.

AND

Opponent : Skylark Ithaca,  
Skylark Mansion Pvt. Ltd.,  
37/21, Skylark Chambars yellapachetty  
layout, Ulsoor road, Sivanchetti Gardens  
Bengaluru - 560042  
Rep. by Smt. Lubna, Advocate

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**J U D G E M E N T**

1. Mr. Girish Rao Thokur and Mrs. Sangeetha Rao, have filed this complaint jointly under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansion Pvt. Ltd., bearing Complaint no. CMP/190203/0002046. The facts of the complaint is as follows:

*[Handwritten signature]*  
14/05/19



"The Complainants in the above case most respectfully submit as follows: 1. The Respondents have formulated a scheme of construction of Residential Apartments in various Towers, under the Project name Skylark Ithaca.

Based on the advertisements and marketing done by the Respondent Nos. 1 & 2, in Dubai, the Complainants have agreed to purchase One Apartment bearing No. T13-1302, built on Thirteenth Floor, of Tower-T13, of Skylark Ithaca, measuring 1059 Sqft., of Built up area with one Car Parking space, together with 318.047 Sqft., of undivided share in the Land, for a total sale consideration of Rs.63,62,058/-. 3. Subsequently, the Complainants have entered into Three Agreements with the Respondent Nos. 1 & 2, that is, 1) Agreement to Sell, 2) Construction Agreement, and 3) Exit Option-MOU, all dated 29/03/2016. In pursuance of the above-mentioned Agreements and MoU, the Complainants have paid 10% of the sale consideration amounting to Rs.6,27,120/- towards Booking amount on same day (29/03/2016). The Agreement to Sell, Construction Agreement and Exit Option-MOU, all dated 29/03/2016 are attached herewith produced as Annexures A, B and C. 4. It is further submitted that, as contemplated under the Exit Option-MOU, the Complainants have also entered into a Tripartite Agreement, dated 25/04/2016, with M/s. Ithaca Estates Pvt. Ltd. (Respondent No.1), and Indiabulls Housing Finance Ltd. (Respondent No.3), to obtain a housing loan amount of Rs.50,50,000/- from Respondent No.3. Out of the housing loan of Rs.50,50,000/-, Rs.44,40,758/-, has already been paid by Respondent No.3 (Indiabulls) directly to the Respondent Nos.1 & 2, towards sale of undivided interest in the land and for construction of the Apartment booked by the Complainants. Thus, the Respondent Nos. 1 and 2 have received a total sum of Rs.50,67,878/-, which amounts to about 80% of the total sale consideration of the said Apartment. The Tripartite Agreement, dated 25/04/2016, is attached herewith as Annexure D. 5. The Complainants

*[Handwritten signature]*  
14/02/19



Relief Sought from RERA: Refund of total amount =Rs. 23,99,067/-"

2. In pursuance of the summons issued by this authority the complainant was present on 05/03/2019. Sri Dange advocate filed vakalath on their behalf. The developer was represented by advocate Smt. Lubna. Case was adjourned to 21/03/2019. On that day the developer has filed his objections.
3. Heard the arguments.
4. 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. In this regard the developer has said in Para 3 of his objection statement which states as follows:

*"It is submitted that the complainant has not made payments as per the schedule and the complaint filed with the sole intention of harassing the respondent and making illegal monetary gains at the cost of the respondent based on false, frivolous and vexatious contentions. It is submitted that all averments made by the complainant against the respondent are denied as false unless specifically admitted by the respondent herein"*

5. The developer has field 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 19and he has no power beyond the scope of this Section . Further it is the case of the developer the prayer made by the complainant is n the nature of enforcement of agreement specifically in terms of the construction agreement 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.

*Dange*  
*14/03/19*



6. 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.
7. 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.
8. The complainant is seeking benefit under the scheme which is called as Exit Option and the same was executed on 29/3/2016. According to clause the complainant shall avail this benefit within 30 months. It means on or before September 2016 he ought to have shown his willingness to take this option.
9. In this regard the complainant has got issued a letter dated 2/8/2018 claiming the benefit under the scheme. It means the complainant has opted for the benefit within the time. As per the agreement it is the duty of the developer to honour 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.
10. In this case the complainant has filed his written complaint by showing the one financial institution called India Bulls Housing Finance Limited, as respondent No. 3 who is nowhere connected to this authority. Even then the complainant has sought a direction from this authority to direct the banker to return his cheque given at the time of loan transaction. I would say that thought there is a tripartite agreement the dispute could be resolved between the

*Done*  
*14/05/19*



developer and the allottees. Therefore the prayer made by the complainant cannot be accepted. However, this authority will direct the developer to discharge all the obligations and also direction will be given to complainant to execute a cancellation deed.

11. 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 03/02/2019. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties appeared on 05/03/2019. Hence, there is some delay in closing this complaint. With this observation I proceed to pass following order.

### **ORDER**

The complaint no. CMP/190203/0002046 is allowed.

- a. The developer is directed to return amount of Rs.6,27,120/- to the complainant along with interest @ 10.75% P.A., from today till the realisation of the amount.
- b. The developer shall pay Rs. 4,75,239/- as opportunity cost after the end of 36 months.
- c. The developer is also directed to discharge loan amount along with all the EMI, interest and incidental charges if any attached to the said loan amount.
- d. The complainant is hereby directed to execute the cancellation deed after realisation of entire amount.
- e. Further the developer shall pay Rs. 5000/- as cost.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 14/05/2019)

(K.PALAKSHAPPA)  
Adjudicating Officer