

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/190114/0001867

PRESIDED BY: Sri K.PALAKSHAPPA

Adjudicating Officer

Date: 23rd APRIL 2019

Complainant : Asoka Kumar M. Menon99
H-205, Raheja Residency, 3rd Block,
Koramangla, Bengaluru- 560034

AND

Opponent : LGCL United Towers
LGCL Urban Homes (India)LLP
No. 12/1, Rest House Road,
Bengaluru - 560027.

J U D G E M E N T

1. The complainant Mr. Asoka Kumar M Menon99 has filed this complaint under Section 31 of RERA Act against the project "LGCL United Towers" developed by LGCL Urban Homes (India)LLP bearing Complaint no. CMP/190114/0001867. The facts of the complaint is as follows:

"WE HAVE SIGNED THE REGISTREED PURCHASED AGREEMENT DATE:28-11-2017 PAYING AGREED INITIAL PAYMENT OF RS.87,00,000/- AT THE TIMES OF COMSTRUCTION WORK WAS IN PROGRAESS BUT STOPPED ALL CONTRUCTION WORK WITHOUT INFORMING ME FROM 1ST APRIL 2018 AND WORK NOT YET RESUMED TILL DATE AND BUILDER NOT ANSWERING THE REASON FOR IT AND LATELY INFORMED BY TELEPHONE THAT ARE UNDER PREPARATION OF NEW AGREEMENT TO SIGN WHICH IS NO ACCEPTABLE TO ME

Relief Sought from RERA : REFUND OF ALL ADVANCE WITH INTERST AS APPLICABLE"

2. In pursuance of the notice issued by this authority on 13/02/2019 parties were present. Again on 7/3/2019 the case was called and on that day I have heard the parties.
3. The complainant has sought for refund of his advance amount with interest. One Mallesh has appeared along with authority letter and filed his objection. According to him the complainant has entered into agreement on 28/11/2017 with respect to apartment bearing No. 201. The delivery date was mentioned as 30/06/2020. It is his case that the complainant was expected to make payment of Rs. 1,31,18,675/- including the cost of apartment and other incidental charges. The complainant also says that he had paid only Rs. 82,00,000/- on various dates and still he is due of Rs. 44,18,675/-.
4. According to the developer including grace period still he is having time to complete the project i.e. by the end of 2020. But now the complainant is seeking refund of the amount means it is nothing but cancellation of agreement. In this regard the developer has contended in

"Para 12: Further clause 3.3.3 of the construction agreement dated 28/11/2017 defines the process of cancellation from the customer.

"if the customer desires to cancel/terminate this agreement, the customer shall notify the developer his/her/their/its intent to terminate in writing with acknowledgement and this Agreement along with the Agreement of sale which is executed on the same date as this Agreement shall also stand terminated. Upon such cancellation/termination of this Agreement by the customer, the sum equivalent to 20% of the contract amount will be forfeited by the developer and adjusted towards liquidated damages. The amount received towards statutory payments namely VAT, Service Tax etc., by the developer from the customer till the date of such termination will be non refundable and will not be paid to the customer under this clause."

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Para 13: Further the complainant had approached this Hon'ble Authority for refund of all advance with interest as applicable"

5. Based upon the same the representative of the developer submits that he is going to deduct the amount as per the agreement. Per contra it is the case of the complainant that the developer has failed to give the information regarding the development of the project. He also says that till the day he lodged the complaint to RERA the developer has not restarted the work.
6. The respondent developer has submitted in his written statement with respect to collection of amount and forfeiture to the effect that the total consideration of Rs. 1,20,16,230/-excluding the incidental charges. The incidental charge of Rs. 11,02,445/- and therefore, it comes totally to Rs. 1,31,18,675/-. It is the case of the developer that the complainant has paid only Rs. 87,00,000/- and due of Rs. 44,18,675/-. By reading the plea of complainant and defence taken by the developer, it reveals that the complainant alleges that the developer failed to complete the project and therefore refund may be ordered. Whereas the developer says that the complainant is due and he has failed to pay complete instalment. It is also his case that the complaint is pre-mature because he has given the date of completion as 30/06/2020. He further says that even before the deadline if the complainant wants to go out of the project with the date mentioned in the agreement then there would be some force in forfeiting the amount. Therefore the question of forfeiture does not arise. The plea of argument that the complaint is pre-mature holds no water. The complainant has given the reasons for withdrawal which is as follows:

