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BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190824/0003998

Dated: 19th December 2019

Complainant : Deepika E
#186, Panchamukhi, 18th cross, 7th C main
3rd Block, 4th Stage, Basaveshwaranagar
Bengaluru -560079

AND


Opponent : 1. Srinivas Duggi Venkata Rao
Yellapa Garden, Yellapa Chetty layout,
Sinvanchetti Gardens
Bengaluru-560001.

2. M/s Allam Infinite India Pvt. Ltd.
G.M Preal, #06, BTM Layout,
1st stage, 1st phase
Bengaluru-560068
Rep. by Kumari Lubna Advocate

J U D G M E N T

1. Deepika E has filed this complaint under Section 31 of RERA Act against the project "GM AMBITIOUS ENCLAVE" developed by M/s Allam Infinite India Pvt. Ltd. bearing Complaint no. CMP/190824/0003998. The facts of the complaint is as follows:

On the 4th November 2018, we made an booking amount of NEFT Rs.10,000/- for the GM Ambitious Enclave apartment number bearing A2-05-16. On 24th November, 2018 partial amount payment of 3,05,000 /- was paid against with the cheque number bearing 000126 dated 29th November 2018. Due to our

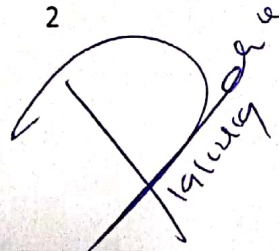


financial constraints where I would be no longer working because of my marriage and also mother's medical condition, we are not able to meet the loan and payments any further for the property purchase. Hence, we have reached out the property personnel for the cancellation and return of total amount of Rs.3,15,000 /- (Three lakh fifteen thousand rupees only) but we have not received any positive responses from their respective personnels. We request RERA to help us in receiving back the total amount paid against the property at the earliest. We have attached all the relevant documents pertaining to the receipts and payments against the above property. It would be of immense help. Thank you for the support in advance. Best Regards, Deepika E
Relief Sought from RERA :Total refund of payment

2. In pursuance of the summons issued by this authority the complainant has appeared and the developer has appeared through his counsel and filed his objections.
3. I have heard the arguments.
4. The point that arise for my consideration is as to
 - a. Whether the complainant proves that he is entitled for the relief as prayed in the complainant?
5. My answer is affirmative in part for the following

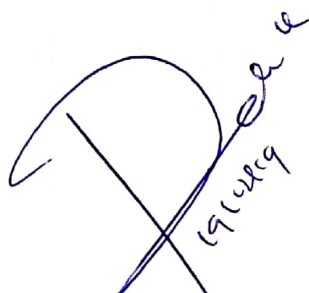
REASONS

6. The complainant has filed this complaint against the Respondent praying for the relief of refund of his amount of Rs.3,15,000/- paid to the developer in the month of November 2018 towards purchase of flat bearing no. A2-05-16. But the developer has failed to complete the project. Further the complainant has demanded to return the amount due to her financial constrains. The developer has filed objection statement stating that the complainant herself has withdrawn the booking and therefore she is not entitled for any interest. Further it is also the case of the developer that the Adjudicating Officer is having the jurisdiction 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 that the prayer made by the complainant is in the nature of enforcement of agreement specifically in terms of the construction agreement. Therefore it is the case of the developer that the complainant shall approach the Civil Court. But I'm not going to accept his argument because Section 18 of the RERA Act empowers the complainant to approach this Authority. By going through Section 18 in case of delay in delivering the possession the complainant is entitled for compensation. Further Section 17 prescribes regarding execution deed of conveyance deed. Section 19 determines the rights and Liabilities of developer as well as consumer.

7. As per 79 of the Act, the Civil Court has no jurisdiction over the issues covered by RERA hence, the submission made by the developer regarding jurisdiction has no force. The parties shall not approach the civil court. 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 raised by the complainant is within the jurisdiction of the Adjudication Officer.
8. In view of the above position I would say that the complainant has paid the amount under an unregistered agreement of sale but now she is demanding for refund on her own reasons. It further means the complainant herself has terminated the booking and therefore the counsel for the developer submitted that the complainant may be directed to give some sort of amount.

A handwritten signature in blue ink, followed by the date '19/12/19' written vertically.

9. As per Clause 4.1 of the construction agreement it is said that the developer is entitled to forfeit the whole booking amount or 20% of the amount paid in case the termination is made by the complainant. Under this back ground the counsel for the developer submitted that the developer is ready to return the amount by deducting Rs. 75,000/- and ready to pay the Rs. 2,40,000/- after the sale of the flat. For which the complainant submits that a date may be fixed for payment of the amount but the developer failed to give any concrete date for repayment. Hence, the matter is posted for judgment on merits. In view of the same I say that the developer may be directed to pay the amount of Rs. 2,40,000/- within 30 days from the today. If not, it will carry the interest and as such I allow the complaint in part.

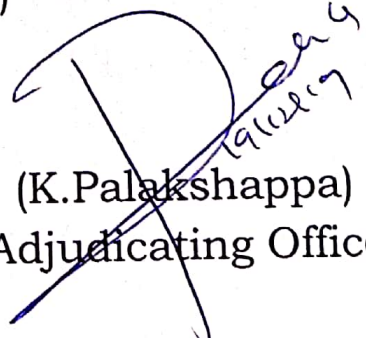
ORDER

The Complaint No. CMP/190824/0003998 is hereby is allowed in part.

1. The developer is directed to return Rs.2,40,000/- to the developer within 30 days from the today. If not it will carry interest at the rate of 2% above the MCLR of the SBI commencing from 31st day till the realization.

2. The developer is directed to pay Rs. 5,000/- as cost of this petition.

(Typed as per dictation Corrected, Verified and pronounced on 19/12/2019)


(K. Palakshappa)
Adjudicating Officer