

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/180617/0000921

Presided by:- Sri K.PALAKSHAPPA

Adjudicating Officer.

Dated: 27th NOVEMBER 2018

Complainant : LAKSHMINARAYANA K P MANDALEEKA
827/4, 8th main, 4th block, BEL Layout,
Vidyaranyapura, Bengaluru – 560097

AND

Opponent : P V Ravindra Kumar,
Vasathi Avante,
Plot no. 41, H.No. 8-2-269/S/41, Sagar
Society, Road No. 2, Banjara Hill Bengaluru
Urban, Karnataka – 500034

J U D G E M E N T

1. Lakshminarayana K P Mandaleeka, being the Complainant filed his complaint bearing no. CMP/180617/0000921 under Section 31 of RERA Act against the project "Vasathi Avante" developed by Vasathi Housing Ltd., as he is the consumer in the said project. The complaint is as follows:

"Complainant & Respondent entered into Agreements of Sale & Construction dated 04.08.14, with completion date for the year 2016. Despite the time extended by grace period of 6 months along with extended time period of 12 months as per Agreements, Respondent has not completed construction as per terms of Agreements. Complainant issued Letter to Rescind on 21.09.17 seeking refund of amount with interest, which was acknowledged vide

Emails of Respondent. Despite repeated follow-ups by Complainant, Respondent failed to refund amount. Legal Notice dated 27.03.18 was issued by Complainant since the construction was till date incomplete and Respondent had not refunded the amount in violation of 1. Terms of Agreements 2. Section 19(4) of RERA. Respondent Replied to Notice asking Complainant to take possession of Schedule Property, although the amenities required to be provided as per Agreement was yet incomplete in construction. Complainant now issued Rejoinder Notice dated 29.05.18 on grounds of Respondent's failure to complete and handover possession as per terms of Agreement. Complainant therefore seeks to 1. Withdraw from project and seek refund with interest @18% under Section 18, RERA 2. Receive Compensation for failure to complete & inability to give possession of apartment as per terms of Agreement under s.18 & 19(4), RERA.

Relief Sought from RERA: *Refund of amount with interest and Compensation*

2. After registration of the complaint, notices have been issued to the parties. Accordingly both the parties were present through their respective counsel on 17/07/2018. Though the parties requested the court to give time for meeting and conciliation but failed in their attempt. Finally objections have been filed by the respondent, re-joinder were also filed and heard the argument. The complainant sought for refund of the amount.
3. The developer has taken a strange contention in his objection statement stating that the complaint is pre-mature one and not made the payment towards the flat. In this regard the developer has said as under:-

"The complainant did not make the payments in terms of the Agreement for Construction and Agreement for sale in respect of the Apartment. As on this date, the complainant is

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27/06/18

liable to pay a sum of Rs. 5,74,646/- after deducting delay compensation of Rs. 1,74,790/-. Hence, the complainant does not have a prima facie case to file complaint before this Hon'ble Authority".

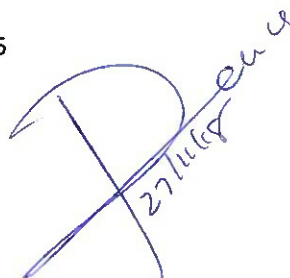
4. Further the developer has contended that the land owner is also necessary party. But I would like to say that developer is responsible for the same and as such Complaint cannot be hit out under the principle of non -joinder of necessary party. The counter claim made by the developer can be met by deducting in the refundable amount. Therefore I find no good reasons in rejecting the claim of the complaint.
5. As per the AOS the project was to be completed by the end of September 2016 including grace period. The amount from the complainant was collecting from the year 2014 stage by stage and now the completion date was given to RERA as 30/12/2018.
6. As per Section 18 of the RERA Act, it is the wish of the consumer to be with the project or to go out of the project. The wordings used in Section 18 are as under:

" 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"

