

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority, Bengaluru

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

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K PALAKSHAPPA

Adjudicating Officer

Date: 20th March 2020

Complaint No.	CMP/190626/0003372
Complainant	Nayantara Kochhar and Shailesh Kochhar 4025, Sobha Palladian, Kariyamma Aghara Road, Old Airport Road, Bengaluru-560037 Rep. by Sri Shylesh Chandra, Advocate.
Opponent	Century Real Estate Holdings Pvt. Ltd., No.3/1, 4th Floor, JP Techno Park, Millers Road, Bengaluru-560052 Rep. by Sri Chandan, Advocate.

"J U D G E M E N T"

1. Nayantara Kochhar and another being the complainants have filed this complaint bearing no.CMP/190626/0003372 under Section 31 of RERA Act against the project 'Century Artizan' developed by "Green Orchards Farm Houses" with a prayer to refund the amount, as the complainant is the consumer in the said project. The complaint is as follows:

Deary
20/03/2020

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As has been stated in the soft copy of the complaint which has been attached and titled as REPA complaint, Shailesh Kochhar and Nayantara Kochhar.

Relief Sought from RERA : refund of amount along with interest.

2. In pursuance of the summons issued by this authority, the parties were appeared through their respective counsel and written arguments filed by the respective counsel on behalf of the complainant and respondent.
3. Heard the argument on both sides.
4. The points that arise for consideration is as to:
 - a. Whether the complainant is entitled for the relief as sought in the complaint?
 - b. If so, what is the order?
5. My answer is affirmative for the following

REASONS

6. The complainants have filed this complaint seeking for refund of the amount in respect of booking of plot bearing No.187 measuring 2400 sq.ft., It is his case that he has approached the developer in the year 2017 in connection with plot bearing No.187, its cost of Rs.1,24,33,650/-, against which the complainant had paid Rs.69,30,095/-. Later the complainant has cancelled the agreement and as such he demanded for refund of the amount. In response to his demand the developer has returned Rs. 69,17,595/- It means the developer has returned lesser of Rs.12,500/-. Therefore, according to him along with interest, the developer was expected to refund of Rs.18,67,750/- to him, and therefore, he has filed this complaint. The respondent has appeared and filed his objections where he has submitted that:-

Devi
24/03/2020

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- a. Complainant has agreed to the extended time period for handing over of possession by the respondent No.1, by their silence while respondent No.1 intimated them regarding the delay caused by force majeure event and hence respondent No.1 is not liable for payment of interest for the delayed period.
- b. Complainants having themselves sought for refund by exiting the project have no right to claim any sums from respondent No.1
- c. Complainants having encashed the complete advance amount paid by them towards sale consideration as full and final settlement, have now filed this frivolous complaint and hence, has no remedy under law.
- d. Complainant after having received the cheque issued by respondent has made some remarks on that without the authority or approval of respondent No.1, which is termed as fabrication of document and hence on this ground alone, complaint deserves to be rejected.
- e. The complaint is premature and there is no cause of action for the complainant to file the instant complaint as respondent No.1 had time till 30/06/2019 to complete the project and complaint exited from the project as on 30/04/2019, the date on which complainant accepted the complete amount as full and final settlement.
- f. In addition to the above, it is submitted that the complainant has not approached this Hon'ble authority with clean hands. Since the real estate business has been subjected to market fluctuations, the complainant is making reckless allegations and unlawful claims against he respondent No.1 herein, and has approached this Hon'ble authority and is using this authority as a tool to make financial gain by taking undue advantage and this is an abuse of process of law.

[Handwritten signature]
20/03/2020

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It is submitted that for the reasons facts and circumstances as stated above the claim made by the complainant is not maintainable legally or factually and the same is liable to be dismissed.

Respondent No.1 submitted that the oblique motive behind the complainant in filing the above complaint without substantiating any ground either in law or on facts is to make illegal gains from the respondent No.1 by taking a chance in the said matter which is not permissible in the eye of law. Thus, viewed from any angle, the complaint is unsustainable, misconceived and same deserves to be dismissed in limine for want of merits.

7. But as per the agreement of sale at 6.4 clause, it says that the developer has agreed to complete the project within 12 months from the date of agreement with grace period of three months. It was executed in the month of October 2017, to which 15 months is added it comes to January 2019. But, according to the developer the present complaint is premature, because the completion date was agreed by the developer 30/06/2019. In the month of April 2019 itself the complainant has received Rs.69,30,095/- towards full and final settlement of the amount. I would say that the developer has deducted only Rs.12,500/- towards administration charges. But the complainant has to give proper reasons as to why the developer is not liable to refund the said amount also. Further he claims 18% interest on the said amount, which is not permissible, because Rule 16 prescribes the rate of interest.

Deve
24/3/2020

8. However, the complainant has sought for grant of interest on his amount which was with held by the developer. But the same was also denied by the developer on the ground that he had time till 30/06/2019 to complete the project. The complainant had received his amount on 30/04/2019 itself means there is no question of penalty on the part of the developer. Per contra, it is the case of the complainant that date of completion was 15 months from the date of agreement. Agreement of sale was executed in the month of October 2017 for which 15 months means it comes end of December 2018. When that being the case, the complainant is certainly entitled to seek refund of his amount as per S.18 of the Act with interest as prescribed. In the present case, the complainant has sought for interest @ 18% per annum which is against the Rule 16. The return of Rs.69,17,595/- is admitted, but the developer has not returned the interest on the said sum. In view of the same, this complaint has been filed seeking grant of interest from October 2017 till 30/04/2019 @ 2% above the MCLR of SBI. But, the prayer made by the complainant for refund of Rs.12,500/- cannot be granted, as it was forfeited as administrative charges.
9. 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 26/06/2019. In the present case, the parties have appeared on 22/08/2019. Since the agreement of sale was not registered the same was referred to authority. But the authority has sent back the same to consider the prayer of the complainant regarding grant of interest. Hence, there is some delay in closing this complaint.

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10. Hence, I proceed to pass the following

ORDER

- a. The Complaint filed by the complainant bearing No.CMP/190626/0003372 is hereby allowed in part.
- b. The developer is hereby directed to pay interest @ 2% above the MCLR of SBI on the respective payment made on the respective date till 30/04/2019. (MCLR be calculated @ which is prevailed on this day)
- c. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 20/03/2020).


K. PALAKSHAPPA
Adjudicating Officer