

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

K.PALAKSHAPPA Adjudicating Officer

Date: 6th March 2020

Complaint No.	CMP/190927/0004186
Complainant	Rohit Ramesh Bhondve D402/203, Ivy Botanica, Ivy Estate Road, Wagholi Pune-412207 Rep. By Sri M.Mohan Kumar Advocate.
Opponent	Ithaca Estate Private Limited No. 37/21, Yellappa Chetty Layout, Ulsoor Road, Sivanchetti Garden, Bengaluru - 560042 Rep. By Kumari Lubna Advocate.

J U D G E M E N T

1. Rohit Ramesh Bhondve , complainant under complaint no. CMP/190927/0004186 has filed this complaint under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Ithaca Estate Pvt. Ltd., as the complainant is the consumer in the said project. His complaint reads as follows:

I Rohit Ramesh Bhondve along with my wife Smt. Priyanka Sinha booked our flat in SKYLARK ITHACA Project in the year 16.11.2013 and entered into agreement to sell and Construction Agreement in the year 2014, for the flat bearing No.T2-602 for a total consideration of Rs.31,31,531/- including all taxes and amenities charges. Out of the said Sale Consideration we have paid a sum of Rs.6,44,473/- as myself contribution and balance of Rs.21,22,216/- was arranged by the Respondents by way of SBI Bank loan. As such I state that I have totally paid a sum of Rs.27,66,689/- to Respondents. As per my sale agreement and Construction agreement with Respondents, completion date is 31.03.2017. I state that the builder has committed a breach of trust and defaulted in completion of the Project. I state that since the

P. Palakshappa
06/03/2020

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Respondents failed to complete the project on time and deliver possession of Apartment causing immense financial burden and hardship, which not only effected our health, mental peace causing mental, physical and financial harassment. I state that I am unable to claim any Income Tax benefits or earn out of our hard earned money paid to Respondents/Promoter. I state that due this my saving and earning on my saving has been completely wiped off, as such the Respondents is liable to make good for the said losses. I state that I am entitled to interest @12% per annum for delayed period for all our money paid to them which is Rs.27,66,689/- from the committed date of possession (i.e. 31.03.2017). I state that I was very badly treated by the Respondents whenever I visited their office causing immense mental pain and agony. I state that the Respondents has indulged in unfair trade practice and enriched themselves at our cost. I state that due to the delay in completion and handing over of the Apartment I am put into immense mental pain and agony as such entitled for compensation and damages. I request to file detailed claim statement and additional documents during the course of hearing. Hence for the brief facts mentioned above we are seeking for following Reliefs :- 1. Direct the Respondents to complete the construction at the earliest and handover the flat along with O.C. 2. Direct the Respondents to pay interest on Rs.27,66,689/- paid by me until possession from the date of possession of the apartment is given. 3. Direct the Respondents to pay a sum of Rs.15,000/- per month which we would have earned, had the possession of the Apartment being handed over to us as per the agreement. 4. Compensation for the Mental Agony and pain and Damages to an extent of Rs.3,00,000/-. 5. Loss of Income Tax benefits because of delay in construction. We are not able to take income tax benefit as construction delay is not allowing to start claiming EMI as per Income Tax Act and Rules. 6. GST input credit which needs to pass on to end customers due to GST implementations. Respondent will be entitled to take input credits which need to be transferred to the end customers. 7. Compensation for unfair Trade practice to an Extent of Rs.2,00,000/-. 8. Cost of litigation and expense to an Extent of Rs.50,000/-. Based on the above I request you to please register a new RERA complaint against Respondents and help me with a favourable judgement.

Relief Sought from RERA : Handing Apt delayed compensation & as prayed above

*Devi
06/03/2020*

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2. The complainant was present when the case was called and his advocate Sri Mohan Kumar has filed vakalath. The developer is represented by his advocate Kumari Lubna. The developer has filed objections.
3. I have heard the arguments on both sides.
4. The point that arise for my consideration whether the complainant is entitled for the Delay Compensation ?
5. My answer is affirmatively for the following

REASONS

6. The complainant is seeking delay compensation for the delay caused by the developer in completing the project. According to him the developer has agreed to complete the project on or before September 2017 including the grace period. But the developer has failed to do so. Therefore, he has filed this complaint alleging that the developer has violated the Section 18 of the Act. Against the same the developer has filed his objection statement wherein he has contended as –

It is submitted that the respondent is in the process of completion of the construction of the apartment. It is pertinent to submit that time was of the essence of the agreement for sale and construction agreement and the complainant had to make the payments as per the dates agreed under the said agreements. It is submitted that the respondent sent various demand notices to the complainant requesting for payments which were overdue. However, the complainant failed to honour the terms of the agreement for sale and construction agreement and has defaulted making the payments.

It is submitted that the complainant made a devious plan to avoid making balance payments and approached the Hon'ble Real Estate Regulatory Authority by filing the present complaint for reliefs base on false and baseless allegations

Devi
06/03/2020

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against the respondent. The said complaint has been filed with a mala fide intention of harassing and defaming the respondent and with the sole intention of making illegal monetary gains at the cost of the respondent.

7. The developer has taken 2 folds of defence. Firstly the complainant has not made the payment regularly. Secondly the developer is going to complete the project by the end of December 2019. It means everything is admitted including the delay in completing the project. For payment of instalment is concerned the developer can recover as per the agreement. So for as completion date is concerned he said that his project will be completed by the end of December 2019 means it is against to the promise made in agreement of sale. Therefore his argument holds no water because the complainant is certainly entitled for delay compensation as there is a failure on the part of the developer to complete the task. The developer is expected to complete the project on or before September 2017 including the grace period. Hence, the complainant is entitled for delay compensation from October 2017 till the possession is delivered.

8. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 27/09/2019. As per SOP 60 days shall be computed from the date of appearance of the parties. In the present case, the parties have appeared on 22/11/2019. Hence the complaint is being disposed of with little delay. With this observation I proceed to pass following order.

*Per
08/12/2019*

ORDER

The complaint no. CMP/190927/0004186 allowed by directing the developer to pay delay compensation in the form of simple interest @2% above the MCLR of SBI commencing from October 2017 on the amount paid by him towards purchase of flat in question till possession is delivered after obtaining the occupancy certificate.

The developer is also liable to pay cost of Rs.5,000/- to the complainant.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 06/03/2020)


K.PALAKSHAPPA
(Adjudicating officer)