7. By reading the above, it is clear that the Act does not make specific ground to go out of the project. However the parties have entered into agreement on 20/6/2014 with number of clauses, they are all binding upon each other. Though the agreement says regarding the forfeiture of Rs.100/-per square feet in case of cancellation by the complainant.
8. The complaint has vehemently argued before me that he is entitled for the entire amount with loss sustained by him. I have already refereed to S.18 where in it is said that if the consumer wants to go out of the project then his amount shall be returned with interest including the compensation. In this background I would like to discuss regarding the interest and compensation for which the complainant is entitled.
9. The complainant sought the relief against the developer stating that the developer be directed to pay principal consideration amount of Rs.77,94,054/-. Further he also sought Rs.42,47,689/- towards interest @18% P.A.
10. As per sec.18 by the Act delay Compensation has to be paid at the rate of interest as prescribed. As per rule 16, it is said under.

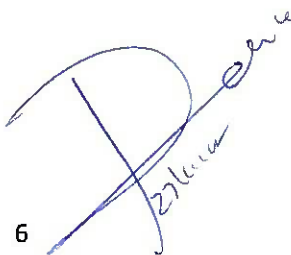
Rate of interest payable by the promoter and the allottee:- The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.

11. The complainant has sought compensation under different heads with interest @18%. But as per Act, the rate of interest is already prescribed. Hence, the prayer of the complainant for award of interest @18% holds no water.
12. Coming to section 18 of RERA, the complainant who is going away from the project is entitled for refund of amount with interest @10.25% P.A from 01/05/2017. According to complainant he has paid 95% of the amount to the developer. It means he has paid the amount to the developer even before delivery of possession. Therefore the complainant is entitled for compensation @9% as per Karnataka Apartment Ownership Act, 1972 till coming into force of RERA Act,
13. By taking into consideration of these Points; I would like say that the complaint is entailed for compensation @ Rs.9/- on the amount paid by him from the respective payment till 30/04/2017 and @10.25% P.A from 01/05/2017 .
14. However, the counsel for the developer has drawn my attention to the forfeiture clause at 13.1 in sale agreement where it says that the developer can forfeit of the total consideration amount in case the complainant has cancelled the agreement. Therefore he says that the complainant is not entitled for compensation. Per contra the complainant has filed the Judgement of Maha RERA to support his contention. In this case the complainant has paid the amount commencing from the year 2014 and he has paid 95% of the amount payable to the developer.

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15. From the above position of law it is clear that the Authority will have to take the notice of Section 72 along with Section 18. The Developer is going to complete the project by the end of this year. Further it is his case that the flat is ready for occupation. The developer has submitted in his objection statement to the effect that the complainant can occupy the same by tendering the rest of the sale consideration. It means the amount given by the consumer has not been mis-utilised. However the demand made by the consumer that he is going out of the project has to be honoured in view of the provision made in section itself. Further by reading Section 18 is very clear that Developer is liable to refund the amount to the allottees on demand. In this case the Complainant has demanded the amount by filing this Complaint and therefore this Authority holds that as the Developer has no right to exercise the forfeiture clause in view of delay.

16. AS per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 17/07/2018. After filing objections and hearing the parties, the case is reserved for orders. Some attempts have been made for conciliation but failed Hence, the complaint could not be disposed of within time. With this observation I proceed to pass the order.


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O R D E R

- a) The Complaint No. **CMP/180617/0000921** is allowed.
- b) The developer is hereby directed to return the amount of received from the complainant together with interest @ 9% P.A. from the respective payment till 30/04/2017 and also to pay interest @10.25% from 1/05/2017 till the realization of entire amount.
- c) In case the developer has paid the GST, then the developer has to give necessary documents to the complainant to enable him to claim the same from the concerned department.
- d) The complainant shall execute the cancellation deed in favour of the developer after realisation of entire amount.
- e) Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 27/11/2018)

(K.PALAKSHAPPA)

Adjudicating Officer

