

BEFORE ADJUDICATING OFFICER RERA

BENGALURU, KARNATAKA

Complaint No. CMP/180829/0001197

Presided by:- Sri. K.PALAKSHAPPA

Adjudicating Officer.

Date: 30th NOVEMBER 2018

Complainant : SRI. RAJESH KRISHNAMOORTHY
#5/1, 1st Floor, 1st Cross, CSI
Compound, Mission Road,
Bengaluru - 560027.

AND
Opponent : SKYLARK ITHACA
ITHACA ESTATES PRIVATE LIMITED,
Skylark Chambers, #37/21, Ulsoor
Road, Bengaluru - 560042.

J U D G E M E N T

1. **SRI. RAJESH KRISHNAMOORTHY**, has filed this complaint under Section 31 of RERA Act against the project "**SKYLARK ITHACA**" developed by M/s ITHACA ESTATES PRIVATE LIMITED., bearing Complaint no. CMP/180829/0001197. The facts of the complaint is as follows:

The complainant on 7th Feb 2016 - Booked the flat T9-1102 with a booking amount of Rs.3,93,605/- paid by HSBC Cheque Number-013366. The same was acknowledging by the Respondent vide his letter dated 26th March 2016. 4. On 17th Mar 2016 - An agreement is made between the Respondent and complainant including the exit

option on or before 24 months from purchase date. Also as per the agreement the Respondent should repay the PRE-EMI amount debit by the ICICI bank every 7th of the month. The two condition as per complainant understanding for the exit option to be valid is to get the loan disbursed within 45 days and to intimate the Respondent on 18th month before exit from the project. 5. On 2nd April 2016 - Loan got disbursed to the Respondent so the first condition of getting loan disbursed to the builder within 45 days is successively completed from the complainant. 6. There weren't much of an issue till May 2017 where the reimbursement of PRE-EMI was happening within maximum of 7 days however after that it was delayed every month. 7. On May 2017, Complainant sent an email mentioning that he want to go for Exit option but they mentioned to send this initiation only on 18th Month which is Oct 2017. On Sep/Oct 2017 Complainant sent an email and also a letter to them as per the format shared. After receipt of the information they proceed with the exit option to be completed on or before 24 months i.e. March 2018. The said Intimation letter was sent to Respondent by way of email on 27/5/2017 and several reminders in response to the complainant email, he has received confirmation mail on 29/6/2018 from Mr.Ajit Lobo General Manager of the Respondent Company. 8. On 18th March 2018 ? the respondent didn't honor the exit option where they need to return advance sale consideration of Rs.3,93,605/- along with the opportunity cost of Rs.2,21,403/- which amounts to Rs.6,15,008.

this Hon'ble authority may kindly be pleased to direct the Respondent :- a) To refund of advance sale consideration of Rs.3,93,605 along with the opportunity cost of Rs.2,21,403/- which amounts to Rs.6,15,008/- and to discharge the loan availed by the complainant on behalf of Respondent with ICICI bank Ltd of Rs.29,50,000/- along with bank charges associated with closing the loan as per the EXIT MOU. b) The Respondent also needs to clear the pending reimbursements of Pre-EMI to the complainant as well as the EMI's got delayed on monthly basis and compensation towards deficiency in service, litigation expenses, damages, mental agony which is quantified to the tune of Rs.5 lakhs. Bangalore Dated: 29/8/2018 Complainant

Relief Sought from RERA : As Preyed In Facts Of complaint

2. In pursuance of the summons on 12/09/2018 the parties were present. Finally on 17/10/2018 after hearing the argument it is reserved for Judgment. The Complainant has filed a memo on 05/10/2018 by calculating the amount payable to him by the Developer. It means the Complainant wants to take an award for a sum of Rs. 39,92,410/-. In this regard the Complainant has given the exit option. Though the Developer has filed objections but during the course of argument she submitted that exit option may be considered.

3. As per exit option of agreement it was executed on 17/03/2016 the Complainant was expected to opt for exit option within 30 months from 17/03/2016 means it comes to September 2018. As per the letter dated 10/10/2017 the complainant has sought for amount payable as per Exit Option and as such the complainant has opted the same within the limitation as stated in the said agreement. Hence, the exit option may be accepted. The complainant has given his calculation memo. In this regard I would like to say that the developer is liable to return the amount with closure of the bank loan with all its pre-EMI. With this observation I proceed to pass the order.

4. As per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 29/08/2018. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the parties were present on 12/09/2018. Hence, the complaint is being disposed off not within 60 days from the date of appearance. With this observation I proceed to pass the order.

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ORDER

The Complaint No. **CMP/180829/0001197** has been allowed.

1. The developer shall pay and close the bank loan by clearing all the pre EMI with interest.
2. In case the complainant had paid the EMI, then the developer shall return the entire EMI amount to the complainant with interest if any.
3. The developer shall pay the amount of Rs. 3,93,606/- within 30 days from this order. If not it will carry interest at the rate of 10.25% till the realisation
4. The developer shall pay the opportunity cost of Rs. 2,21,403/- to the complainant as per Exit Option agreement.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 30/11/2018)

(K.PALAKSHAPPA)

Adjudicating Officer