

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

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K.PALAKSHAPPA
Adjudicating Officer
Date: 5th February 2020

<u>Complaint No.</u>	<u>CMP/191025/0004566</u>
Complainant	Ankush Joshi Flat 404, Padmalaya residency, 2 nd main, 2 nd stage, vital nagar Bengaluru Karnataka-560111
Opponent :	Ithaca Estate Private Limited Skylark Mansions Pvt. Ltd., No. 37/21, Yellappa Shetty Layout, Ulsoor road, Bengaluru-560042

J U D G E M E N T

1. Ankush Joshi, complainant under complaint no. CMP/191025/0004566 has filed this complaint under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansions Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

The complainants Mrs. Swathi Joshi & Mr. Ankush Joshi humbly submits as follows; 1. The complainants had raised a RERA complaint No.CMP/180509/0000819 however the builder Ms

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ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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Skylark Ithaca forced to withdraw the case and also demanded the next disbursement of loan as condition to clear the pending EMIs. We raised another case CMP/180908/0001247 for complete exit from the project and loan closure with refund, however, the case was withdrawn by the lawyer to continue with 819 case. Now the last case 3798 was withdrawn as per the RERA court since it is premature to raise it before the expiry of the delivery date of the unit. Hence this complaint. I am requesting for refund of my advance amount and closure of loan. I was not given my exit agreement to avail opportunity cost. As per the construction agreement, page 16, section 6.1, it is mentioned ?property will be delivered by 31/03/2019, with grace period of 6 months.? It is already more than that period and even 1% construction has not started and is plain ground. I would like to seek exit on this ground. Construction agreement and site picture attached.

Relief Sought from RERA : Close loan, refund advance amt and pre emis paid.

2. When the case was called the complainant was present. The developer was represented by Kumari Lubna, Advocate, who has filed objections.
3. I have heard the arguments on both sides. The complainant is seeking for the amount repayment.
4. The point that arisen for my consideration is:
Whether the complainant is entitled for Refund of
the amount paid by him?
5. My answer is affirmative for the following;

REASONS

6. The developer has taken two kinds of defence. It is said that the Complainant is not entitled for the relief because he has not paid the payments regularly.
7. Secondly he submits that as per Section 72 of the Act 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 this section . further it is the case of the developer the prayer made by the complainant is n the nature of enforcement of agreement specifically in terms of the

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construction therefore it is the case of the developer that the complainant shall approached the civil court but I am not going to accept his argument because section 18 of the RERA Act enforced the complainant to approached this Authority. By giving 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 convinces. Section 19 determines the rights and Liabilities of developer as well as consumer.

8. Therefore as per 79 of the Act, the civil court has no jurisdiction over the issues 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 the wish of the complainant either to continue with the project or go away from the project. From the above discussion the dispute raise by the complainant is within the jurisdiction of the Adjudication Officer.
9. In view of the same now the point is clear that the Complainant is seeking refund of the amount since the developer has failed to honour the previous verdict of the Authority. Further the developer has pleaded regarding financial difficulty. The developer was expected to complete the project on or before 2019 including the grace period. The objection statement filed by the developer does not say any thing about the completion of the project. It is not the case of the developer that he has applied for grant of O.C. it means there is no chance of completing the project in nearer time. Moreover the complainant has file this case for closer of his account since the complainant had already filed 2 complaints before this authority. Hence, I find no good reason in dismissing the complaint.

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10. 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. The said 60 days to be computed from the date of appearance of the parties. In this case the complaint was filed on 25/10/2019. In the present case, the parties have appeared on 05/11/2019 and parties taken some time to file objections and rejoinder. Hence, the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

ORDER

The complaint No. CMP/191025/0004566 is hereby allowed.

- a. The developer is hereby directed to pay Rs.9,90,000/- with interest @ 9% p.a. on the respective amount paid on the respective date of prior to 30/04/2017 and @ 2% above the SBI marginal lending rate of interest on home loans till the amount is realized.
- b. The developer is also directed to discharge the loan, with its interest, EMI if paid by the Complainant, EMI if any due and any other incidental charges.
- c. The developer shall pay Rs. 5,000/- as cost of this petition.
- d. The Complainant is hereby directed to execute Cancellation of Agreement of Sale after the entire amount is realized.
- e. Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 05/02/2020)

(K.Palakshappa)
Adjudicating Officer