

**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**

**Presided by Sri K.PALAKSHAPPA**

**Adjudicating Officer**

**Complaint No. CMP/190810/0003856**

**Dated: 29<sup>th</sup> November 2019**

Complainant : Swarnim Srivastava  
112, Viceroy Splendor  
Apartment, 1<sup>st</sup> cross road  
Kasavanahalli, off Sarjapura Road  
Bangalore-560035

**AND**

Opponent : 1. Brigade Enterprises Limited  
2. Mr. Savanur.  
3. Mr. Syed  
29<sup>th</sup> & 30<sup>th</sup> floors, WTC  
Brigade Enterprises Limited  
Brigade Gateway Campus,  
26/1, Dr. Rajkumar Road,  
Malleswaram-Rajajinagar  
Bangaluru - 560055.

**J U D G E M E N T**

1. Mr. Swarnim Srivastava, has filed this complaint under Section 31 of RERA Act against the project "Serene at Brigade Cornerstone Utopia" developed by Mysore Projects Pvt. Ltd., bearing Complaint no. CMP/190810/0003856. The facts of the complaint is as follows:

*I have booked 2 BHK in Serene at Brigade Cornerstone Utopia on 17-JAN-2019 and paid Rs 200000. Builder has revised the GST rates in the month of MAY to 12% after central government reduced the GST rates for under construction projects to 5%. Also, builder has not communicated its buyers in written about GST percentage which they are planning to charge and upon enquiry saying Bangalore builder association has opted for 12% GST slab. They are following*

*29/11/19*

unfair practices by revising the rates in month of MAY and per application form forfeiting entire booking amount after my repeated notifications of cancellation. They have not given chance to buyers to continue or opt-out of the project after change in original cost sheet. They are providing lame excuses that due to Input tax credit (ITC) they are charging 12% which is for sure a fraud as no builder purchases entire project inventory in pre-launch stage itself. I have already communicated them in writing that i will be moving to consumers court and demand entire refund of booking amount which builder is seizing in the name of cancellation and in turn will sell the same unit (G-0547) to other buyer without taking consent from current customer. I have offered them to have a deduction of 10-12% of booking amount but marketing team - Mr Syed (site project manager) categorically denied and told entire booking amount will be forfeited.

Relief Sought from RERA: Refund of Booking amount of Rs 200000

2. In pursuance of the summons issued by this authority the wife of complainant was present and at the same time the developer is represented by one Kumari Sonali.
3. The developer has filed his objections.
4. Heard the arguments.
5. 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?
  - b. My answer is affirmative for the following

### **REASONS**

6. The complainant has sought for the relief the refund amount of Rs.2,00,000/- with damages with compound interest which totally comes to Rs.3,00,000/-. In this regard the developer has filed his objection stating that the complainant had paid Rs.2,00,000/- on 21/01/2019. But for the reasons known to him he cancelled the booking by sending a mail on 25/07/2019. The company has informed the complainant that his entire booking amount is forfeited towards cancellation charges. The chart has been given by the developer where he says that if the booking is cancelled within

30 days the rate of the cancellation of booking amount mentioned in the chart.

Cancellation	Type of Unit			
	1BHK	2BHK	3BHK	4BHK
Within 30 days of booking	50,000/-	1,00,000/-	1,50,000/-	2,00,000/-
30-60 days of booking	1,00,000/-	2,00,000/-	3,00,000/-	4,00,000/-
More than 60 days of booking	Full Booking amount (Limited to a maximum 10% of cost of apartment)			

7. From the documentary evidence as well as argument placed before me it is clear that the complainant who has paid booking amount has been forfeited. Kumari Sonali representative of the developer has drawn my attention to the booking form where clause 4 reads as under:

*Company reserves the right to cancel the allotment and forfeit monies paid if the amounts are not paid as per the terms of booking and/ or if the amount paid by cheque is dishonored for non-availability of funds or for any other reasons, and/or suppression of information/wrong information of any information which is required to be provided at the time of booking resulting in a violation by the applicant. In case the applicant desires to withdraw the booking, the cancellation amount will be charged.*

