

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by: Sri K.Palakshappa

Adjudicating Officer

Complaint No. CMP/190212/0002122

Date: 23rd APRIL 2019

Complainant : Karthikeyan Subramanian
107, Premier Solitude, #15,
Sy 49/15. 16th Main,
Veeranapalya, Nagawara,
Bengaluru- 560045

AND

Opponent : Skylark Ithaca
Skylark Mansion Pvt. Ltd.,
Skylark Chambers, Ulsoor Road,
Bengaluru - 560042

J U D G E M E N T

1. Karthikeyan Subramanian Complainant filed this complaint bearing complaint no. CMP/190212/0002122 under Section 31 of RERA Act against the project "Skylark Ithaca developed by Skylark Mansion Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

"Myself Karthikeyan Subramanian and my wife Mrs. Laxmi Sangeetha have purchased an apartment in Skylark Ithaca Phase 2 unit T12-406 under exit option scheme as per the MOU executed on 12-Apr-2016 by paying down a payment of INR 3,57,967/- which was 5% of the total cost and later availed a loan for the unit from ICICI Bank for an amount of INR 58,00,000/-. The loan has been disbursed for an amount INR 42,95,604/- on 04-May-2016. We were asked to make further payment from skylark Ithaca on Feb-2017, we have paid second contribution INR 3,58,482/- on 8-Feb-2017 from my end and bank disbursement of INR 7,16,959/- was disbursed on 16-Feb-2017. I have also paid TDS(1% of the amount paid) on behalf of skylark of INR 10,754/- on 13-Mar-2017. I have also paid TDS for 2016 year payment on behalf

Done
Prabhu

of skylark amounted INR 46,436/-. The TDS for 2016 got reimbursed amounted INR 46,436/- after several follow-up. But the TDS of 2017 INR 10,754/- is yet to be reimbursed for almost 23 months. As per the MOU executed, The builder shall reimburse the pre-emi amount paid on or before 7th of every month. We have been facing issue with the builder in reversing the pre-emi from July 2017. As of 12-Feb-2019 there is pending due for 17 months from the builder which amounts to INR 6,00,732/-. As per the terms of Exit option agreement, we have intimated in E-mail dated on 4th June 2018 within the stipulated time i.e., within the 36th month for availing the benefit of the Exit option. The builder suggested to move from phase 2 to phase 1 and said they will allocate unit T3-302 from Phase 1 as the actual T12 construction is yet to start even after 2.5 years launch of phase 2. But after several follow-ups from my side with no proper replies from them, they told that the unit T3-302 was already sold to somebody. Finally the CRM team agreed for exit option as per my email dated 4th June 2018. We have been undergoing severe stress due to the irresponsible handling of customers from the builder. We have lost complete hope with the builder as they have not kept any of promises made to us. Amount to be refunded: Own Contribution - Rs 7,16,449 Loan Disbursement - Rs 50,12,563 TDS paid(pending) - Rs 10,754 Pre Emi (Till Feb 2019) - Rs 6,00,732 Opportunity Cost - RS 5,42,544

Relief Sought from RERA: Pre emi reversal and process exit option"

2. In pursuance of the notice issued by this authority, on 8/3/2019 the complainant was present. The developer was represented by his advocate. On 29/3/2019, the developer has filed his objection. It is the case of the complainant that he wants to go out of the project since he is having the agreement to that effect.
3. For which the developer has taken two contentions to the effect that the complainant cannot approach this authority for two grounds. One is that the Adjudicating Officer has no jurisdiction to hear the issue and secondly the complainant has to approach only the Civil Court for enforcement of his Exit Option Agreement.
4. The developer has filed objection by taking shelter under section 72 of the Act. It is his argument that the Adjudicating Officer is having the jurisdiction for only with respect to section 12, 14, 18

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22/06/19

and 19 and he has no power beyond the scope of this section. Further it is the case of the developer the prayer made by the complainant is in the nature of enforcement of agreement specifically in terms of the construction agreement and therefore it is the case of the developer that the complainant shall approach the Civil Court. But I am not going to accept his argument because section 18 of the RERA Act empowers the complainant to approach this Authority. By invoking Section 18 the consumer is entitled for the compensation in case of delay in delivering the possession the complainant and also entitled for refund of his invested amount with compensation. Further section 17 prescribes regarding execution deed of conveyance. Section 19 determines the rights and Liabilities of developer as well as consumer.

5. Therefore as per 79 of the Act, the civil court has no jurisdiction over the issues hence, the submission made by the developer regarding jurisdiction has no force. The parties shall not approach the civil court. In order to comply with the terms of the agreement the developer has to pay the EMI as agreed in the agreement. As per S.19(3) the allottee is entitled to claim the possession. As per S.18 it is the wish of the complainant either to continue with the project or to go away from the project. From the above discussion the dispute raised by the complainant is within the jurisdiction of the Adjudication Officer."

6. In the present case the relief of exit option is based upon the exit option agreement. The same was executed on 12/4/2016. As per this agreement, the option to exit shall be exercised within 30 months. This complaint is filed in the month of February 2019, but the developer has issued a email notice on 4/6/2018 exercising the right of exit option. It means the complainant has shown the willingness to opt for the same. When that being the case the developer has no other voice except to go out of the project. Therefore the complaint has to be allowed by directing the developer to honour his own agreement.

7. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the complaint was presented on 12/02/2019. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 08/03/2019 and hence, there is no delay. With this observation I proceed to pass following order.

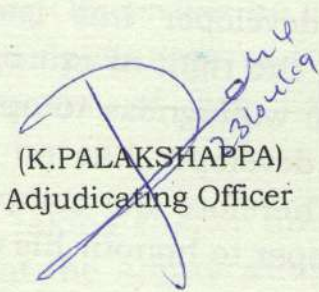
ORDER

The complaint filed by the complainant bearing no. CMP/190212/0002122 is allowed.

1. The developer is directed to pay the amount of Rs. 7,15,934/- with interest at the rate of 9% p.a. from the respective amount paid on the respective date till 30/04/2017 and interest @10.75% P.A from 1/5/2017 till the entire amount is realized.
2. The developer is directed to pay Rs. 5,42,544/- as opportunity cost.
3. The developer is also directed to discharge Loan amount, EMIs and interest, if any.
4. The complainant shall execute the cancellation of agreement deed after the entire amount is realized.
5. Further the developer is directed to pay Rs. 5000/- as cost.

Intimate the parties regarding this order.

(Typed as per dictation, Verified, Corrected and pronounced on 23/04/2019)


(K.PALAKSHAPPA)
Adjudicating Officer