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BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA
Adjudicating Officer

Complaint No. CMP/190416/0002587

Dated: 25th JUNE 2019

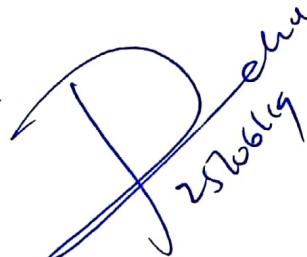
Complainant : K V Aiyappa
Varsha Apartment. Flat no 209,
Elamkulam
Kerala -682020

AND

Opponent : Air force station race course road
New Delhi -110003

J U D G E M E N T

1. K V Aiyappa has filed this complaint under Section 31 of RERA Act against the project "Jalavayu Towers Mysuru " developed by Airforce Navel Housing Board, bearing Complaint no. CMP/190416/0002587.
2. This complaint is filed by the complainant against the developer. The total cost of the unit was Rs. 39.5 lakhs but later it was revised to Rs. 58.10 lakhs. As per the agreement the developer was expected to complete the project by the end of March 2018. Now the date given by the developer to RERA is different as mentioned in the agreement. Further the developer has violated the terms of the agreement and therefore this complaint is filed for refund of the amount.

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The facts of the complaint is as follows:

I was allowed a DU in Jal Vayu towers on 14 Mar 13 vide AFNHB reg No. MYA0196. The project was diluted with out the consent of me and hence I had applied for withdrawal from the scheme on 30 Mar 18. The amount paid by me has still not been refunded. On 18 Feb 19, AFNHB had put up a web update asking for bank details of people who want to withdraw. I sent my bank details i.a.w the update. However, they have reverted back and now they have conveyed that refund will be given when the project is fully subscribed.

Relief Sought from RERA : Full refund with interest w.e.f 30 Mar 18

3. The respondent has appeared and filed his objections.
4. Heard the arguments.
5. The point arise for my consideration is ;
 - a. Whether the complainant is entitled for refund of the amount?
 - b. If so, what is an order?
6. My answer is affirmatively for the following

REASONS

According to the complainant the following reasons for going away from the project as stated in the complaint. By reading the above contentions it is clear that the developer has committed a grave error in transferring the 180 units to the contractor without taking the confidence of the allottees who have already on record. Now I have to see what is the stand taken by the developer against these allegations.

By reading the above contentions it is clear that the developer has committed a grave error in transferring the 180 units to the builder without taking the confidence of the allottees who have already on record.

On behalf of the developer it is submitted that the developer is doing the project only for the members of the Air Force. He also submits that this project is being developed on no profit & no loss on self financial housing scheme. Further the developer has taken specific contention in Para No. 7,

Since the scheme is self financed, any expenditure including compensation, if awarded has to be contributed by the allottees of the scheme as the respondent is working no profit no loss basis. Further when Respondent has no funds even to progress the project without instalments being paid so Respondent has no capacity to pay any compensations and in worst case additional financial burden may lead to total stoppage of work and auctioning of the project.

On behalf of the developer it is further submitted that :

Vide clause 19 of the allotment letter, it has been certified that, "due to unforeseen circumstances beyond the control of AFNHB, if the project gets delayed, on no interest/ compensations shall become payable". If the completion of the project get delay, no interest and/ or compensation shall become payable. The rules and regulations of local authority and other state authorities can at times become governing deterrents affecting the completion of project.

Further on behalf of the developer it is submitted that this project is based upon no profit no loss principle.

Shri. Biju representative of the developer further submitted that:

Mysore scheme was initially planned for 388 DUs and construction work started in 2015. Though the scheme was not fully subscribed, it was anticipated that during the progress of project more aspirants would join the scheme and scheme would get fully subscribed. Until all the planned DUs are subscribed by the aspirants and they pay the instalments. AFNHB cannot progress the entire project. When the completion of project reached 40% the subscription to the project remained only at

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49% which was not sufficient to generate funds to progress the project. Further after giving option of withdrawal in 2015 about 169 allottees for refund. The numbers of allottees were thus further reduced to 184 against 388 planned DUs by 16/12/2015. This made the financial condition of the project in bad shape and the contribution made by 184 allottees was insufficient to progress 388 DUs. As a last resort, the Board of Management approved dilution of scheme in June, 2015, however the scheme remained undersubscribed.