"the builder of LGCL UNITED TOWERS stopped all on-going project work and withdrawn all of their Men and construction materials and equipments cleared from site from 1st April, 2018 till I forwarded my complaint to RERA i.e., in the second week of January, 2019 (enclosed copy of site photographs taken by me for the proof) without informing me either in writing or by any other means and till date

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they never bothered to provide any explanation for stopping all ongoing site work from 1st April, 2018 for my various emails and calls. Finally just before my complaint to RERA, on 11th January, 2019 the CRM of LGCL, Mr. Willfred sent me a SMS informing "sir my legal team is preparing a reply and I will revert" but that reply I never received showing their inability to provide any valid explanation. Due to my frustration only I forwarded my complaint to RERA asking to refund my entire advance paid for booking my flat A-201 in LGCL UNITED TOWERS being a very big amount and thereby cancellation of sale agreement. The builder LGCL has not followed RERA regulation being the project is registered under RERA No. PRM/KA/RERA/1251/446/PR/171015/000244 and LGCL has not followed the builder's responsibility by withholding construction work without informing the client and clearing all MEN and MATERIALS from site for longer period. So there was no alternative other than complaining to RERA for refund of entire my booking advance paid., since the builder is not responding to any of my enquires regarding withdrawing construction activities. So their contention of withholding 20% of contract amount can not be justified and it is not at all acceptable to me being the builder is defaulter.

In order to confirm that my intention was not cancellation of purchase agreement, I am still ready to retain my booked flat once I receive all my claimed dues and fresh agreement to be prepared as per their special offers appeared in TIMES OF INDIA dated 1st and 2nd June, 2018 for 10% booking advance and balance payable at the time of handing over the flat based on the REVISED PRICE @5999/- sq ft. For the saleable area and extra only to be paid for registration and stamp duty. This offer is confirmed to me by Mr. Vijay of LGCL sales staff when I contacted him on 4th June 2018. If LGCL agree they can prepare a sales agreement as per their special offer once they pay my present full settlement and before signing the fresh sales agreement I will pay 10% of booking advance for flat No. A-201 in LGCL UNITED TOWERS based on the flat saleable area 1963 sq. Ft., of Rs. 11,77,603/- in agreement with RERA"

7. In view of the above reason, the complaint is to be considered. By looking into the stand taken by the developer it is clear that the complainant has filed this complaint seeking refund of the amount is not correct. But by analysing the case of the parties it goes to show that the developer has committed grave error and instigated the complainant to seek this kind of relief. Why I am saying like this point because the developer has read the clauses for termination and forfeiture of the advance amount but he failed to answer to the allegations made by the complainant that the developer has stopped the construction work abruptly and failed to give information about the same to the consumers including the complainant. He also seriously alleged that the developer has resumed the work only when the complainant caused notice about his complaint. As per section 19 (2) it is the duty of the developer to give Information about the stage of progress of his project. In case for any reason developer has stopped the construction work then also it should be brought to the notice of the consumer because the consumer has invested the money. As per section 19 the developer has to give compensation for the delay caused in developing the project.
8. The complainant has given reason in his complaint that the developer cannot forfeit 20% of the amount because he has failed to complete the project by engaging the men and materials. He also made clear that he is not intended to go out of the project and he's ready to retain the same in case the developer is agreeing to the advertisement given by him in the month of June 2018. The complainant is seeking refund of his amount because the developer has abruptly stopped the construction work. Further the developer has given an advertisement which is more beneficial than the advertisement given to the complainant and therefore the complainant want to take the benefit and to continue with the project. But the same has not been properly answered by the developer. When that being the case the prayer made by the complainant to go out of the project has to be honoured.

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9. But however as per the agreement the time has not yet completed but the complainant want to go out of the project for the above said reasons and therefore I would say that the developer may be directed to refund the amount within 30 days from the date of this order by not allowing the developer to forfeit the 20% of the amount which will meet the ends of justice.

10. 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 presented on 14/01/2019. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 13/02/2019. Hence, there is no delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

1. The Complaint No. CMP/190114/0001867 is allowed. The developer is directed to refund the amount of Rs. 87,00,000/- within 30 days from today. If not, it will carry interest at the rate of 10.75% from the 31st day till the realisation of entire amount.

2. Further the developer is directed to pay Rs. 5,000/- as cost of petition.

Intimate the parties regarding this order.
(Typed as per dictation Corrected, Verified and pronounced on 23/04/2019)

(K.PALAKSHAPPA)
Adjudicating Officer