

BEFORE ADJUDICATING OFFICER RERA

BENGALURU, KARNATAKA

Complaint No. CMP/180902/0001213

Date: 9th NOVEMBER 2018

Complainant : S. CHANDRASHEKHAR
Flat No. 412, Divya MSR Gateway No. 72,
MSR Main Road, Gokula, Mathikere,
Bengaluru- 560054

AND

Opponent : Vasathi Housing Limited
No. 37/1, Near Mesthri Palya Chruch Gate
No- 5, Mesthri Palya
Bengaluru - 560045.

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:

"Date of signature of agreements is 20 June 2014. Project completion as per contract March 2016 with a grace of 6 months. No end in sight. Due to conflict between landowner and builder, no registration is possible. Quality of construction is poor. No reason for delay or expected date of completion ever communicated by builder. Quality of construction is also poor. Our home has been funded by a home loan and with the delays, our financial position with the house is bad. We are paying our EMI but do not

Deny
glues

know when we will get possession. The builder no longer inspires confidence that he will ever handover the project after completing all his responsibilities. He has consistently missed all the deadlines that he has communicated to us over email.

Relief Sought from RERA: Withdrawal and compensation for delay"

2. After registration of the case notice has been issued the parties. In pursuance of the same Complainant was present personally where as the Respondent – Developer has appeared through his counsel. The developer and Complainant finally argument was placed on both sides.
3. The Complainant has filed this Complaint seeking the relief of refund of total amount paid to the developer with compensation. 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. Surprisingly the Respondent-Developer has claimed a counter claim with a prayer to this Authority to direct the Complainant to pay remaining amount of Rs. 4,76,560/-
4. The Complainant has submitted his argument stating that no reasonable grounds are there to continue with the project because the developer has failed to deliver the possession as agreed by him. The developer has failed to inspire confidence with the consumer.
5. 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:

9/4/18

"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"

6. 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 20/6/2014 with number of clauses, they are all binding upon each other. Though the agreement says regarding the forfeiture of Rs.100/-per square feet in case of cancellation by the complainant, but he cannot exercise the same in view of the delay.
7. 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.
8. The complaint has vehemently argued before me that he is entitled for the entire amount with loss sustained by him. I have already refereed to S.18 where in it is said that if the consumer wanted to go out of the project then his amount shall be returned with interest including the compensation. But the word compensation has not been defined in this Act. In this regard I would like to take the following commentary:

Adjudication of Compensation: *The Act provides for compensation to the Allottee for false advertisement, structural defect failure to complete construction or deliver, defective title, and failure to discharge the other obligations under the Act, Rules or Regulations or*

Agreement. This section enables the authority, to appoint adjudicating officer for the purpose of adjudging the compensation.

The word compensation is not defined under this Act, However, section 72 lays down the factors to be taken to account while adjudging the quantum of compensation namely, the amount of disproportionate gain or unfair advantage made, loss caused as a result of default and the repetitive nature of such default and other factors.

The Act unlike Consumer Protection Act and all other previous enactments strike a balance to protect the interests of both promoter and allottee. Subject to the Act and Rules and Regulation made there under the parties are free to enter into agreement and both the promoter and the allottee are bound by the same. The Promoter has a right to cancel the agreement as per the terms of the agreement, for reasons to be reviewed by the authority. They may approach the adjudicating Authority for adjudging the compensation

Further the authority has to keep in mind of S.72 also while awarding compensation as per S.71 of the Act.

Factors to be taken into account by the adjudicating officer:- While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:-

- a. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- b. The amount of loss caused as a result of the default;
- c. The repetitive nature of the default;
- d. Such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

9. From the above principle as well the conditions imposed in the agreement regarding forfeiture clause I would say that the developer cannot exercise his right of forfeiture and he has to return the amount to the consumer. Hence, the complaint is to be allowed.

[Handwritten signature]
glt/g

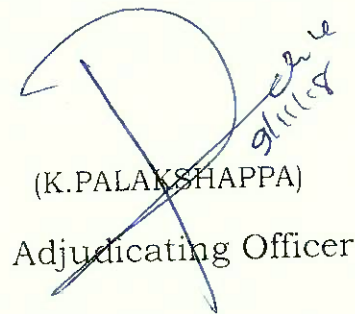
10. From the above position of law it is clear that the Authority will have to take the notice of Section 72 along with Section 18. The Developer is going to complete the project by the end of this year. Further it is his case that the flat is ready for occupation. The developer has submitted in his 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 miss-utilised. However the demand made by the consumer that he is going out of the project has to be honoured in view of the provision made in section itself. Further by reading Section 18 is very clear that Developer is liable to refund the amount the allottees on demand. In this case the Complainant has demanded the amount by filing this Complaint and therefore this Authority holds that as the Developer has no right to exercise the forfeiture clause in view of delay .
11. 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 02/09/2018. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the parties were present on 04/10/2018. With this observation I proceed to pass the order.



ORDER

- a) The Complaint No. CMP/180902/0001213 is allowed.
- b) The developer is hereby directed to return full amount received from the complainant without deducting, along with interest paid by him.
- c) The developer also directed to pay interest @ 10.25% on the principal sum commencing from 01/05/2017 till the realisation of entire amount.
- d) 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.
- e) The complainant shall execute the cancellation deed in favour of the developer after realisation of entire amount.
- f) Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 09/11/2018)


(K.PALAKSHAPPA)
Adjudicating Officer