

BEFORE ADJUDICATING OFFICER RERA

BENGALURU, KARNATAKA

Complaint No. CMP/180810/0001129

Presided by:- Sri. K.PALAKSHAPPA

Adjudicating Officer.

Date: 27nd NOVEMBER 2018

Complainant : SHAKEEB AHAMED PASHA
IBM, D3, Manyata Tech Park,
Nagavara, Bengaluru - 560045

AND

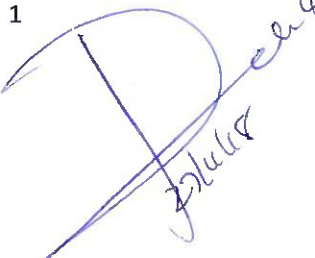
Opponent : P.V.Ravindra Kumar
VASATHI AVANTE,
Vasathi Housing Ltd,
Rachenahalli, Near Mesthri Palya,
Church Gate - No – 5,
Bengaluru – 56004

J U D G E M E N T

1. This Complaint has been filed by the consumer against the developer under section 31 of RERA Act claiming the payment of full amount with interest. His complaint reads as:

I, Shakeeb Ahamed Pasha, entered into an agreement of sale and agreement of construction on 15-02-2017, for the apartment bearing No.W1-B-706 on the 7th floor of Block-B in Vasathi Avante measuring 1089.78 square feet of Super Built Up area, which includes 762.69 square feet of Carpet area and proportionate share in common areas

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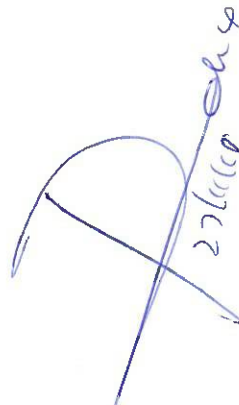


such as passages, lobbies, lift wells, lifts, staircase, including the car parking area. And that as per the terms and conditions of the said

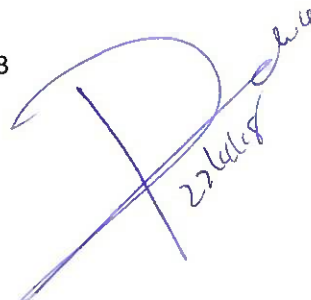
two agreements, after obtaining a loan of Rs.44,00,000/- from the bank and also by obtaining hand loans from other people on interest, paid the amount as per the payment schedule described in the said agreements.

That I recently came to know that the builder has fraudulently and dishonestly suppressed the material facts of filing a suit by Ramachandrashetty, represented by GPA holder B.Shankar against the builder and the land owners pertaining to Survey No 84/1, wherein the builder has proposed for construction of apartments including the apartment under consideration in O.S.No.25522/2014 on the file of the Hon'ble XVIII ADDL. CITY CIVIL JUDGE BANGALORE. Wherein the builder is also guilty of suppressing the material facts and that the builder and the land owners have appeared in the said case O.S.No.25522/2014 and is still pending. Having got the knowledge that there is a litigation pending before the Hon'ble court pertaining to the proposed apartment including the apartment under consideration, the builder has intentionally by misconceiving the facts and also in breach of trust, has entered in to above mentioned agreements with me. As per my legal advice, the contract itself is void ab-initio and as per Sec.52 of Transfer Of Property Act any transaction during the lease pendancy of case in O.S.No.25522/2014 has got no value in the eye of law. And moreover the Hon'ble High Court of Karnataka while dealing with the miscellaneous first appeal No.6054/2017 has clearly held that the transferring of the title and flats to the purchasers shall be subject to the ultimate result of the case. Added to all of this, the builder is not ready with the flat including the necessary approvals for handover, breaching the contract terms, of completion by end of July 2017, including the 6 months grace period. Because of this ill-motivated conduct of the buidler, I have been incurring a monitary loss of Rs.60,000/- per month, which I can no longer bear. Hence through this complaint I request for cancellation of my booking and refund of the amount of Rs.54,67,667/- with accrued rate of interest.

Relief Sought from RERA : Cancellation of booking and refund of the amount



2. After registration of the case notice has been issued the parties. In pursuance of the same Complainant was present and also through his advocate where as the Respondent – Developer also has appeared through his counsel.
3. The Complainant has filed this Complaint seeking the relief of refund of total amount paid to the developer with interest. The Respondent has strongly opposed the case of the Complainant and submitted that the Complaint is not entitled for relief as sought in the Complaint. According to him the present complaint is premature one. Further the developer has submitted that the flat is ready for occupation and the complainant may take the possession by tendering the amount payable to him and he makes a prayer to this Authority to direct the Complainant to pay remaining amount of Rs. 07,49,635/-.
4. The Complainant has submitted his argument stating that no reasonable grounds are there to continue with the project because the title of the Developer over the land itself is in dispute. In this regard he has drawn my attention to suit filed by one Ramachandra Shetty in O.S.No. 25522/14 which was filed for the relief of specific performance. In fact the pendency of suit is not in dispute but according to the Respondent it is nothing to do with the claim of the Complainant. During the course of argument the Complainant has submitted number of documents among which he has drawn my attention to the order of the Hon'ble High Court of Karnataka.



