

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/180927/0001599

Date: 18th MARCH 2019

Complainant : Mr. PERUMAL THANGARAJAN,
 C704, Gopalan Gradeur, Hoodi
 Circle, Whitefield
 Bangalore - 560048.

AND

Opponent : Om Prakash Yadav
 Supertech Micasa,
 Supertech House, B- 28-29, Sector
 58, Noida, Gautam Buddha Nagar,
 Uttar Pradesh- 201307.

J U D G E M E N T

1. Perumal Thangarajan, has filed this complaint under Section 31 of RERA Act against the project "Supertech Micasa" developed by Supertech Limited, bearing Complaint no. CMP/181031/0001599. The facts of the complaint is as follows:

"The Complainant herein has purchased a Flat bearing No.0704/R0370C00704, 7th Floor, of ?MICASA? having 2 Bed Room plus Two Toilet with Super built up area of 1127 sq ft and UDS of 329 sq ft along with 1 Car Parking built on converted land bearing Sy No. 39, measuring aprox 76,597.201 sq ft presently bearing BBMP Khatha No. 43/39, situated at Bellahalli Village, Yelahanka Hobli, Bengaluru North Taluk, from the above mentioned Respondents vide Agreement to Sell and Construction Agreement dated 21.04.2015 for total sale & construction

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consideration of sum of Rs.61,57,126 The complainant submits, as per page 6 para 3 & page 11 para 24 of Agreement to sell and Construction Agreement dated 21.04.2015 the Respondents have promised to deliver the possession of the Schedule Property within August 2016 plus grace period of 6 months maximum by the end of February 2017.

Relief Sought from RERA : Withdraw from project & to return 59,36,872 + comp"

2. In pursuance of the summons issued by the authority the wife of the complainant was present on 30/11/2018. Shri Bellad Advocate has filed vakalath on behalf of the developer. Time has been taken for conciliation as per Section 32(g) of the Act but later it was failed. Therefore the developer has filed Objection Statement.
3. I have heard the arguments on 1/2/2019 and reserved for judgment.
4. The relief sought by the complainant is for refund of entire amount which was strongly opposed by the developer on the ground that the authority not only meant for granting the relief on complaints but also to regularize the real estate business. Shri Bellad Advocate submits that if all the consumers go on demanding for refund of the amount the real estate business will fall on the ground. Further he submitted that the developer has constructed the apartment with a hope that the construction will take the same for their purpose.

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5. He has built the project on the amount invested by the consumer. In case the consumers are permitted to withdraw the amount, the purpose of real estate business will be defeated. Hence, the developer has requested the authority to dismiss the complaint. It is his submission that the project has been implemented in 2014 with an intention to provide luxurious apartment to the consumer. The complainant has entered into agreement with free will. He has also drawn my attention that as per clause 33 of the agreement 15% of the total consideration will be deducted. Under these backgrounds, now I would like to go through the complaint of the complainant.
6. As per Sec. 18 the complainant is entitled for refund of amount as the developer failed to provide goods as agreed by him. Ofcourse now the developer has submitted to the authority that he will deliver the flat on or before 30 June 2019. Now we are in the month of March. Hardly 3 months are left. Therefore the submission has been rightly made by the learned counsel of developer to consider subject to delivery of possession on or before 30th June 2019.
7. Generally it is the wish of the complainant to take a decision on his own. But however the submission made by the learned counsel for the developer is also to be looked into. Of course, the developer had already promised to the complainant that he will complete the project on or before February 2017. Later he had promised that he will complete the project in the year 2018 but even today also it is not completed. However it is submitted that by the end of June 2019 he will provide the flat as agreed with the complainant.

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8. It is also true that the complainant has paid the amount and waiting for the goods which is not taken place even after 5 years. By taking into consideration of all these aspects I would like to say that the complainant has to wait till the 30th June 2019 and till then the complainant is entitled for the delay compensation. IN case the developer failed to deliver the flat on or before June 2019 the complainant may go for refund of his amount in accordance with S.18 of the Act. My finding is supported by the HRERA decision in his complaint NO. 161/2018 where in the HRERA has made the observation as under:

However keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project at the project is almost complete and the respondent has committed to handover the possession of the said unit by 31st December 2018. The refund of deposited amount will also have adverse effect on the other allottees in the said project. Therefore, keeping in view the principles of natural justice and in Public Interest, the relief sought by the complainants cannot be allowed.

9. Though this decision is an independent one, the principle is taken into consideration.

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10. 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 filed on 31/10/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 30/11/2018. Hence, there is delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

The Complaint No. CMP/181031/0001599 is allowed.

- a. Directing the developer to pay delay compensation in the form of interest @10.75% P.A. on the amount paid by him from March 2017 till the possession is delivered.
- b. in case the developer fails to deliver the possession on or before June 2019 the developer shall refund the entire amount paid by the complainant with interest at the rate of @9% with respect to date of payment prior to 30/04/2017 and @10.75% P.A from 1/5/2017 till the realization of entire amount.
- c. The developer shall pay Rs. 5,000/- as cost of the petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 18/03/2019)

(K.PALAKSHAPPA)
Adjudicating Officer