

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI K. PALAKSHAPPA
DATED 12th NOVEMBER 2020

Complaint No.	CMP/170912/0000064
Complainant	Swagatika Sahu Ramky One North apartment, Flat no.C5-901, Avalahalli Village, Doddaballapur Road, Yelahanka Bengaluru Urban - 560064 In person
Opponent	Max worth Realty India #12/2, KMP House, Near Shivananda Circle, Madhava Nagar Rep. by Keshava K Managing Director Bengaluru-560001 Rep. by Sri K.S. And Associates Advocate

J U D G M E N T

1. Swagatika Sahu the complainant has filed this complaint no. CMP/170912/0000064 under Section 31 of RERA Act

Den
12/11/2020

against the project "MAX City", developed by 'Maxworth Realty India Limited., seeking for the relief as under:

We booked a flat in MAX City in April 2014, with a promise to get handover by July 2015, paid Rs.9 lakhs towards it, but construction never started, we cancelled the booking in March 2016 with a promise of getting the amount back in 4 months, but waiting since, still not received the amount. Moreover they are not receiving our calls or responding to mails, even started misbehaving with us.

Relief Sought from RERA : Please make the refund our amount with interest

2. After registering the complaint notice has been issued to the parties, the complainant has appeared in person where as the respondent has appeared through his advocate and filed his objections and along with objection statement he has filed Xerox copy of the order passed by the Consumer court in C.P. No. 2470/2017.
3. This case was to be called on 02/04/2020 but on account covid-19, it was ordered to stop the hearing in open court. Further from 24/03/2020 till 17/05/2020 lock down was declared and as such hearing was not possible. Further as per office note, the personal hearing was deferred and as such the parties have been called for hearing through Skype. Advocate for developer has appeared and

Peru
12/11/2020

submitted that the complainant has already taken order from the consumer court and thereby the present complaint is not maintainable. The complaint has admitted the order taken from the consumer court. In view of the same I posted the matter for judgment.

4. However on 22/09/2020 the complainant has sent a mail stating that

Dear Sir,

This is with reference to our last online hearing through skype on 12/08/2020, we have complaint number 64 in the name of Swagatika Sahu with RERA.

Same complaint we had filed with consumer court as well in 2017, and we have received judgement from DC asking us to approach State Commission on the same, however we have decided to withdraw our complaint from consumer court and we are not approaching state commission for this matter, instead we want to continue with our hearings at RERA office, as this matter is more related to RERA jurisdiction.

We are requesting you to kindly give us the next date for our hearing.

Done
12/11/2020

Looking forward to your cooperation and support.

Kind Regards
Swagatika & Sandeep

5. In view of the same Skype notice has been sent to parties for which the complainant and her husband have appeared on 22/09/2020. The developer has failed to appear and even his advocate also failed to appear. Hence, the matter is posted for judgment on merits.

6. The point that arise for my consideration is

- a. Whether the complainant proves that he is entitled for refund of his amount?
- b. If so, what is the order?

7. My answer is affirmative in part for the following

REASONS

8. In this case the complainant is the customer of the developer is not in dispute. The complainant has filed this complaint seeking refund of his amount. According to the developer the present case is not maintainable since the complainant has already taken an order from the consumer court in CP 2470/2017 by passing the order as under:

Swagatika
12/10/2020

This forum has no jurisdiction to entertain the complaint. Return the complaint to the complainant with document for presentation before the Hon'ble Karnataka State consumer Disputes Redressal Commission.

9. This order has been passed on 29/06/2020. As per this order the complainant had to take further steps to file his complaint before the State forum.
10. It is a fact that the complainant has been directed by District Consumer forum to approach the State Forum but now the complainant has submitted that he has not filed any complaint to the State Forum and he has chosen this authority for the appropriate adjudication. In this regard I would say that as per S.71 of the act, this authority can entertain the complaint which is pending in the Consumer forum with a restriction. Here the complaint was directed to approach the State Forum but he has not approached the same. Instead of filing a complaint to the State Forum he has filed this complaint. It means he has chosen only one forum which is permissible under law. In case he has chosen both authorities then the present complaint would not have been entertained. Now the complainant has made it clear that he has chosen only this authority and not both. Hence, the present complaint is maintainable.

Devi
12/6/2020

11. At the time of argument it was submitted that the complainant has entered into agreement with the developer on 31/07/2015 where he has agreed to complete the project on or before December 2015. At the time of argument it was submitted that the developer never started the development of his project.
12. The allegation made by the complainant has not been denied by the other side. I would say that the on behalf of the developer some objections have been filed with regard non-maintainability of the complaint in view of the order of Consumer forum. After the reopening of the case, the developer has not filed any objections. The authority has disposed off many complainants filed against the same project where this authority has passed the judgment directing the developer to pay the booking amount along with applicable interest. In this case also I am going to allow this complaint.
13. On 20/10/2020 the complainant has produced some documents. According to these documents it is clear that the complainant has given Rs. 9,00,000/-to the developer on different dates but he has returned Rs. 2,00,000/-to the complainant. It means the transaction is admitted

Done
12/11/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

but he failed to return the whole amount for which this complaint has been filed.

14. Before passing the final order I would like to say that as per Section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. Afterwards this authority has issued notice to the parties. For which the parties have appeared on 14/01/2020 and the case was posted to 2/04/2020. In the meanwhile on account of natural calamity COVID-19 the Government has put lock down completely from 24/03/2020 till 17/05/2010 and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/170912/0000064 is hereby allowed in part.
- b. The developer is directed to return Rs. 7,00,000/- to the complainant.

[Handwritten signature]
12/04/2020

c. The developer is directed to pay simple interest @ 9% on the said amount from 19/10/2016 till 30/04/2017 and @ 2% above the MCLR of SBI from May 2017 till realization.

d. The complainant may file his memo of calculation as per this order after 60 days from today in case the developer failed to comply the order.

The developer also pay Rs.5000 as cost of this petition.

e. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 12/11/2020).


K. PALAKSHAPPA
Adjudicating Officer