

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K PALAKSHAPPA

Adjudicating Officer

Date: 19th FEBRUARY 2020

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|----------------------|--|
| Complaint No. | CMP/190709/0003519 |
| Complainant | Punniyakoti Balakrishnn & Gandhimathy Punniyakoti, 12, 1 st Street, 1 st Block Prakruthi Township, Babusapalya, Kalyanagar post, Bangalore-560043 Rep.by Sri Prakynth Shetty K. Advocate |
| Opponent | Vivansaa Infratech #88, Renuka Nilay, 1st Floor 17 th Cross, 14 th Main, Sector-4, HSR Layout, Bangalore-560102. Rep.by Sri Akshay L, Advocate |

“J U D G E M E N T”

1. Punniyakoti Balakrishnan and Gandhimathy Punniyakoti, Complainants filed this complaint bearing complaint no. CMP/190709/0003519 under Section 31 of RERA Act against the project “Vivansaa Blessings” developed by “The Vivansaa Infratech” for the relief of delay compensation jointly. The facts of the same reads as under:

I, Punniyakoti Balakrishnan and my wife Gandhimathy Punniyakoti are both Complainants in the said matter and here after referred as ?we? . We entered into an agreement to sell cum construct with Vivansaa Infratech on 12th April 2016. Vivansaa Infratech is Partnership Firm and its represented by one of its Partners


19/02/2020

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Vijay Omprakesh Agarwal and . As per the agreement to sell cum construction dated 12/04/2016 with Vivansaa Infratech i.e Builder/ Developer had agreed to construct a flat and handover the possession by the end of October 2018 even with a grace period of six months from the above mentioned date of delivery is April 2019 the builder has failed to construct: infact the builder has merely constructed . As per the agreement to sell cum construct the Builder/ Developer had to construct a residential apartment on property bearing No Sy No 83/8 (old survey No 83/3) and in sy No 83/9 (old No 83/3) situated at S Medahalli village, sarjapura Hobli, Anekal Taluk, Bengaluru Urban District. As per the above mentioned agreement the builder had to construct a flat bearing No 309, at 'A' wing with a super built up area of 1771sqft at third floor and the said project is called as 'Vivansaa Blessings'. As per the above mentioned agreement sale consideration for the said flat is Rs 46,25,729/- (Rupees forty six lakhs twenty five thousand seven hundred and twenty nine only) and additional amount of Rs 10,46,406/- (Rupees ten lakhs forty six thousand four hundred and six) totally amounting to Rs 56,72,137/- (fifty six lakhs seventy two thousand one hundred and thirty seven) as per Annexure AA of the agreement to sell cum construction agreement. We have paid Rs 5,00,000/- (Rupees five lakhs) via cheque bearing number 00015 from Kotak Mahindra Bank dated 19/11/2015 and Rs 101 (Rupees One hundred and one only) via NEFT reference number 29925515 and further paid Rs 1,54,702/- (Rupees one lakh fifty four thousand seven hundred and two) via NEFT reference number 29956675; totally amounting to Rs 6,54,803/- (Rupees six lakhs fifty four thousand eight hundred and three) to the builder at the time of entering into the above said agreement dated 12/04/2016. I, Punniyakotti Balakrishnan, hereafter referred as the 1st Complainant, have availed a loan from Indiabulls Housing Finance Limited amounting to Rs 45,37,000/- (Rupees forty five lakhs thirty seven thousand only) and started paying pre emi's to Indiabulls Housing Finance Limited and as on today I have paid totally paid Rs 4,56,118/- (Rupees four lakhs fifty six thousand one hundred and eighteen) as pre-emi's. The builder has not constructed, except those pillars. The status of the said project is at the same stage as on today as was then, at the time of booking a flat in the above said project. The 1st Complainant have received a mail from the developer on 30/01/2019 which mentions that 'cancelling of Apartment in Blessing', after the cancellation of the apartment through an email correspondence the builder has failed to return the money which I have paid. The 1st complainant states that, the cancelling of our flat was done by the builder himself as he had failed to construct, the email correspondence is herewith attached as Document:2 series. We further state that, we have paid Rs 11,10,921/- (Rupees eleven lakhs ten thousand nine hundred and twenty one only) totally till date for the said project. We are undergoing tremendous


19/6/20

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stress as the project has stopped and in spite of the builder cancelling the apartment, we have not received any money till date. We have met the builder multiple times and raised our concerns but the builder has given only false promises. We are highly stressed and want our money back.