8. In support of the above condition the developer has produced 2 MAHA RERA judgments. The gist of the judgments is that such kind of complaints is liable to be dismissed. The learned counsel for the developer has given the judgment of MAHA RERA in complaint No. CC005000000001087 were in the MAHA RERA had said that :

*Here the complainant had cancel the booking of his own. The respondent has brought to my notice the complainant's letter contending that because of financial difficulties he was cancelling the booking. In view of this situation I find that there is no expressed provisions in the Real Estate (regulation And Development) Act, 2016 under which this complaint can be entertained. So far as the refund of advance/payments are concerned, this Authority does not get jurisdiction to direct the*

*Donu*  
29/11/19

promoter to refund the same unless and until the case comes under one of the section such as Section 7, 11(5) 12, 14, 18 or 19 of the Act. The complainant's case does not come under any of the section of the Act. Hence, the Authority does not get the jurisdiction to entertain this complaint. The order passed by the Authority in Complaint No. CC006000000000430 will not come to the help of the complainant because the legal aspects of the matter have not been dealt with in that case.

9. At the time of the Argument it was brought to my notice that the developer has not executed the Agreement of Sale. According to the developer the condition imposed in the booking form will be binding on the parties. Another question is whether the developer can forfeit whole amount which is 100% of the amount. In this regard I would like to refer the following decisions:-

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 7588 OF 2012  
Satish Batra .. Appellant  
Versus  
Sudhir Rawal .. Respondent  
JUDGMENT  
K.S.Radhakrishnan, J.

This Court, considering the scope of the term

"earnest", laid down certain principles, which are as follows:

"21. from a review of the decisions cited above, the following principles emerge regarding "earnest":

(1) It must be given at the moment at which the contract is concluded.

(2) It represents a guarantee that the contract will be fulfilled or, in other words, "earnest" is given to bind the contract.

(3) It is part of the purchase price when the transaction is carried out.

4  
29/11/19

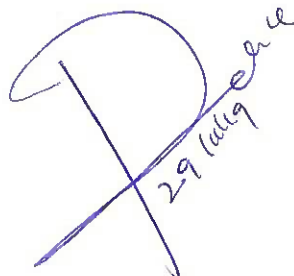
(4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.

(5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest."

17. Law is, therefore, clear that to justify the forfeiture of advance money being part of 'earnest money' the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance, by the Depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get the double the amount, if it is so stipulated. It is also the law that part payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part payment of consideration and not intended as earnest money then the forfeiture clause will not apply.

10. The above decision has been taken to say that the payment made by the complainant towards purchase of flat was withdrawn for his own reasons. But the developer argued before me by stating that as per the clause put in the form is sufficient to forfeit the whole amount. But as per the decision as above, the developer has to prove that is an earnest money and liable for forfeiture. But no evidence is placed to prove that it is earnest money. However kumara Sonali has drawn my attention to the stand taken by the developer as under:

Here the complainant has cancelled the booking of his own. The respondent has brought to my notice the complainant's letter contending because of financial difficulties he was cancelling his bookings. In view of this situation I find that there is no express provisions in Real Estate (Regulation and Development) Act, 2016

A handwritten signature in blue ink, followed by the date "29/11/19" written vertically.

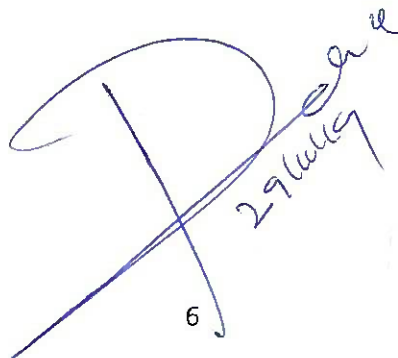


under which this complaint can be entertained. So far as the refund of advance/payments are concerned this Authority does not get jurisdiction to direct the promoter to refund the same unless and until the case comes under one of the section such as 7, 11(5) 12, 14, 18 or 19 of the Act. The complainant's case does not get the jurisdiction to entertain this complaint.

