

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/190530/0002684

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Date: 6th December 2019

Complainant : Sweety Gupta
Sweety Gupta c/o Akash Deep Gupta
Ward No.5, near Railway Station
Bamhani Banjar
Madhya Pradesh-481771
Rep. by Sri B.G.Vasanth Kumar, Advocate

AND

Opponent : MANTRI WEBCITY 2A
Mantri Developers PVT. LTD,
No.41 Mantri House, Vittal Mallya Road,
Bengaluru - 560001.
Rep. by Sri Veersh R.Budihal, Advocate

J U D G E M E N T

1. Sweety Gupta has filed this complaint under Section 31 of RERA Act against the project "MANTRI WEBCITY 2A" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no. CMP/190530/0002684. She has filed this complaint for refund of her amount with compensation. The facts of the complaint is as follows:

I have invested in Mantri Webcity2A, Flat #G-1806 Tower No. G on dated 13.09.2015 under the scheme MOU for the assured return & Pre-EMI Proposal. As per MOU Mantri developers Private Limited (MDPL) must bear the Pre-EMI till September-2018 & on expressing buyback on the property, MDPL must transfer the amount invested/ paid by the unit owner along

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with 100% premium to account of investor/unit owner on or before end of 36 months from the date of booking (i.e. Sept-2018). As per the MOU, MDPL has failed to pay Pre-EMIs (more than 21 months are pending) & final buyback settlement amount even though the final date of payment has already passed (i.e. Sept-2018). In spite of regular email / phone calls & follow-ups, MDPL is not giving any assurance / commitment on the settlement. Also, MDPL delayed construction of flat and not confirming delivery date, as per the actual schedule it should be completed by Sept-2018. I sincerely request RERA authority to take our case forward at the earliest, as I am going through huge financial crisis.

Relief Sought from RERA: Refund for amount due with compensation.

2. In pursuance of the notice issued by the authority, the parties have put in appearance through their respective advocate. The complaint has filed this complaint for refund of the amount. The same was strongly opposed by the other side.
3. Heard Arguments.
4. The point that arise for my consideration is
 - a) Whether the complainant is entitled for Refund Under the scheme as prayed in the compliant?
 - b) My answer to the same is affirmatively for the following

REASONS

5. Advocate representing the complainant submits that as per section 18, the allottee to whom the developer has failed to deliver the possession of the flat, plot or building as the case may be as agreed to deliver or failed to complete the project then only the consumer could claim the relief.

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6. Per Contra it is the argument on the side of the developer that Section 18 cannot be invoked to seek this kind of relief. He also read Section 12 & 71 before me and submits that there is no violation of either Section 12 or 14. When that being the case the complainant cannot file this complaint before the Adjudicating Officer. He also submits that the claim made by the complainant is out of jurisdiction of this authority. It is the case of the complainant that she had entered into buyback scheme. But the developer has denied the same and gave his explanation as under:

- It is submitted that as per the scheme, the complainant would avail a Home Loan from Punjab National Bank and the amount disbursed by the bank to the complainant, would be paid to the respondent, in order to cause to be constructed, the allotted apartment unit, booked in the name of the complainant by the respondent. Thereafter, the Pre-EMIs would be paid by the Appellant to the complainant, on a monthly basis, as per the terms and conditions of the Scheme. An investor coming under the Assured Returns & Pre EMI/ Buy-back Scheme could avail of one of two options:
 1. Retain the Apartment Unit and receive Pre-EMI's along with interest if any from the developer, as per the terms of the scheme in lieu of the loan taken from the bank, and take possession of the apartment unit, booked in the name of said investor, upon completion of the project. Or
 2. Assured return of 2x amount on the own contribution made by the investor at the time of booking/ allotment of the Apartment Unit by the developer and handing over possession of the apartment unit back to the developer.
- Further, as per the terms and conditions of the scheme, inter alia, the investor would be required to give 6 months prior notice to the respondent/developer before the Scheme end date, if she wished to return the apartment unit in favour of the developer, in order for the developer to buy back the said apartment unit. In the event of failure of the investor to

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notify the developer, as mentioned above, it was agreed between the parties that it would be deemed that the investor had willingly retained the apartment unit. i.e., she has foregone the buyback option. It was specifically agreed between the complainant and respondent herein that once the complainant had agreed to retain the apartment, the buy-back scheme would not be applicable.

