

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/181105/0001611

Presided by Shri K Palakshappa
Adjudicating Officer

Date: 24th MAY 2019

Complainant : PS Jambulingam, G C Shankari
 No. 407, A Block,
 Sri Sai Sumukh Apartments,
 1st Main, 6th Cross, Shivu Badavane ,
 Mariyappana Palya
 Bengaluru - 560056.

AND

Respondent : Shriram Sameeksha,
 Shriram Properties
 40/43, 8th Main, 4th Cross,
 Sadashiva Nagar,
 Bengaluru -560080.

J U D G E M E N T

1. PS Jambulingam and G C Shankari under complaint no. CMP/181105/0001611 has filed this complaint under Section 31 of RERA Act against the project "Shriram Sameeksha" developed by Shriram Properties as the complainant is the consumer in the said project. The facts of the case is as follows:

"Dear Sir, At the fag end of my service, my life time savings amount of Rs. 17,89,315/- was invested in the project & entered into agreement with the Builder on 24.01.2014, for the Flat to be constructed bearing the

Done
24.05.19

Flat No. 02-07-4 with the hope that the project would have been delivered on or before March 2016, but this did not materialize. 2) I have retired from the service on 31.01.2014 & living in a rented house by paying a monthly rent of Rs.13,000/- per month. Had the Flat been ready for Occupation within the agreed date, I would have moved in, that would have saved the rent payable every month. 3) As the Developer could not deliver the flat in time as promised, I had no option but to stay in a rented house. I have to manage my family within the Pension Amount which is not sufficient to meet the Additional Expenditure towards Rent. Since I do not have a Son, I have no other source of income except pension. Moreover as I am a Senior Citizen having completed more than 4 years of my retired life, may not be in a position to raise Loan from any Bank/ Financial Institutions, hence I am withdrawing from the Project. Under these circumstances mentioned above, I humbly request your good selves to get me the justice as under: (i) Full refund of Investment made with interest as applicable, (ii) Compensation towards the loss on account of Monthly Rent, (iii) Compensation towards meeting the additional expenditure for visiting the Project Site frequently with mental agony.

Relief Sought from RERA: Refund of Investment with Interest"

2. The complainant has given his complaint against the respondent/Developer. The project was rejected by this authority and later it was approved. After approval notice has been issued to parties.

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The complainant was present when the case was called on 27/02/2019 but the Developer was not present. On 19/3/2019 one Naveen kumar was present before this Authority on behalf of the Developer. Later Sri Hegde Prakash R advocate filed vakalath on behalf of developer. Naveen kumar who was representing developer has already filed objection and heard the argument.

The point that arisen for my consideration is,

4. Whether the complainant is entitled for refund of his amount with interest or not?
5. My answer is affirmatively for the following:

REASONS

6. The Complainant case is that he has entered into agreement with developer on 24/1/2014 wherein the developer has agreed to complete the Project on or before March 2016 with 6 months grace period means on or before September 2016. The Developer has to complete the Project within the given time but according Complainant he has already paid 45% of total amount in the year 2015 itself. Though there was obligation on the part of Developer to complete Project on or before September 2016 but he has issued demand notice which is fault on the part of the developer. At the time of argument it was submitted that if the complainant asked for refund of the amount, then 20% of amount will be deducted as per clause 1.4 of the agreement. In turn it is submitted that if the instalment is not paid by the complainant then the developer could have terminated the agreement itself. This kind of submission has been made on the ground that the complainant is not entitled to demand for refund of his amount. The counsel appearing for developer submitted that because of the non-payment of instalment he also sustained loss.

Deva
24/05/19

According to him the authority has to give relief to developer also in case the developer is going to sustain loss due to non-payment of instalments by the complainant regularly. The Authority is expected to balance the case of the parties.

7. It is the submission of the complainant that the agreement executed by developer is one sided because he will impose 18% interest in case of delay in making payment. Whereas he will pay the Compensation at the rate of Rs. 5/- per Sq.ft of super built up area which is meagre. When the complainant has failed to make instalment the developer could have terminated the Project but he will not do because as per clause 1.4 of the agreement in case of termination offer is made by complainant then the developer could be able to deduct 20% of total amount as liquidated damages. By going through the case taken by parties it reveals that the both of them are making allegations with each other. In the objection statement filed by complainant on 10/04/2019 he admits that as per Clause 5.1 the completion date was March 2017 including the grace period but it is not correct to say so because it should be September 2016 including the grace period. As the developer has failed to deliver the unit within time, the complainant is the senior citizen residing in the rental house could not able to sustain the financial burden. The developer has given some grounds for delay wherein he says as per Clause 6.2 of the agreement the delay cannot be attributed against the developer. I would like to say that as per Sec. 18 it is the duty of the developer to give compensation to consumer who is withdrawing his claim from the project. According to the complainant the developer ought to have refunded the amount on or before 29/10/2018 itself but the developer has made the complainant to approach this Authority. The developer has failed to honour the date fixed as in the agreement. Again, he failed to honour the request made by complainant through letter dated 29/10/2018. Even during the course of trial he did not say when exactly he is going to complete the project.

D. Sene
24/6/19

The counsel for the developer read the letter dated 29/10/2018 and submitted that as per the contents of this letter reveals that the default is on part of the complainant. But his argument holds no water because the agreement was entered into in the year 2014 and the complaint filed in the year 2018. The Developer has given the completion date to this authority is on or before March 2019.

8. The learned counsel for the developer has strongly argued that the complaint is not entitled for refund since 30 days prior notice has not been issued. Further he submits that if he demands for refund of the amount then he has to go to civil court.
9. 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 agreement and 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 empowers the complainant to approach this Authority. Section 18 says that in case of delay in delivering the possession of the flat, plot or building as the case may be the complainant is entitled for the compensation in case he wanted to go with the project. Further Section 17 prescribes regarding execution deed of conveyance. Section 19 determines the rights and Liabilities of the developer as well as the consumer.
10. Therefore as per 79 of the Act, the Civil Court has no jurisdiction over the issues and hence, submission made by the developer regarding jurisdiction has no force. The parties shall not approach the Civil Court since this Act covers everything. As per S.18 it is the wish of the complainant either to continue with the project or go away from the project. From the above discussions the dispute raised by the complainant is within the jurisdiction of the Adjudication Officer. Hence, the developer has no proper defence.

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11. The counsel for the developer also has said that this authority can grant the relief only in case of violation any provision of law of RERA. If not, no question of grant of relief. But his argument has no force for the reasons I have already given as above.
12. Now I am coming to refund of the amount where in it is said that 20% of the total amount will be deducted in case he wants to terminate the agreement. But it is clear that the developer has enjoyed the benefit of money collected from the complainant from 28/11/2013. When that being the case question of forfeiture as per clause 1.4 of Agreement does not arise. Hence, the complaint is to be allowed.
13. 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 05/11/2018. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the parties were present on 19/03/2019 and now there is little delay in completing the project. Hence, I proceed to pass the following.

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24/03/19

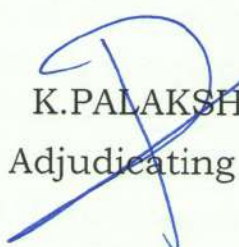
ORDER

The Complaint filed by the complainant bearing No. CMP/181105/0001611 is allowed.

1. Directing the developer to pay Rs. 17,89,315/- with interest at 9%p.a on the respective amount paid on the respective dates till 30/04/2017 and the rate of 10.75%p.a till the recovery of entire amount.
2. Further the developer shall also pay Rs. 5000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 24/05/2019).


K.PALAKSHAPPA
Adjudicating Officer