

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್,

ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್‌ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K PALAKSHAPPA

Adjudicating Officer

Date: 26th MAY 2020

Complaint No.	CMP/190923/0004188
Complainant	Rahul Kumar, A401, Jin Heights East Parade, L Narayana Reddy Main Road, Vignan Nagar, Bengaluru-560037. Rep.by Sri M.Mohan Kumar Advocate
Opponent	1. Ithaca Estates Pvt. Ltd., 2. Skylark Mansions Pvt. Ltd., 3. Omar Sheriff Ithaca Estates Pvt.Ltd., No. 37/21, Yellappa Chetty Layout, Ulsoor Road, Sivanchetti Garden, Bengaluru -560042 Rep. By: Kum. Lubna, Advocate

J U D G E M E N T

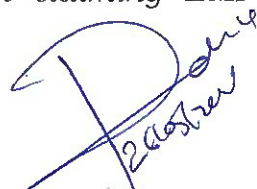
1. Rahul Kumar, the complainant has filed this complaint bearing No.CMP/190823/0004188 under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Estates Pvt. Ltd., seeking the relief of delay compensation. The complaint is as follows:

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26/5/2020

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

I, Rahul Kumar booked our flat in SKYLARK ITHACA Project in the year 12.07.2013 and entered into an agreement in the year 2014, for the flat bearing No.T1-502 for a total consideration of Rs.48,37,308/- including all taxes and amenities charges. Out of the said Sale Consideration I have paid a sum of Rs.1582530/- as myself contribution and balance of Rs.2682418/- was arranged by the Respondents by way of SBI Bank loan. As such I state that I have totally paid a sum of Rs.4264948/- to Respondents. As per my sale agreement and Construction agreement with Respondents, completion date is 31.03.2017. I state that the builder has committed a breach of trust and defaulted in completion of the Project. I state that since the Respondents failed to complete the project on time and deliver possession of Apartment causing immense financial burden and hardship, which not only effected our health, mental peace causing mental, physical and financial harassment. I state that I am unable to claim any Income Tax benefits or earn out of our hard earned money paid to Respondents/Promoter. I state that due this my saving and earning on my saving has been completely wiped off, as such the Respondents is liable to make good for the said losses. I state that I am entitled to interest @12% per annum for delayed period for all our money paid to them which is Rs. 42,64,948/- from the committed date of possession (i.e. 31.03.2017). I state that I was very badly treated by the Respondents whenever I visited their office causing immense mental pain and agony. I state that the Respondents has indulged in unfair trade practice and enriched themselves at our cost. I state that due to the delay in completion and handing over of the Apartment I am put into immense mental pain and agony as such entitled for compensation and damages. I request to file detailed claim statement and additional documents during the course of hearing. Hence for the brief facts mentioned above we are seeking for following Reliefs :- 1. Direct the Respondents to complete the construction at the earliest and handover the flat along with O.C. 2. Direct the Respondents to pay interest on Rs. 42,64,948/- paid by me until possession from the date of possession of the apartment is given. 3. Direct the Respondents to pay a sum of Rs.15,000/- per month which we would have earned, had the possession of the Apartment being handed over to us as per the agreement. 4. Compensation for the Mental Agony and pain and Damages to an extent of Rs.3,00,000/-. 5. Loss of Income Tax benefits because of delay in construction. We are not able to take income tax benefit as construction delay is not allowing to start claiming EMI as per


Rahul Kumar

Income Tax Act and Rules. 6. GST input credit which needs to pass on to end customers due to GST implementations. Respondent will be entitled to take input credits which need to be transferred to the end customers. 7. Compensation for unfair Trade practice to an Extent of Rs.2,00,000/-. 8. Cost of litigation and expense to an Extent of Rs.50,000/-. Based on the above I request you to please register a new RERA complaint against Respondents and help me with a favourable judgement

Relief Sought from RERA Handling Apt delayed compensation & as prayed above

2. In pursuance of the summons issued by this authority. The complainant and the respondent appeared through their respective advocates. The developer has filed his objections.
3. Heard the arguments
4. The point that arise for my consideration is
 - a. Whether the complainant is entitled for the relief as sought in the complainant?
 - b. If, so what is the order?
5. My answer is affirmative for the following

REASONS

6. The developer has field the objection by stating that the complainant has not made payments as per the schedule and the complaint is filed with the sole intention 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 complainant against the respondent are denied as false unless specifically admitted by the respondent herein. Except this stand absolutely the developer has not stated anything about the completion of project. It is further said by the developer in his objection statement to the effect that

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26/05/2020

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ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್‌ರಸ್, ಬೆಂಗಳೂರು-560027

It is submitted that the respondent is in the process of completion of the construction of the apartment. It is pertinent to submitted that time was of the essence of the agreement for sale and construction agreement and the complainant had to make the payments as per the dates agreed under the agreement. It is submitted that the respondent sent various Demand notice to the complainant requesting for payments which were overdue. However, the complainant failed agreed the terms of the agreement for sale and construction agreement and has defaulted making the payments.

7. In view of the same I would say that the complainant is entitled for the relief as prayed in the complaint Hence, I allow this complaint. However at the time of argument the counsel for the developer filed a memo stating as under :

MEMO

The under signed counsel most respectfully submits that there is an order moratorium passed by the NCLT Bengaluru in CP(IB)No.389/BB/2019 against Skylark Mansion Pvt. Ltd., in view of the above no orders may be passed in the interest of justice and equity.

8. In view of the above position of the developer the complainant has to take the relief from the NCLT with the assistance of the this award.
9. 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 23/09/2019. The said 60 days be computed from the date of appearance of the parties. In the present case, the parties have appeared on 22/11/2019. In the meanwhile on account of natural calamity COVID 19 whole nation was locked down completely from 23/03/2020 till 16/05/2020 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.

Per
26/11/20

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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ORDER

- The complaint no.CMP/190923/0004188 is hereby allowed.
- The developer is hereby directed to pay simple interest on the total amount paid by the complainant @2% above the MCLR Of SBI from July 2019 till the possession is delivered after obtaining the occupancy certificate with all amenities.
- The developer is also directed to pay Rs.5,000/- as cost of this petition.
- The complainant has to approach the NCLT for realisation of the delay compensation as ordered.
- Intimate the parties regarding this order.

April 2017
Amount by
per order dt.
26/5/20
[Signature]

(This Order is Typed, Verified, Corrected and pronounced on 26/05/2020)

K.PALAKSHAPPA
Adjudicating officer

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