

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/181029/0001590

Dated: 06ND FEBRUARY 2019

Complainant : VIRALKUMAR PATEL
Flat#303- Chethana Meadows,
Hadosiddapura, Carmelaram Post,
Off. Sarjapur Road,
Bengaluru- 560035

AND

Opponent : Skylark Ithaca
Skylark Mansions Pvt. Ltd.,
37/21, Yerlapachetty Layout,
U'soor Road, Sivanchetti Gardens
Bengaluru- 560001

J U D G E M E N T

1. Viralkumar Patel, being the Complainant filed his complaint bearing no. CMP/181029/0001590 under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansion Pvt. Ltd., as he is the consumer in the said project. The complaint is as follows:

"We booked a flat bearing no. T17-303 in Skylark Mansion ITHACA project on 31-01-2016. As per our agreement with the Respondent, completion date is 28-02-2019 with grace period of 6 months i.e. 31-08-2019. But construction activities are stopped since more than 1.5 years and hardly 5% work is done so far on our tower. We have paid INR 7029284 which is 84% of cost amount INR 8388234 as per agreement. As per agreement, Respondent has to pay pre EMI interest every month to us on bank loan that we have borrowed from ICICI bank. (copies of relevant pages of our agreement are attached). But since November 2017 Respondent has not paid single rupee to

Done
6/6/2019

us towards pre EMI interest. Up to October 2018, total such amount to be paid by the Respondent is INR 4,89,316. (statement of pre EMI monthly calculation is attached). Relief Sought from RERA : Yes

2. In pursuance of the summons issued by the authority, on 11/12/2018 the complainant was present. The developer was represented by Advocate smt. Lubna. She undertook to file vakalath and objections on behalf of the developer. Hence the case was posted to 16/1/2019.
3. On 16/1/2019, the parties were present and the developer has filed the objection stating that the completion date has been given by the developer as 31/12/2019. The complainant is not entitled for relief since he has failed to make the installment payment properly and thereby he has breached the terms of the agreement. It was strongly opposed by the complainant and submitted that the developer has agreed to complete the project on or before 31/3/2017 with 6 months grace period and he is bound to pay EMI but it was withheld without any reasons.
4. I find some force in his submission. As per Sec. 19 the developer can recover the installments with interest as applicable. But at the same time he is also bound by the terms of the agreement. The EMI cannot be withheld just because the complainant is irregular in making installments. Therefore the complainant has approached this authority. The developer has utterly failed to give reasons for withholding the EMIs. The objection statement filed on behalf of the developer is not denying the liability to repay the EMI. I would say that the steps adopted by the developer to with hold the EMI payable to the bank has no meaning and the same is not supported by legal sanctity. The consumer who is waiting for the flat has to pay the EMI along with rent for the present accommodation is only because of delay in completing the project. The maximum deadline given by the developer was September 2017. Now he has given the completion date as 31/12/2019 without following the Section 19(2) of the Act.

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5. The developer has kept the consumer in dark and he has given the fresh date of completion by the virtue of induction of RERA as per S.4(2)(1)(c). But liability to pay the delay compensation or relief to the consumer in case of delay shall be borne by him. Accordingly the developer who was paying EMI shall pay the same till he completes the project. In view of the above discussion the developer has no reasons to withhold without any legally acceptable cause. The complainant has given the statement of PRE EMI interest debited by ICICI Bank which reveals that the developer has not at all paid the EMI from December 2017 till this date. It is needless to say that the loan has been raised by the complainant on the assurance that the EMI will be paid by the developer till the possession is delivered. There are no good reasons on the part of the developer to withhold the EMI payments. Mere completion of the project without complying all these obligations the developer has no reason and hence, he is liable to answer to the claim of the complainant.

6. 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 29/10/2018. 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 11/12/2018. Hence the complaint is being disposed of within limitation. With this observation I proceed to pass following order.

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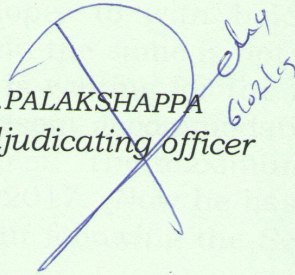
ORDER

The complaint no. CMP/181029/0001590 is allowed by directing the developer to clear all the pending EMIs on or before 28/02/2019 along with interest, if any. Further to regularize EMI commencing from March 2019 till the possession of the flat is delivered to the complainant. If not, the developer shall pay the interest at the rate of 10.75% on each EMI commencing from March 2019.

The developer shall pay Rs.5,000/-as cost.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 06/02 /2019)


K.PALAKSHAPPA
Adjudicating officer