Relief Sought from RERA : The project is abandoned by builder - Compensation

2. In pursuance of the notice issued by this authority, complainants have appeared through their advocate Sri Prakyath Shetty K and respondent also appeared through his advocate Sri Akshay. The counsel for the developer has filed objection statement.

3. I have heard arguments on both sides and posted for judgment.

4. The points that arise for consideration are:

- Whether the complainant is entitled for the relief as prayed in the complaint?
- If so, what is the order?

5. My answer to the above point is in the affirmative for the following

REASONS

6. At the time of the argument, the complainant has brought to my notice that they have entered into agreement of sale with the developer on 12/04/2016 with respect to flat bearing No.309 and developer has agreed to complete the project on or before October 2018 with six months grace period, it means it comes to April 2019. The respondent has filed his objection statement stating that the complainant himself has cancelled the booking. In this regard, he has drawn my attention to the e-mail sent by the developer to the complainant dated 19/11/2019, which reads as under:

[Handwritten signature]
19/02/2020

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Dear Punniyakotti,

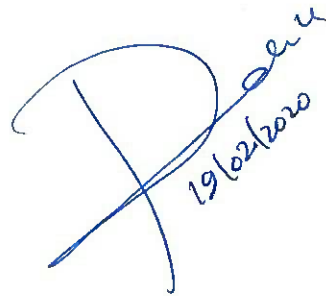
As discussed couple time over the phone, we have agreed and accepted your cancellation request. I believe the reason of cancelling is delay in project possession and since we are unable to allot you the unit in Baalsam in same existing price which is fair enough. We would go ahead and start marketing your unit and try to resell the same. Since market is not supportive at the moment, it will definitely take time to find the suitable buyer and dispose of the same. Thus, we need at least 4 to 6 months time to give you complete exit from the apartment and repay your money and close the home loan.

Even if the same unit is not sold, we would be we will be arranging the fund to give you time once this grace period is over. Till then, we assure that we would pay PEMi directly to India bulls on your instruction or into your account time to time to relieve you from monthly payment burden.

7. By this way, it is the case of the developer that the complainant is not entitled for the relief as sought in the complaint. On perusal of the papers, it is learnt that the complainants have taken the sale deeds from the hands of the developer on 12/04/2016. It is also their case that they have availed loan of Rs.45,37,000/- from India bulls Housing Finance Limited. But it is the case of the complainants that first complainant had received mail from the developer on 30/01/2019 stating that his apartment has been cancelled. It is the case of the complainants that their but money has not been repaid by the developer.

Done
15/02/2020

8. It is their case that they have paid Rs.11,10,920/- and the same has to be returned. I would say that if the developer has cancelled the apartment it was his duty to return the same to the complainant. As per section 19(4) of the Act mandates the developer to give compensation even though the project is abandoned. When that being the case the stand taken by the developer holds no water.
9. 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. The said 60 days to be computed from the date of appearance of the parties. This complaint was filed on 09/07/2019. In this case the parties were present on 27/08/2019. After hearing arguments of the parties, the matter came up for judgment and as such there is some delay in closing this complaint. With this observation, I proceed to pass the following.


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ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190709/0003519 is hereby allowed.
- b. The developer is hereby directed to return an amount of Rs.11,10,921/- together with simple interest @ 9% on the respective amount paid on the respective dates till 30/04/2017 and @ 2% above MCLR of SBI commencing from 01/05/2017 till realisation of the entire amount.
- c. The developer shall also pay Rs.5,000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 19/02/2020).


(K. Palakshappa)
Adjudicating Officer