7. The parties have entered into agreement on 13/9/2015. It was agreed to complete the project in the month of September 2018. The complainant has given the letter to the developer by obtaining the buy back scheme on 27/11/2017. Instead of honouring the same the developer has dragged till this day and submitted that he is not entitled for buyback scheme. The scheme was introduced by the developer alone as per the terms of the agreement. The complainant has issued the notice 6 months earlier to the due date. Now he cannot take different view. These are all not denied by the developer but only at the time of filing the objection taken a different view. In this regard he submitted as under:

It is submitted that the complainant submitted 6 months prior letter/notice opting for buyback and therefore he is not eligible for the protection afforded under the Act, in as much as, the complainant is covered under the Pre-EMI/Buy-back scheme, and being an investor under the said scheme, the complainant is only concerned with the recovery of money and does not have any claim in relation to the construction, its qualities or any other ground as contemplated under RERA Act, 2016; and under these circumstances, this Hon'ble Authority cannot exercise its jurisdiction to adjudicate the complaint, as required under section 71 of the Act.

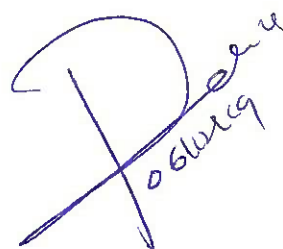
It is humbly submitted that the Buy-Back Scheme or the Pre-EMI scheme entered between the complainant and the respondent is a contract in itself, where the rights and obligations of the parties are involved. Such being the case, the issue raised by the complainant has to be looked into by competent civil court having the jurisdiction. Hence, on this ground alone the complaint deserves to be dismissed since this Hon'ble Authority does not have jurisdiction to entertain this complaint. The complainant is seeking specific performance of an understanding/contract where under complainant is the seller and respondent is the buyer, under these circumstances the complainant cannot invoke the provisions of RERA and hence RERA has no jurisdiction. The RERA Act, 2016 does not contemplate the adjudication of obligations when the builder is a buyer, which is the circumstance in this case.

The said contention of the respondent has been amplified by the fact that the complainant has not claimed any right under the terms of any other contract namely, agreement for sale of undivided interest or agreement for construction but has only maintained her claim under the Pre-EMI/Buy-Back scheme. Thus, the pre-EMI/Buy-back scheme being an absolute contract between the parties, independent of agreement for sale of undivided share of interest or agreement for construction, the rights and the liabilities flow only from the said scheme and hence, the said Buy Back scheme denudes the complainant of any right to approach the adjudicatory mechanism provided under the RERA Act, 2016 for the reasons mentioned supra.

8. Of course the developer has submitted that the complainant is not entitled for the relief because complainant is not a consumer but he is an investor. Further it is his submission that he is not an allottee and therefore provisions of Section 18 are not applicable to him. He also says that in order to have the benefit of scheme he had to issue 6 month prior notice to the developer in order to opt the same.

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9. I would say that in order to attract the customer, the developer uses a number of ways by giving advertisement. In the same way the present case stands by attracting the scheme released by the developer for which the complainant has entered in to agreement with the developer. By reading the clauses of the agreement all the terms and conditions are giving the status of complainant as purchaser and respondent as developer. The document called as TERMS AND CONDITIONS wherein the developer has said the complainant has been allotted flat No. G-1806 in tower No. G in the project Mantri Web city.
10. The above word "Allotted" itself clearly proves the relationship of Developer and Customer and indirectly proves the case of the complainant. In view of the same I have no any hesitation to say that the argument of the developer has no force. The developer cannot blow hot and cold at the same time. In view of the above discussion his objection losses its importance.
11. From the above averments it is clear that the developer also admitting the scheme launched by him. But at the time of arguments the developer has submitted that the complainant is not entitled for the relief because complainant is not a consumer but he is an investor. Further it is his submission that he is not an allottee and therefore provisions of Section 18 are not applicable to him. He also says that in order to have the benefit of scheme he had to issue 6 month prior notice to the developer in order to opt the same.
12. It is also the stand of the developer that the claim made by the complainant will not cover either S. 12 or 14 or 18 and 19 of the Act and as such his complaint be rejected. The learned counsel for the complainant has strongly opposed the same. The counsel for the complainant submits that he is not an investor but he is an allottee.


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19. 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 is filed on 30/05/2019. In this case the complainant and the developer were present on 28/06/2019 and hence, the complaint is being disposed of with some delay. Hence, I proceed to pass the following:

ORDER

- a. The complaint No. CMP/190530/0002684 is allowed in part.
- b. The developer is hereby directed to pay Rs. 6,98,528/- together interest @2% above the SBI marginal rate of interest on its home loan as on today commencing from TODAY.
- c. The developer is also directed to pay 2x amounts of Rs. 6,98,528/- to the complainant.
- d. The developer is hereby directed to discharge the home loan raised by the complainant towards the purchase of flat no. G-1806 involved in this case along with EMI and interest and any incidental charges, if any.
- e. The developer is also directed to pay Rs. 5000/- as cost.
- f. The complainant is hereby directed to execute the cancellation of agreement of sale after the realisation of entire amount.

Intimate the parties regarding the Order.

(Typed as per Dictates, Verified, Corrected and Pronounced on
06/12/2019)

(K.Palakshappa)
Adjudicating Officer

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