

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/190711/0003523

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Date: 13th November 2019

Complainant : Yusuf Shabbir Ghadiyali &
Mrs. Tasneem Yusuf Ghadiyali
G-2 Taheri Apartment, 32 Church
road, marol Andheri
Mumbai-400059
Rep. by Smt. Sharada Advocate

AND

Opponent : Omar Sheriff,
Skylark Mansions Pvt. Ltd.,
No. 37/21, Yellappa Chetty Layout,
Ulsoor road, Bengaluru, Karnataka-
560042
Rep. by Kumari Lubna Advocate

J U D G E M E N T

1. Yusuf Shabbir Ghadiyali & Mrs. Tasneem Yusuf Ghadiyali being the complainants under complaint no. CMP/190711/0003523 have filed this complaint under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansions Pvt. Ltd., as the complainants are the consumers in the said project. Their complaint is as follows:

The applicant herein has booked a flat to be constructed on the part and parcel of the lands situated at kodigehalli village and kurudu sonenahalli village, flat bearing no. T-13-703, Apartment in tower no T-13,-703, in the project named as ? Skylark Ithaca?, which is situated at part and parcel of the lands situated at, kodigehalli village and kurudu sonenahalli village, Bangalore east taluk, Bangalore dist. Bangalore, Bangalore dist. Bangalore (ii) The complainant has entered into a Agreement for Sale dated 17.03..2016 with the respondent in respect of the afore mentioned flat for a total sale consideration amount of Rs.46,78,133/- The complainant states that while entering into the Agreement for sale and Construction agreement, there was another agreement called- ?Exit Option- Memorandum of Understanding? was also entered in between the parties by an agreement dated 17.03.2016. As per the said Exit option Agreement if the buyer does not want to Continue for any reason, he can opt out with an Exit Option with in a period of 30 months from the date of booking the flat, wherein the buyer was promised to refund the sale consideration amount and discharge of loan availed by the complainant and as an Opportunity cost of Rs.4,64,665/- shall be paid by the respondent. The complainant herein has opted for the Exit option asking for the refund of sale consideration amount, discharge him of the loan availed by the bank and pay the opportunity cost. The complainant has also sent an Email and hard copy letter of intimation and is trying to contact the respondent in this regard for Exit Option but the complainant has not even got any reply for the email nor any communications were possible, because of no response from the respondent for the complainant's request. The complainant has paid amount to purchase the schedule flat by taking a bank loan. The bank has sanctioned bank loan for the same in the name of complainant and the complainant is paying an EMI towards the bank loan in respect of the purchase of the schedule property. As per the Agreement between the complainant and the respondent, complainant has agreed to make the reimbursement of the EMI paid to the bank to the account of complainant and the respondent has failed to keep his promise, made to complainant. (vi) The respondent has failed to make reimbursement of the EMI as promised under the agreement and the construction being not even taken up even after the payment of 90% of sale consideration amount after a lapse of three years, as per the terms of agreement the apartment ought to have been handed over by march 219, but there is no signal of any construction in the project and the complainant has lost the hope of getting Possession any where sooner. The complainant having invested his hard earned money with the respondent is suffering by the default committed by the respondent. Thus the respondent has committed default in reimbursement of the EMI till the possession of the flat.

Relief Sought from RERA :PRE EMI & refund, compliance exit option agreement

1. When the case was called the complainant was present through his advocate Smt. Sharadha and the developer was represented by Kumari Lubna, Advocate. I have heard the arguments after the developer has filed his objections.

[Handwritten signature]
13/11/19

2. The point that arisen for my consideration was:
Is the complainant entitled for compensation in the form of Opportunity cost ?
If so what is the order?
My answer is affirmative for the following

REASONS

3. 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”

4. The developer has field the 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 19 and he has no power beyond the scope of these Sections. 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 construction. 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

P. Deek
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section 18 of RERA Act empowers the complainant to approach this Authority.

5. 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.

6. Further as per 79 of the Act, the Civil Court has no jurisdiction over the issues and 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.

7. The complainant is seeking benefit under the scheme which is called as Exit Option and the same was executed on 17/03/2016. According to clause the complainant shall avail this benefit within 30 months. It means on or before 17/08/2018 he ought to have exercise his willingness to take this option.

8. In this regard the complainant has got issued notice dated 06/03/2018 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 honor 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.

Done
13/06/19

9. 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 1/07/2019 where the parties have appeared on 29/08/2019. Hence, there is some delay in closing this complaint. With this observation I proceed to pass following order.

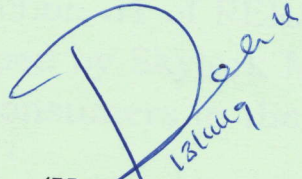
ORDER

The complaint no. CMP/190711/0003523 is allowed

- a. The developer is directed to return amount of Rs.6,13,166/- to the complainant along with interest @ 2% + MCLR from today till the realisation of the amount.
- b. The developer shall pay Rs.4,64,665/- as opportunity cost after the end of 36 months.
- c. The developer is also directed to discharge loan amount along with all the EMI and interest, if any attached to the said loan amount.
- d. Further the developer shall pay Rs. 5000/- as cost.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 13/11/2019)


(K. Palakshappa)
Adjudicating Officer