22/11/18

5. In a Miscellaneous First Appeal the High Court has made an observation that the developer title is subject to result of the suit. It means the title over the land is always a hanging one. This is the apprehension of the complainant and he wanted to go out of the project. It is also his contention is that in spite of pendency of the suit regarding the title; the Developer has entered into agreement of sale where in the complainant has paid nearly more than 80% of the total consideration amount and hence according to him this is nothing but an unfair practise. In case the Complainant takes the Sale Deed by continuing with the project it would be considered as fraudulent Sale Deed. Further it is his contention that the Complainant is having sufficient valid and legally enforced reasons for opting the Cancellation of agreement.
6. But the same was strongly opposed by the other side. It is his case that

It is further submitted that the complainant had, with full and free consent entered into the Agreement for construction with the Respondent on 15.02.2017, on understanding all the terms mentioned thereto and with knowledge of delay in the project. The Clause 5.4 of the construction Agreement specifies the procedure for rescinding the contract between the complainant and the Respondent. The relevant portion of clause 5.4 is reproduced hereunder:

5.4 In the event there is delay in completion of construction of schedule D Apartment and is delayed by more than six month beyond the period of 6 months from the end of the grace period as mentioned above, then , in that event, the apartment

Owner/s, subject to the condition that no further penalty or damaged will be payable by the Builder to Apartment Owner/s including the aforesaid penalty of Rs.6/- per square feet of Super Built-up Area per month the Apartment Owner/s may thereafter viz., after 12 month from the date of expiry of time for completion as stated in Schedule 'I' at his/her discretion, shall rescind from this Agreement and the Agreement for sale, by causing a notice to the Builder''

It is submitted that the complainant has not sent any notice of cancellation to the Respondent and has further sent several emails requesting for registration of the apartment has accepted the delay compensation and has continued to do so until June 2018, and only now is he seeking cancellation without any reasonable grounds for the same. In view of all the above facts, the complainants' cancellation of agreement is unacceptable to this Respondent as the same was done in violation of the terms under Agreement for Construction.

7. Project was ought to be completed in the month of June 2017 but on account of induction of RERA and on account of provision available in RERA the completion date was shown as 31/12/2018. The counsel for the Developer submitted that the Developer will be able to give possession of the flat with OC before the time line as mentioned in the RERA.
8. He further submits that he is ready to pay the delay compensation at the rate of Rs. 6/- per sq.ft, from the due date. It is his case that the complainant never sent any demand notice for cancellation.

9. As per the agreement the developer was expected to give the possession by the end of 2016, but the respondent submitted that there is an additional 6 months grace period. It means the developer was to complete the project on or before June 2017 but he failed and now he is saying that he is going to deliver on or before 31st of December 2018.
10. As per Section 18 of the RERA Act, it is the wish of the consumer to be with the project or to go out of the project. The wordings used in Section 18 are as under:
- “ in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act”*
11. By reading the above, it is clear that the Act does not make specific ground to go out of the project. However the parties have entered into agreement on 15/02/2017 with number of clauses, they are all binding upon each other.
12. According to the agreement if the purchaser cancels the agreement without any default on the part of developer then the developer is entitled to forfeit 20% of total cost of construction. But the same was opposed by the other side. In this regard he has drawn my attention to the proceeding of the civil dispute under O.S no. 25522/14 was filed on 27/03/2014 but the agreement was executed by the developer was on 2017.

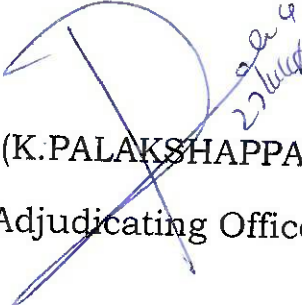
13. It means the consumer wanted to say that the developer has entered into agreement with the consumer even though he was involved in the dispute where his title is questioned. In view of the words used in S.18 and the delay caused in completion of the project, the developer has lost his right of forfeiture.
14. From the position of law it is clear that the Authority will have to take the notice of Section 72 along with Section 18. The Developer is going to complete the project by the end of this year. Further it is his case that the flat is ready for occupation. The developer has submitted in his objection statement to the effect that the complainant can occupy the same by tendering the rest of the sale consideration. It means the amount given by the consumer has not been mis-utilised. It was the submission that the developer has played the fraud on the consumers by entering into agreement even though his title was under cloud. But it was the case of the developer that it was not having any effect on the consumer. The section 18 of the Act says that interest to be paid as prescribed which is as per rule 16.
15. AS per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the parties were present on 7/09/2018. As per the SOP the 60 days be computed from the date of appearance of parties. After filing objections and hearing the parties, the case is reserved for orders. Hence, there is ^{little} ~~no~~ delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

- a) The Complaint No. **CMP/180810/0001129** is allowed.
- b) The developer is hereby directed to return the amount received from the complainant with interest @9%P.A from the respective dates of receipt as per KAOA Act,1972 till 30/04/2017 and @ Rs.10.25% P.A as per RERA commencing from 01/05/2017 till the realisation of entire amount.
- c) In case the developer has paid the GST, then the developer has to give necessary documents to the complainant to enable him to claim the same from the concerned department.
- d) The complainant shall execute the cancellation deed in favour of the developer after realisation of entire amount.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 27/11/2018)


(K.PALAKSHAPPA)
Adjudicating Officer