

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: 11th FEBRUARY 2020

Complaint No.	CMP/190801/0003795
Complainant :	ANKUSH JOSHI Flat No.404, Padmalaya Residency, 2 nd Main, 2 nd Stage, Vittalnagar Bengaluru-560078
Opponent :	G.MURLI SRINIVASAN SLN Plaza, #953, 2 nd Floor, 21 st Main, 15 th Cross, Banashankari 2 nd Stage, Bengaluru- 560070 Rep.by Sri N.K.Dilip, Advocate

“J U D G E M E N T”

ANKUSH JOSHI, Complainant has filed complaint bearing complaint no.CMP/190801/0003795 under Section 31 of RERA Act against the project ‘Unicon North Brooks 46’ developed by “Unicon Shelters Pvt. Ltd.,” as the complainant is the consumer in the said project for closing loan and return advance amount. The complaint is as follows:

1. We came to know about the ?Unicon North brook? project located at Veerasagara village, New yelhanka town, North Bangalore through newspaper advertisements and ?M/s.Squareyards?. I booked one units (Flat) ie; A-102 for total consideration of 5,452,315. 2. Thereafter we entered into three agreements with Unicon shelters pvt Ltd ie; a) ?Agreement to sell? b) ?Construction

[Handwritten signature]
11/02/2020

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Agreement? c) ?Buy back agreement? 3. As per the scheme of the builder the we have to communicate their option to exit within 30 months from the date of date of commencement with grace period of 6 months and the builder has promised to give 100% returns on the initial advance amount paid and also close the loan. We booked and entered into an agreement on 16th August, 2016. 4. Loan account No. RHHLBAN000041294 held with Reliance home finance had total disbursed amount is 3,812,501 (Thirty eight lakhs , twelve thousand, five hundred and one) 5. I have paid an advance booking amount of Rs. 5,45,231 to Unicon shelters pvt Ltd 6. Unicon has stopped paying the Pre EMIs to the bank Reliance home finance for last 3 months and there is an overdue of 107,144 to be paid to the bank over and above the outstanding loan amount.

Relief Sought from RERA :Monetary compensation per Construction Agreement

2. In pursuance of the notice issued by this authority, the complainant appeared in person whereas the developer appeared though his advocate Sri N. K. Dilip. I have heard arguments and the matter was posted for judgment on merits.

3. The points that arise for consideration is as to:

Whether the complainant is entitled for refund of amount as prayed?

4. My answer is affirmative for the following

REASONS

5. The complainant has entered into agreement with the developer on 16.08.2016 and the complainant had paid Rs.5,45,232/- on 14.06.2016 and booked the flat bearing No.A102. However, it is the case of the complainant that he has also entered into buy-back agreement where there is a provision to the complainant to exit from the project within 30 months had communicating anything to

exit. It is also submitted by the complainant in case he opted for exit, then the developer has to return 100% initial amount by closing membership. The developer has admitted that the complainant has paid Rs.34,64,424/-. Of course, it is the case of the developer that the complainant is still due a sum of Rs.19,96,651/-. It is the case of the developer that he has constructed 60% of the project, he has applied for occupancy certificate in the due course. At the time of the argument, it was brought to my notice that, the developer has filed suit before Civil court for Specific performance of the Contract. In this regard, he has pleaded in his objection statement that he is ready and always ready to execute sale deed. Why I am referring this point because, at the time of the argument, he submits that he has filed suit for Specific performance of Contract and as such he submits that complaint may be allowed for refund of the amount.

6. I would say that, stand taken by the developer has no force at all, because as per Sec.90 of the Act, no suit is maintainable so far as the dispute of this nature. As per 18 of the Act, the complainant is entitled either for refund of the amount or delay compensation, when the developer has failed to complete the project within due date. It is the choice of the complainant either to continue with the project or to go away out of the project. As per 18 a right is accrued to the complainant and hence he cannot be prevented from taking the relief under this act by filing a suit for Specific performance of agreement by the developer. In case, the complainant wants to go out of the project; when there is default on the part of the developer, the question of forcing the complainant to go along with the project is not correct. Therefore, the submission made at the bar on behalf of the developer has no force at all. Therefore, the arguments

Devi
11/02/2020

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submitted on behalf of the developer that the complainant has not paid instalments and he should not be non-suited because by virtue of the suit filed by the developer has no force at all.

7. Admittedly, the agreement was executed on 16/08/2016. The developer has agreed to complete the project, but according to the complainant he has also executed buy back agreement on 16/08/2016. The complainant has produced the e-mail letter dated 23/08/2018 where he has expressed his intention to go out of the project. It means as per the condition imposed in the buyback agreement dated 16/08/2016, the complainant is entitled for initial amount of Rs.5,45,232/- and also 2X amount of the same. In this regard, the learned counsel for the complainant has drawn my attention to Clause 11 of the buyback agreement, which reads as under:

It is hereby agreed by the parties that the purchase, within the time frame of 30 months from date of booking or 6 months before possession whichever is earlier, shall exercise his option to offer the unit to the developer in writing. In such a case the developer shall arrange for buyback of the said apartment within the period of 180 days of the said notice. The developer will also:

- a. *Refund to the purchaser the initial booking amount of 10% of the total property value of Rs.5,45,232/- (Rupees five lakhs forty five thousand two hundred and thirty two only) paid by the purchaser at the time of booking.*
- b. *Close the loan taken by the purchaser with the bank by paying back the loan amount received from the bank/financial institution plus any foreclosure charges , if any.*

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c. *Pay to the purchaser the assured return of 10% of the total property value Rs.5,45,232/- Rupees five lakhs forty five thousand two hundred and thirty two only).The payment would be made after deduction of applicable taxes.*

8. Further in order to exercise the buyback scheme benefit the complainant had to exercise by exercising his desire to use that benefit. Accordingly, the complainant has issued e-mail notice dated 23/08/2018 it is well within 30 months and thereby the developer has to give relief as agreed in the buyback scheme agreement.
9. At the time of argument, the learned counsel for the developer has submitted that the present complaint itself is not maintainable in view of the suit filed by him. I would say that Sec.18 of the RERA Act, prevails over any other law since it is a special act which deals with agreement in between consumer and developer. As per 18 whatever agreement held between the parties, the question of dismissal of this complaint does not arise. Moreover as per S.19 of the Act there is an obligation on the part of the developer to give physical possession of the unit after taking the occupancy certificate. As per S.19(6) he can demand for payment which is due towards sale agreement. But there is no provision to the developer to force the complainant to take the sale deed by filing a suit. The stand taken by the developer that in view of his suit, the present complaint has to be thrown out has no force at all. Hence, the complaint has to be allowed.

Devi
11/6/2018

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10. 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. In this case the parties appeared on 24/09/2019 and case is being disposed off on today is with little delay. With this observation, I pass the following

ORDER

- The Complaint filed by the complainant bearing No.CMP/190301/0003795 is hereby
- The developer is hereby directed to refund amount of Rs. 5,45,312/-
- The developer is hereby directed to pay interest @ @ 2% above the MCLR of SBI on the above amount commencing from today till the date of realization of the entire amount.
- The developer is directed to pay 2x amount of Rs.5,45,312/-to the complainant.
- The developer is hereby directed to discharge bank loan with its interest, EMI if any, EMI if paid by the complainant and any other statutory charges.
- The complainant is hereby directed to execute cancellation of agreement of sale after realization of the entire amount.
- The developer is hereby directed to pay Rs.5,000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 11/02/2020).

K. PALAKSHAPPA
Adjudicating Officer