

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/180927/0001328

Date: 18th MARCH 2019

Complainant : SAURABH MANDAL
 D6, 6th floor, BSNL Telephone
 Exchange, 80 feet road, Indiranagar
 Bangalore - 560008.

Opponent : ANL
 Om Prakash Yadav
 Supertech Micasa, Supertech
 House, B- 28-29, Sector 58, Noida,
 Gautam Buddha Nagar, Uttar
 Pradesh- 201307.

J U D G E M E N T

1. Saurabh Mandal, has filed this complaint under Section 31 of RERA Act against the project "Supertech Micasa" developed by Supertech Limited, bearing Complaint no. CMP/180927/0001328. The facts of the complaint is as follows:

"I have booked a 2-BHK flat (No. C-904/G-03) in Supertech Micasa, Bengaluru in September 2014 under the subvention scheme with HDFC Ltd. The possession of the said flat was promised to be in August 2016 with a six months extension (till Feb 2017). I have already paid nearly 99% of the total cost (Rs. 59,19,698 out of Rs. 59,45,236) for the flat as the remaining amount is to be paid at the time of possession, as per the Sale and Construction Agreement. Till today, I have neither been

Dear
 18/03/19

given the possession of my flat, nor the agreed upon penal interest of Rs. 5/sqft/month. I have tried to do follow-ups and made visits to the site office along with other flat owners as well, but every time the project team has given false assurances and fake completion timelines. After, RERA came into force, the developer (Supertech Limited) was forced to register themselves under RERA and commit a date of completion. The date given by the developer to RERA is June 2018. However, even this date/deadline is also over but the project is still far from completion, let alone possession. I have been paying an EMI of Rs. 43,527 per month towards my Home Loan to HDFC Ltd. Out of the total amount of Rs. 59,19,698 paid to Supertech Ltd, Rs. 12,65,428 has been paid from my bonafide savings and the rest of the amount has been paid from my Home Loan account. Considering all this, I am bearing a big financial loss because of non-deliverance of this flat. Moreover this has also led to a lot of mental stress for me and my family.

Relief Sought from RERA : Full refund of the amount paid along with interest"

2. In pursuance of the summons issued by the authority the wife of the complainant was present on 25/10/2018. Shri Bellad Advocate has filed vakalath on behalf of the developer. Time has been taken for conciliation as per Section 32(g) of the Act but later it was failed. Therefore the developer has filed Objection Statement.
3. I have heard the arguments on 1/2/2019 and reserved for judgment.
4. The relief sought by the complainant is for refund of entire amount which was strongly opposed by the developer on the ground that the authority not only meant for granting the relief on complaints but also to regularize the real estate business.

Devi
170319

5. Shri Bellad Advocate submits that if all the consumers go on demanding for refund of the amount the real estate business will fall on the ground.
6. Further he submitted that the developer has constructed the apartment with a hope that the construction will take the same for their purpose. He has built the project on the amount invested by the consumer. In case the consumers are permitted to withdraw the amount, the purpose of real estate business will be defeated. Hence, the developer has requested the authority to dismiss the complaint. It is his submission that the project has been implemented in 2014 with an intention to provide luxurious apartment to the consumer. The complainant has entered into agreement with free will. He has also drawn my attention that as per clause 33 of the agreement 15% of the total consideration will be deducted. Under these backgrounds, now I would like to go through the complaint of the complainant.
7. As per Sec. 18 the complainant is entitled for refund of amount as the developer failed to provide goods as agreed by him. Ofcourse now the developer has submitted to the authority that he will deliver the flat on or before 30 June 2019. Now we are in the month of March. Hardly 3 months are left. Therefore the submission has been rightly made by the learned counsel of developer to consider subject to delivery of possession on or before 30th June 2019.

Done
17/03/19

21

8. Generally it is the wish of the complainant to take a decision on his own. But however the submission made by the learned counsel for the developer is also to be looked into. Of course, the developer had already promised to the complainant that he will complete the project on or before February 2017. Later he had promised that he will complete the project in the year 2018 but even today also it is not completed. However it is submitted that by the end of June 2019 he will provide the flat as agreed with the complainant. It is also true that the complainant has paid the amount and waiting for the goods which is not taken place even after 5 years. By taking into consideration of all these aspects I would like to say that the complainant has to wait till the 30th June 2019 and till then the complainant is entitled for the delay compensation. IN case the developer failed to deliver the flat on or before June 2019 the complainant may go for refund of his amount in accordance with S.18 of the Act. My finding is supported by the HRERA decision in his complaint NO. 161/2018 where in the HRERA has made the observation as under:

However keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project at the project is almost complete and the respondent has committed to handover the possession of the said unit by 31st December 2018. The refund of deposited amount will also have adverse effect on the other allottees in the said project. Therefore, keeping in view the principles of natural justice and in Public Interest, the relief sought by the complainants cannot be allowed.

9. Though this decision is an independent one, the principle is taken into consideration.
10. 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 27/09/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 25/10/2018. Hence, there is delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

The Complaint No. CMP/180927/0001328 is allowed.

- a. Directing the developer to pay delay compensation in the form of interest @10.75% on the amount paid by him from March 2017 till the possession is delivered.
- b. In case the developer fails to deliver the possession on or before June 2019 the developer shall refund the entire amount paid by the complainant with interest at the rate of @9% with respect to date of payment prior to 30/04/2017 and @10.75% p.a from 1/5/2017 till the realization of entire amount.
- c. The developer shall pay Rs. 5,000/- as cost of the petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 18/03/2019)

(K.PALAKSHAPPA)
Adjudicating Officer