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BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/181204/0001714

Date: 22nd March 2019

Complainant : Diwakar Singh
Flat Number 202, B Block,
Sreeja Sreevaru Apartment , 6th cross,
Kageadaspura, Bengaluru- 560093.

AND

Opponent : Palm Vista
Pearl Community one Developers Pvt. Ltd.,
Aurelia Estates, Novell Office Central,
1st floor, 8/2, Ulsoor Road, Bengaluru
Urban, Karnataka - 560008.

J U D G E M E N T

1. Diwakar Singh, complainant under complaint no. CMP/181204/0001714 has filed this complaint under Section 31 of RERA Act against the project "Palm Vista" developed by Pearl Community One Developers Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

"Dear Sir, I had entered in construction and sale agreement, and a MOU with Pearl Community One Developers Pvt. Ltd., on 29th Jan 2016. As per the agreements the timeline to complete the construction and handover of the villa was May 2017. I have paid a total sum of 5000000 (Fifty Lakhs) towards booking and advance payment. My booked unit had to be constructed in Phase 1 Extension of Palm

Vistas project. Till now no construction has started for my booked unit. Four months back I came to know from other sources that builder is not going to construct my booked unit at all. As per my discussion with the builder on 16th August 2018, builder agreed to return me my money with 12% interest. Until today builder has not paid any amount and is trying to buy time. I am afraid that builder will not return my money at all. Therefore, it is my earnest request to RERA authorities to take cognizance of the hardship faced by me. I would request you to direct the builder to return my money with agreed on interest at the quickest. To intervene into this matter and help me get the refunds.

Relief Sought from RERA: To intervene and help me get refund

2. In pursuance of the notice issued by this authority, the parties were present. The complainant was present on 26/12/2018, since the developer was not present again notice was issued. Though the developer has appeared but failed to contest the case properly. Complainant has sought for refund of amount.
3. The agreement of sale was executed on 29/01/2016. According to clause 5, the delivery of possession was on May 2017 with grace period of 3 months. It means August 2017 was deadline. The clause 5.3 says that the developer has agreed to pay interest @18% p.a on the amount paid by him in case of delay.
4. The complainant also filed Memorandum of Understanding where the developer has executed the same in favour of complainant wherein it states that
 - a. It is agreed that Pearl Community One Developers Pvt. Ltd., Shall hand over the constructed Villa C- 09 within 15

Done
22/03/19

months of signing this agreement and is subject to variation on account of force majeure or acts of God or Government orders/ Restriction/ Controls or any strike including transport strike and other reasons which are beyond the control of the developer.

- b. In the event of not handing over the property within the stipulated time to the client, as per the clause above, Pearl Community One Developers Pvt. Ltd., hereby agree to pay an amount of INR 25,000 per month and till the date of handing over the property on the condition that all subsequent/ further payments during the period of construction are made on time without any delay by the client to the developer as per the payment schedule which will be mentioned in the sale agreement to be subsequent signed.
- c. In the event of yourself desiring to assign his/her rights under this booking receipt to any third party, you may do so with the prior permission of pearl community one developer Pvt. Ltd., in writing after paying the due transfer fees of INR 300 per sqft to pearl community one developers Pvt. Ltd.,

5. Based upon the same, the complainant has filed this complaint stating that he is in need of this amount since the developer has failed to comply with the undertaking. I would say that the complainant has been able to give the sufficient documentary evidence to his case. It is also said by the complainant that he is also ready to pay compensation when he spoke on 15 August 2018. Therefore, the developer has to return the amount since the complainant is entitled for relief for refund of his amount.

6. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 04/12/2018.

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As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the Complainant was present on 26/12/2018 but the parties have appeared on 18/01/2019 and as such there is a little delay. With this observation I proceed to pass the order.

ORDER

The complaint no. CMP/181204/0001714 is allowed

- a. The directing the developer to return full amount of Rs. 49,75,000/- along with interest @10.75% commencing from September 2017 till realization of full amount.
- b. The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
- c. Further the developer is directed to pay Rs. 5000/- as cost of the petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 22/03/2019)

(K.PALAKSHAPPA)

Adjudicating Officer