With the assistance of the above decision it was submitted on behalf of the developer that the present complaint is not sustainable since I have discussed on this point also. By taking into consideration of all these aspects I would like to say that the developer may exercise his right of forfeiture to some reasonable amount of Rs. 50,000/- and the developer has to return the rest of the amount with interest as per Rule 16.

11. In view of the above finding the argument canvassed on behalf of the developer cannot be accepted. At the same time argument submitted by the complainant that he is entitled for refund of the whole amount with compound interest is also not correct. In fact the booking form is not all be treated as agreement. Therefore the enforcement of the condition imposed in the booking form cannot be received as it is. Therefore I say that the developer may be ordered to return the amount with some restrictions.

12. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the complaint was filed on 1/08/2019. 60 days be computed from the date of appearance of parties. In this case the parties appeared on 12/09/2019 and after receipt of objections and hearing the parties the case is set down for judgment. Hence, there is some delay in closing this complaint. With this observation I proceed to pass following order.

  
29/10/19  
6

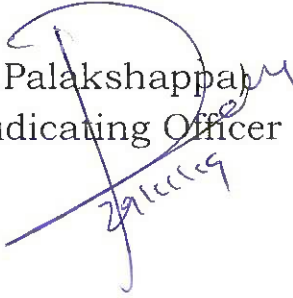
**ORDER**

The Complaint No. CMP/190810/0003856 is hereby is allowed in part.

- a. The developer is hereby directed to pay Rs. 1,50,000/- together with interest @ 2% above MCLR of SBI commencing from 25/07/2019 till the amount is realized.
- b. Further the developer shall pay Rs. 5000/- as cost.
- c. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 29/11/2019)

(K.Palakshappa)  
Adjudicating Officer



NOT AN OFFICIAL COPY



**CMP-3856**

**13.08.2022**

**Before the Lok-Adalath**

The execution proceedings in the above case taken up before the Lok-Adalat. The email dated: 26.07.2022 forwarded by the complainant in the case is hereby accepted and the said email shall be part and partial of the award. Hence, the execution proceedings in the above case stands disposed off as settled and closed in the Lok Adalat.

  
Judicial Conciliator.

  
Advocate Conciliator.



# ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ comp-3856

ಪುಟ ಸಂಖ್ಯೆ .....

ವಿಷಯ Swarnim Srinivasan  
Brigade Enterprises Ltd.

ಕಂಡಿಕೆ  
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

**CMP- 3856**

**12.08.2022**

As per the request of the complainant, the execution proceedings in the above case is taken-up for disposal in the National Lok Adalat to be held on 13.08.2022.

The complainant through email dated: 26.07.2022 has reported that respondent/developer has complied the order passed in the above case. Therefore in view of the said email the execution proceedings in the above case have been closed as settled between the parties. The matter is referred to Lok-Adalat to be held on 13.08.2022 for award.

  
Judicial Conciliator.

  
Advocate Conciliator.

**KARNATAKA STATE LEGAL SERVICES AUTHORITY**

**BEFORE THE LOK ADALAT**

**IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT  
BENGALURU**

**DATED: 13<sup>TH</sup> DAY OF AUGUST 2022**

**: CONCILIATORS PRESENT:**

Sri. I. F. Bidari

..... Judicial Conciliator

AND

Smt. Preethi N

..... Advocate conciliator

**COMPLAINT NO: CMP/190810/0003856**

**Between**

Mrs. Swarnim Srivastava

..... Complainant/s

AND

M/s. Brigade Enterprises Limited.,

.....Respondent/s

**Award**

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having settled the matter, as per email dated: 26.07.2022 forwarded by the complainant and same is taken on record during the pre Lok Adalat sitting on dated: 12.08.2022.

The execution proceedings in the above case taken up before the Lok-Adalat. The email dated: 26.07.2022 forwarded by the complainant in the case is hereby accepted and the execution proceedings in the above case have been closed as settled between the parties. The email shall be part and partial of the award.

  
Judicial conciliator

  
Advocate conciliator