

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190611/0003274

Dated: 10th of October 2019

Complainant : K.P. Srinivas,
740, 9th Cross, 5th Main,
M.C. Layout, Vijayanagar,
Bengaluru 560040.
Rep. by Dinesh Mahale Advocate.

AND

Opponent : Purvankara Limited,
Purva Sunflower,
#130/1, Ulsoor Road,
Bengaluru - 560042.
Rep. by Kumari Sonali Advocate.

J U D G M E N T

1. This Complaint is filed by the Complainant against the Developer seeking for the relief of refund of the amount. The facts of the complaint is as follows:

K P Srinivas (Complainant Buyer) signed sale and construction agreements with Puravankara Limited, formerly Puravankara Projects Limited (Respondent Promoter) on 18/09/2014 for unit no.SFA-1102 in their Purva Sunflower project. As per the agreements, the project was supposed to be handed over in 3 years (with 6 months grace period) from the date of commencement certificate issuance. At that time, Complainant Buyer was kept in the dark about the fact that commencement certificate was not issued yet, even though structure was already constructed up to 1st slab. Eventually, commencement certificate was issued on 22/01/2015. Even taking into

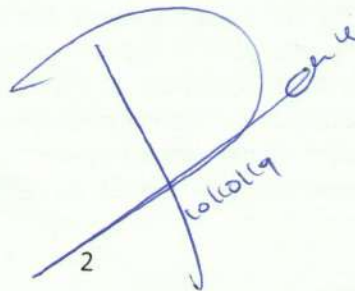
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account the date of commencement certificate, Respondent Promoter ought to have delivered possession of the apartment by January 2018 by providing all amenities and facilities in the project. No communication was sent by Respondent Promoter for extending the deadline beyond January 2018. And, even after 6 months grace period (21/07/2018), Respondent Promoter was not in a position to deliver possession of the apartment. Complainant Buyer has promptly paid instalments of Rs.1,49,41,562/- as per the agreement. But, Respondent Promoter has grossly failed to complete the project and handover possession of the apartment within stipulated time. Complainant Buyer checked the status by phone and then, send e-mail dated 21/07/2018 to enquire date of registration and handing over of the apartment. In e-mail response, Respondent Promoter only stated that the apartment will be open for inspection in mid-September (without mentioning the year) and with no mention about dates of registration and possession. Feeling hopeless, having failed to secure the apartment in the project within the due date and even thereafter, Complainant Buyer, by his letter dated 04/08/2018, cancelled both the agreements and finally withdrew from the project and sought refund of entire amount of Rs.1,49,41,562/- paid in instalments, along with interest and compensation.

Relief Sought from RERA : Refund of Buyer's investment with interest

2. After registration of the case notice has been issued to the Respondent. The Complainant has appeared through his Counsel Sri. Dinesh Mahalae. The Developer has appeared through his Counsel Kumari Sonali. The Complainant has sought for refund of his amount paid to the Developer.
3. Heard the arguments.
4. The point that arisen for my consideration was:
Is the complainant entitled for the relief as sought in his complaint?

My answer is affirmative in part for the following;


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REASONS

5. The execution of the Agreement and amount paid by the Complainant are not in dispute. As per the Agreement the Developer had to complete the project on or before January 2019 but he did not complete the project. The complainant has produced the mail exchanges dated 21/07/2018 where it is written as under:

We are in receipt of your mail. With reference to the trial mail we regret towards the inconvenience caused to you, we would like to apologies for the same with reference to the handover date after RERA coming into force we would like to confirm you that the Purva Sunflower project comes under RERA and as per the RERA the Project completion date was June 2018 which has passed by. We request you to please grant us some time to revert back with the new dates. However the company would open blocks for inspection in the mid of September followed by registrations.

With reference to the site visit request you to please let us know your convenient timing we shall check with the technical team and based on their approval shall schedule the same.

6. Similarly several letters have been exchanged. The mail dated 03/08/2018 discloses that the Complainant has sought for cancellation of the booking for which the Developer has said that his request was forwarded to take further action. Surprisingly the subsequent mails give a different picture. The mail dated 12/09/2018 which reads as under:

Below are excerpts from four of your mails since my withdrawal dated 04/08/2018 saying that 'you will respond shortly', and instead, you have now sent me inspection notice. You are a public limited company now, for God's sake. Its time you

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start functioning like one and protect your reputation.

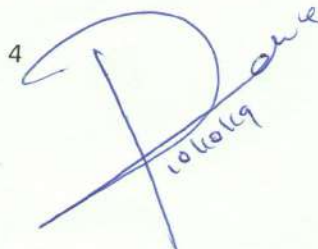
7. It means though the cancellation of booking was made in the month of August 2018, the developer called for inspection in the month of September 2018. Again in the month of November 2018 the developer has sent a mail which reads as under:

This email is with reference to the subject. We would like to inform you that your apartment is ready for inspection hence we request you to let us know your availability to schedule your apartment inspection.

