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BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by: Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/181218/0001773

Date: 30th APRIL 2019

Complainant : HARISH JAIN
No.8/1119, Adarsh Nagar, Modinagar,
Uttar Pradesh, Ghaziabad - 201204
Bengaluru- 560076.

AND

Opponent : GOLDEN PANORAMA
GOLDEN GATE PROPERTIES. LTD,
Golden House, #820, 80 Feet Rd,
Bengaluru - 560095.

J U D G E M E N T

1. HARISH JAIN has filed this complaint under Section 31 of RERA Act against the project "GOLDEN PANORAMA" developed by GOLDEN GATE PROPERTIES. LTD, bearing Complaint no. CMP/181218/0001773. The facts of the complaint is as follows:

"On completion of 18 months we have an option to exit from the scheme and it was agreed that we would be paid 100% of the amount in addition to the booking advance. That Golden gate properties had issued a cheque of the due amount INR 12,99,363 and the same was deposited but the cheque was not honoured as the drawer signature was not as per mandate. We informed the Golden gate properties and we were ignored. Also they failed to close the loan and we haven't received the Pre emi towards the loan since more than 6 months and also the interest rate charged by the bank have been raised. We informed them about all the defaults and they kept on ignoring us.

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Per 30/04/19

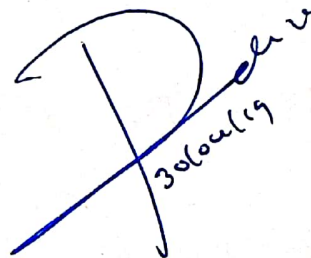
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Relief Sought from RERA: Loan closure and Payment of amount with Interest

2. On 18/01/2019 the complainant was present through his advocate. One Manjunath was present on behalf of the developer and the developer has also filed his objections. In the complaint he has sought for the relief regarding closure of loan with its interest. The developer has filed his memo stating that the developer is not in position of refund the amount and now the developer is focusing in completing the project.
3. According to complainant the developer is liable to refund the booking amount of Rs.13,67,750/-. In this regard the developer has filed a memo stating that due financial crisis the payment is not being made. Now the developer is ~~entitled~~ ^{interested} to complete the project and therefore the prayer for refund of the amount will have to be honoured only after completion of the project.
4. I would like to say that as per the agreement the project was to be completed on or before 25/07/2018. The complainant has paid an amount of Rs.6,83,875/- as 10% of the booking amount. As per the Tripartite Agreement M/s. India Bulls Housing Finance Limited has sanctioned a loan of Rs.56,00,000/-. The developer has failed to make payment of EMI as agreed. Therefore, the complainant has cancelled the booking the registration on 12/04/2018 by sending an email and demanded to return the booking amount of Rs.13,67,750/-.
5. The developer had given a cheque for an amount of Rs.12,99,363/- dated 30/07/2018 which was paid towards the return of the booking amount but the said cheque was dishonoured. Again, when it was presented on 26/10/2018 then also it was dishonoured. It means the claim made by the complainant for refund of his booking amount was not honoured by the developer. The complaint has given the statement of accounts wherein he stated that, he has paid Rs.6,83,875/- as booking amount. The developer had paid Rs.5,17,265/- towards EMI. The loan has been sanctioned for a

sum of Rs.56,00,000/-. By deducting the EMI paid by the developer the developer to pay an amount of Rs.64,50,485/-.

6. The developer had issued cheque but it was dishonoured means the liability is admitted. The legal notice dated 21/11/2018 is not replied. Therefore, the stand taken by the developer that because of the financial crisis will not help him in view of section 19(4) of the Act. The complainant has cancelled the booking even before the completion date mentioned in the agreement but it doesn't mean that he is at default because the developer has committed the default in non-making payment of EMI regularly. Therefore, action taken by the complainant for cancellation of booking cannot be termed as cancellation of agreement by the complainant. When the developer has not adhered to the clauses of the agreement then the complainant had to take some action against the developer. Accordingly, he has cancelled the agreement and therefore the developer shall refund the amount without any deduction.
7. Before passing the final order I would say that 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 18/12/2018. 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 18/01/2019. Hence the complaint is being disposed of with some delay. With this observation I proceed to pass following order.


30/01/19

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ORDER

1. The complaint no. CMP/181218/0001773 is allowed by directing the developer to pay Rs.6,83,875/-.
2. The developer is here by directed to pay interest on the above said some interest at the rate of 9% P.A. as per KOFA Act on the respective amount paid on the respective date up to 30/04/2017 and @ 10.75% P.A from 01/05/2017 till the completion of payment.
3. The developer is also directed to discharge the loan amount with its interest and EMI if any.
4. The complainant is here by directed to execute the cancellation deed after realisation of entire amount.
5. The developer shall pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 30/04/2019)

(K.PALAKSHAPPA)
Adjudicating officer

30/04/19