

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Shri K. Palakshappa

Adjudicating Officer

Complaint No. CMP/190317/0002441

Dated: 1st of July 2019

Complainant : Naveen Kosta, Mrs. Swapna Kosta
R/o Shabiya 12, Building no 141,
Flat no. 503, Mussafaha, Abhu Dhabi
PO Box-13232
Rep. By : Smt. Sharada Advocate
AND

Opponent : Skylark Ithaca
Skylark Mansions Pvt. Ltd.,
37/21, Yellapachetty Layout,
Ulsoor Road, Sivanchetti Gardens
Bengaluru- 560001
Rep. by Smt. Lubna Advocate.

J U D G E M E N T

1. Naveen Kosta and Mrs. Swapna Kosta, being the Complainants filed this complaint bearing no. CMP/190317/0002441 under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansion Pvt. Ltd., as they are consumers in the said project. The complaint is as follows:

(i) The applicant herein has booked a flat to be constructed on the part and

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parcel of the lands situated at kodigehalli village and kurudu sonenahalli village, flat bearing no. T-15-1206, Apartment in tower no T-15 - 1206, 12th floor Having a super built-up area of 1268 sq ft, in the project named as ? Skylark Ithaca?, which is situated at part and parcel of the lands situated at, kodigehalli village and kurudu sonenahalli village, Bangalore east taluk, Bangalore dist. Bangalore, Bangalore dist. Bangalore (ii) The complainant has entered into a Agreement for Sale dated 22.4.2016 with the respondent in respect of the afore mentioned flat for a total sale consideration amount of Rs 60,95,276/- Rupees Sixty Lakhs ninty five thousand two Hundred and seventy six only). The complainant has paid amount to purchase the schedule flat by taking a bank loan. The bank has sanctioned bank loan for the same in the name of complainant and the complainant is paying an EMI of 37,244/- towards the bank loan in respect of the purchase of the schedule property.

Relief Sought from RERA :
cancellation refund of entire amount
as per RERA

2. In pursuance of the summons issued by the authority, on 12/04/2019 the complainant was present but developer did not appear. On 09.05.2019 Smt. Sharada Advocate appeared on their behalf. The developer was represented by Advocate Smt. Lubna. She filed vakalath and objections on behalf of the developer stating that the completion date has been given by the developer as 31/12/2019. The complainant is not entitled for relief since this

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authority has no jurisdiction and also irregular in making payments to the developer.

3. In this connection it is said by the developer in his objection statement that the complaint has not made payments as per the schedule and the complaint is filed with the sole intension of harassing the respondent and making illegal monetary gains at the cost of the respondent based on false, frivolous and vexatious contentions. It is submitted that all the averments made by the complainants against the respondent are denied as false unless specifically admitted by the respondent herein.
4. Further it is said that the complainant is not entitled for relief since *the developer has taken shelter* under Section 71 of the Act. It is his argument that the Adjudicating Officer is having the jurisdiction only with respect to Section 12,14, 18 and 19 and he has no power beyond the scope of this section. Further it is the case of the developer that the prayer made by the complainant is in the nature of enforcement of agreement specifically in terms of the agreement and therefore it is the case of the developer that the complainant shall approach the Civil Court. But I am not going to accept his argument because Section 18 of the RERA Act empower the complainant to approach this Authority. Section 18 says that in case of delay in delivering the possession of the flat, plot or building the complainant is entitled for the compensation in case he wanted to go with the project. Further Section 17 prescribes regarding execution deed of conveyance. Section 19 determines the rights and Liabilities of the developer as well as the consumer.
5. Therefore as per 79 of the Act, the Civil Court has no jurisdiction over the issues and hence, submission made by the developer regarding jurisdiction has no force. The parties shall not approach the Civil Court since this Act covers everything. In order to comply with the terms of the agreement the developer has to pay the EMI as agreed in the agreement. As per S.19(3) the allottee is entitled to claim the possession. As per S.18 it is the wish of the complainant either to continue with the project or go away from the project. From the above discussions the dispute raised by the complainant is within the jurisdiction of the Adjudication Officer. Hence, the developer has no proper defense.

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6. The complainant has rightly submitted in his written argument on these points. Further the learned counsel for the complainant has raised in her written arguments to the effect

"further it is a clear case that, respondent is a defaulter and has defaulted in handing over possession of apartment. The respondent has after receiving huge consideration amount has not completed the construction work and defaulted thereby causing huge financial loss and mental agony to complainant.

The complainant states that the respondent has admittedly stated that there is a delay in handing over the possession of apartment. Recently the respondent has also sent a detailed email to all the home buyers admitting that they are short of funds and making efforts to get the funds for resuming the construction work. Thus it is an admitted fact that the respondent has failed to handover the possession and put the complainants to suffer huge monetary loss and mental agony.

The contention of the respondent that this Hon'ble court does not have jurisdiction is vexatious. As the project being an ongoing project has been registered with the RERA. Thus the complaint being on the ongoing project is maintainable and this court has got all the jurisdiction to entertain.

Therefore the contentions of the respondent are all false without any basis and made only to reject the claim of the complainant in violation of the agreement terms.

The complainants states that respondent has defaulted in his promises made by him and even receiving the huge amount from home buyers. Thus the complainants having no other alternative remedy have approached this authority seeking for the reliefs.

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7. Here the complainants are seeking refund of their amount on the ground that the developer has not kept up his promise made in the

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agreement. It is the wish of the complainant either to go with the project or with draw from the project. Here the complainant has chosen to with draw from the project and hence, as per S.18 he is entitled for the relief.

8. 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 17/03/2019. 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 09/05/2019. Hence, the complaint is being disposed of within the time. With this observation, I proceed to pass following order.

ORDER

The complaint no. CMP/190317/0002441 is allowed by directing the developer to pay Rs.7,25,209 to the complainant with interest @9% p.a on the respective amount paid on respective date prior to 30/4/2017 and interest @10.75% p.a commencing from 1/5/2017 till the realization of full amount.

Further he is directed to discharge bank loan amount along with EMI and interest and any incidental charges, if any.

The developer is also directed to pay Rs. 5000/- as cost.

After receipt of entire amount, the complainant is directed to execute the cancellation of agreement of sale.

Intimate the parties regarding this order.

(This Order is Typed, Verified, corrected and pronounced on 1st of July 2019)

(K.PALAKSHAPPA)
Adjudicating officer