Registration can be processed once the apartment is signed off. Kindly find the availability registration dates are 22nd and 28th in November 2018 on which registrations can be scheduled towards your apartment. Please do choose the date and confirm back to us 15-20 days prior, this will enable us to proceed with necessary preparation for registration.

8. At the time of argument Kumari Sonali Advocate submits that there was dispute with regard to road and now it is also clear. The developer has received the Occupancy Certificate on 26/02/2018. Therefore the refund claim made by the Complainant cannot be entertained. I find some force in the argument because Complainant has sought for cancellation of booking in the month of August 2018 it was subsequent to receipt of Occupancy Certificate. It means as per Section 19(10) of the Act the developer as well as the complainant are having the obligation to give the possession within 2 months from the date of receipt of Occupancy Certificate.
9. Similarly as per section 17 Conveyance Deed has to be executed by the developer within the prescribed time after obtaining the Occupancy Certificate. Therefore the claim made by the complainant for refund cannot be accepted.

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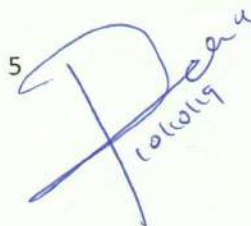
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10. Generally the Authority will not get jurisdiction when once the Occupancy Certificate is received. But the developer was expected to comply Section 17 read with Section 19(10) in case there is no compliance of the same then the developer is liable to pay compensation. Though the developer has received the Occupancy Certificate in the month of February 2018 but he sent mail to the Complainant calling him for inspection only in the month of November 2018. It means even though he has obtained the Occupancy Certificate in the month of February 2018 he had not called for inspection which means his project was not completed as on the date of his Occupancy Certificate. Therefore for this reason the Complainant wants to go out of the project but it is not correct. In view of the same I hold that the Complainant has to take the possession and the developer is liable to pay the delay Compensation. In support of the same I would like to refer to different authority decisions on this point.

Haryana Real Estate Regulatory Authority in
CMP No. 326/2018 dated 27/11/2018 Mr.
Ashok Jaipuria v. M/S Ireo private limited:

Keeping in view the present status of the project and intervening circumstances, awarding of refund of the paid amount to the complainant with the termination of agreement dated 26.10.2012 at this belated stage would not serve the ends of justice and this will also hamper the very purpose of completion of project and interest of existing allottees who wishes to continue with the project.

As such complainant is entitled for delayed possession charges @ 10.75% p.a. as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016 till actual handing over the offer of possession failing which

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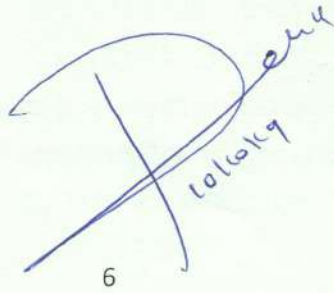
the complainant is entitled to withdraw from the project.

Complaint No. 743/2018 Puneet Dhar & Billa Dhar v. M/s Supertech Ltd.

The complainants are demanding refund of the entire amount paid till date but keeping in view the current status of the project and the revised date as per the RERA registration certificate, giving refund at this time will hamper the interest of other allottees in the project. So, the complainants are not allowed to get refund and they will get interest for delay @ 10.75% p.a. from the due date of possession till the possession is actually delivered.

Complaint No. 63/2018 Pramod Kumar Agarwal v. S.S. Group Pvt. Ltd.,

However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint at this stage of the project, it will adversely affect the rights of other allottees who wish to continue with the project. However, the complainant will be entitled to a prescribed rate of interest till the date of handing over of possession.

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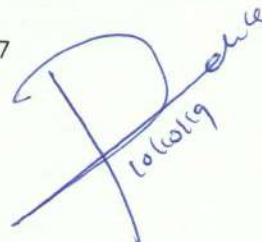
Complaint No. 145/2018 Smt. Pushpa Gupta v.
M/s. VSR Infratech Pvt. Ltd.,

Thus the authority, exercising powers vested in it under Section 37 of the Haryana Real (Regulation & Development) Act, 2016 hereby issue directions to the respondent to promoter is directed to pay interest at the prescribed rate of 10.75% per annum for every month of delay. Promoter is allowed to adjust amount if due against the allottee and shall be allowed to charge interest at the same rate of 10.75%. calculation sheet be shared with the allottee within 7 days. Allottee has alleged that necessary information was not shared by the respondent accordingly promoter is directed to share necessary information with the allottee concerning the unit allotted to her so that she may not be kept in dark.