Having no other option in order to limit its financial burden respondent reduced the scope of work to be executed by contractor M/s GJS Infrastructure from 388 to 208 DUs with 17 vacancies existing at that point of time and remaining units to be developed separately. Reduction in scope of work was objected by the contractor M/s GJS constructions who raised dispute & invoked Arbitration. Though the Arbitrator was appointed by AFNHB but during the course of Arbitration proceeding various meeting were held with the contractor in order to amicably sort out the matter so that losses to AFNHB may be minimised.

Further the developer has given the reasons for transfer of some units as under :

Having no other option in order to limit its financial burden Respondent entered in to Supplementary Agreement (SA) with the contractor wherein the scope of work to be executed by Respondent was reduced from 388 to 208 DUs with 17 vacancies existing that the point of time and remaining units to be developed separately.

By reading the above paragraphs it is clear that the developer has developed this project according to their rules and regulations. But I would like to say that the stand taken by the developer does not hold well because RERA Act prevails over any regulations and principles. As per section 18 in case the consumer wants to go away from the project his amount should be refunded. I

would like to say that the contention taken by the Developer has no force. As per RERA Sec 18:

"in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act"

1. In view of the same the submission made by the Developer that the Complainant cannot go away from the project has no meaning. Any condition imposed by the developer in the agreement will not affecting the S. 18 of the RERA Act.

However the submission made on behalf of the developer that the project is being developed on the amount paid by the member is taken into consideration. Even though S.18 says that the authority has to give interest by way of compensation but because of the above said reasons I would say that the amount received from the allottee may be ordered to be returned.

2. Generally refund has to be awarded with interest as prescribed in Rule 16, prior to commencement of this Act. Karnataka Apartment Ownership Act 1972 was in force. According to Section 8 of the said Act interest @ of 9% has to be awarded. But in this case the whole concept of this project is depending upon the own contribution of the member. In this regard the developer has contended in his objection statement to the effect that 50% of the units have been given to the contractor to raise the fund. Further the developer has also taken stand in his objection statement which is as follows:

As already submitted that Respondent does not possesses any fund of its own and all its schemes are self financed. If the allottees do not pay their instalments on time progress of work be affected. It is submitted that respondent has always taken care of the interest/ requests of allottees and time to time postpone the instalment schedule whenever it could be done taking into consideration funds position. One of such web updates dated 26/4/2018 is annexed as Annexure-R8. But through its web updated 5/2/2019 (Annexure – R9)

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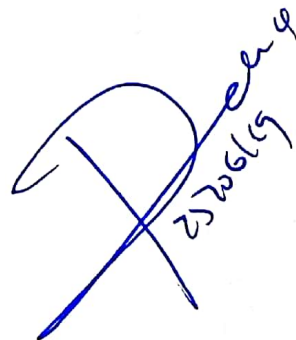
Respondent made it clear that since the project is near completion and funds would be required to expedite the same so further deferment of instalment is not feasible.

As mentioned in allotment letter Para 16 and Para 0703 of Chapter 7 of Master Brochure:

“No withdrawal is generally permitted, if a waitlist does not exist. However, even if the withdrawal is permitted under special circumstances, the amount shall be refunded only when a new allotted joins in and pay the due instalments. No interest shall be paid on such refunds on such refunds and cancellation charges as mentioned in Para 0702 above shall be deducted as per existing rules.”

This is the reason why the developer is opposing the claim made by the complainant. He has given reasons for transferring the 180 units to the builder to raise the fund to complete the project. But as per S.15 the developer cannot transfer the units without taking the consent of the buyers and also consent of this authority. However, the complainant wanted to go out of the project for the reason of delay as well as the selling of units to builder. This has to be honoured.

3. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. This complaint was presented on 16/04/2019. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 14/05/2019 and hence, there is no delay in closing this complaint. With this observation I proceed to pass following order.

A handwritten signature in blue ink, followed by the date '25/06/19' written vertically.

ORDER

The Complaint No. **CMP/190416/0002587** is allowed.

The developer is hereby directed to discharge the bank loan with interest, EMI and any other incidental charges and to get NOC.

The developer is also directed to return the amount of Rs. 10,29,353 received from the consumer within 60 days. If not, from 61st day it will carry Simple interest @10.75% P.A till the realization of entire amount.

Intimate the parties regarding the Order.

(Typed as per Dictates, Verified, Corrected and Pronounced on 25/06/2019)


(K.PALAKSHAPPA)

Adjudicating Officer