Complaint No. PKL451/2018, Manoj Suneja v.
TDI Infrastructure Pvt. Ltd,

Keeping in view the conduct of the respondents, they will not be entitled to the benefit as ordered by the undersigned in Complaint Case No. 49 of 2018- Parkash Chand Arohi Vs Pivotal Infrastructure Pvt. Ltd.

The request of the complainant for refund of money cannot be accepted for the reason that the respondents have developed the colony and have obtained a part competition certificate and have offered the possession to the complaints. When the possession is offered, the complainant cannot be


10/6/2019

allowed refund but they shall be entitled to compensation for the period of delay.

Maharashtra Real Estate Regulatory
Authority Mumbai in CMP No.
CC00600000004479 Bhuvneshwar Pathak v.
Sanvo Resorts Pvt. Ltd.

Simple present tense used in the starting line of section 18 clearly indicates that the provision shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given, as the case may be, the said provision ceases to operate.

11. At the time of argument it is submitted on behalf of the developer that the complainant is demanding for refund without inspecting the site and as such there is no truth in his allegations. Per contra the complainant submits that it is his choice to go out of the project since the developer has not completed the project within the time. Further says that if the agreement is not permitting him to go out of the project then it is one sided agreement. He also says that he had sent a mail on 04/08/2018 expressing his intention to quit for which the developer never sent reply. Of course the same is may be accepted in case the developer has not at all received the Occupancy Certificate. By the time the complainant sent the mail for cancellation there is already OC in the hands of developer. But for the reasons best known to him the developer has invited the complainant for inspection only in the month of November 2018. It further means though the OC was received the project was not completed in all sense. However as on the date of cancellation there was already OC and as such the prayer for cancellation of agreement does not arise. I have already given the citations.

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12. For the above said reasons the Complaint is allowed partly by awarding delay compensation. I hereby reject the claim of the complainant for refund but awarded the delay compensation from the date of OC till the 3rd of November 2018. As per section 19(6) of the Act, it is the responsibility of the consumer to pay the amount due to the developer and as per section 19(10) the developer shall execute the sale deed after obtaining the OC. In view of the same the developer has executed the sale deed in the month of November 2018 and as such he is bound to pay the delay compensation till 3rd of November 2018.
13. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 11/06/2019. In this case the parties have appeared on 02/07/2019. As such there is some delay in completing the complaint. Hence, I proceed to pass the following;

ORDER

The Complaint No. CMP/190611/0003274 is partly allowed.

- a. The developer is hereby directed to pay the delay compensation on the principal amount paid on the Sale Deed in the form of interest @ 2% p.a. above the SBI marginal lending rate of interest on home loan commencing from 26/02/2018 till 3/11/2018.
- b. Further the developer shall pay Rs. 5000/- as cost of this petition.
- c. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 10/10/2019)

(K.Palakshappa)
Adjudicating Officer

CMP-3274

13.08.2022

Before the Lok-Adalath

The execution proceedings in the above case taken up before the Lok-Adalat. The email dated: 10.08.2022 forwarded by the complainant in the case is hereby accepted and the said email shall be part and partial of the award. Hence, the execution proceedings in the above case stands disposed off as settled and closed in the Lok Adalat.


Judicial Conciliator.


Advocate Conciliator.



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp. No: 3274

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K. P. Srinivas

Purva Sunflower

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CMP- 3274

11.08.2022

As per the request of the complainant, the execution proceedings in the above case is taken-up for disposal in the National Lok Adalat to be held on 13.08.2022.

The complainant through email dated: 10.08.2022 has reported that matter has been settled between the parties and complainant has taken possession of the apartment. Therefore in view of the said email the execution proceedings in the above case have been closed as settled between the parties. The matter is referred to Lok-Adalat to be held on 13.08.2022 for award.


Judicial Conciliator.


Advocate Conciliator.

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

DATED: 13TH DAY OF AUGUST 2022

: CONCILIATORS PRESENT:

Sri.I.F. Bidari

..... Judicial Conciliator

AND

Smt. Preethi N

..... Advocate conciliator

CMP/190611/0003274

Between

Mr. K P Srinivas
(In Person)

..... Complainant/s

AND

M/S Puravankara Ltd

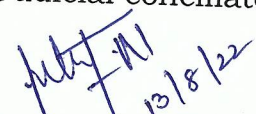
.....Respondent/s

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having settled the matter, as per email dated:10.08.2022 forwarded by the complainant and same is taken on record during the pre lok Adalat sitting on dated:11.08.2022

The execution proceeding in the above case taken up before the Lok-Adalat. The email dated:10.08.2022 forwarded by the complainant in the case is hereby accepted and the execution proceedings in the above case have been closed as settled between the parties. The email shall be part and partial of the award.


Judicial conciliator


Advocate conciliator