

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/190123/0001931

Date: 31th July 2019

Complainant

Raju Chacko
C-206, Block 3 Sneha Splendour
Apartment T, Subbanna layout
Hoodi Mahadevapura post
Bengaluru; Karnataka-560048

AND

Opponent

: Ithaca Estates Pvt. Ltd.,
No. 37/21, Yellappa Chetty
Layout, Ulsoor road,
Bengaluru-560042
Rep. By Smt. Lubna Advocate

1. Raju Chako, complainant under complaint no. CMP/190123/0001931 has filed this complaint under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Ithaca Estates Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

I booked 1 flat of area 1011 sq ft in Skylark Ithaca Project on 23/04/2015, alongwith my sister Molly Mathew. It is in Tower 11, unit 1004 (10th floor). Delivery was promised by April 2017 but has not been made to date. On enquiring at builder's office on 22/01/2019, have been informed that while rescheduled for delivery by March 2019, work has completely STOPPED due to shortage of funds and may not resume. Till 09/02/17, I had paid Rs 5040704 and on 29/08/2018, I paid an additional Rs 1 lakh vide Cheque No 875596 drawn on SBI, Hoodi Branch (IFSC: SBIN000016234). Delay is nearly 21 months and as Project is suspended indefinitely, I want to cancel my booking immediately and get refund of all monies paid + interest from builder.

(Signature)
31/07/19

2. On 22/02/2019, the complainant was present. The developer was represented by Smt. Lubna Advocate, who sought time to file vakalath and objections. After filing the objections the matter was heard by me.

3. The point that arise for my consideration is

4. Whether the complainant is entitled for Refund of his amount

5. My answer is affirmatively for the following

REASONS

6. The complainant sought for refund of his amount paid to the developer mainly on the ground of delay caused by the developer. It is the case of the developer that the complaint has not made payments as per the schedule and the complaint is filed with the sole intention of harassing the respondent and making illegal monetary gains at the cost of the respondent based on false, frivolous and vexatious contentions. It is submitted that all the averments made by the complainant against the respondent are denied as false unless specifically admitted by the respondent herein.

7. I would say that it is not the case of the developer that the complainant has not all paid the instalments. In case of delayed payment a separate arrangement has been made by the developer by collecting the interest. So this reason will not be a hurdle in granting the relief sought by the complainant in this complaint. The defence taken by the developer that the complainant is not entitled for the relief has no force at all.

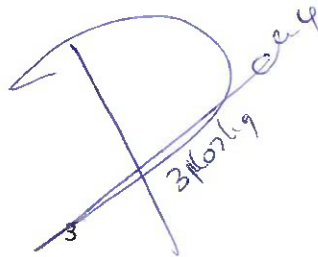
8. Further the developer also has taken a contention that the complainant is not entitled for relief since *the developer has taken shelter under Section 71 of the Act*. It is his argument that the Adjudicating Officer is having the jurisdiction only with respect to Section 12, 14, 18 and 19 and he has no power beyond the scope of this section. Further it is the case of the developer that the prayer made by the complainant is in the nature of enforcement of agreement specifically in terms of the 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 REPA Act empower the complainant to approach this Authority. Section 18 says that in case of delay in delivering the possession of the flat, plot or building the complainant is entitled for the compensation in case he wanted to go with the project. Further Section 17 prescribes regarding execution deed of conveyance. Section 19 determines the rights and Liabilities of the developer as well as the consumer.

9. Therefore as per 79 of the Act, the Civil Court has no jurisdiction over the issues and hence, submission made by the developer regarding jurisdiction has no force. The parties shall not approach the Civil Court since this Act covers everything. 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 go away from the project. From the above discussions the dispute raised by the complainant is within the jurisdiction of the Adjudication Officer. Hence, the developer has no proper defence. The complainant has rightly submitted in his written argument on these points.

From the above points it is clear that the stand taken by the developer is not correct since the developer has failed to deliver the flat as per the agreement. The complaint has to be considered in favour of the complainant since he is having every right to claim refund as per S.18 of the Act.

10. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 23/01/2019. As per SOP 60 days shall be computed from the date of appearance of the parties. In the present case, the parties have appeared on 22/02/2019. Hence, the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

A handwritten signature in blue ink, followed by the date '22/2' and '3/6/19' written vertically.

ORDER

1. The Complaint no CMP/190123/0001931/is allowed.
The developer is directed to refund an amount of Rs.51,32,301/-
2. The developer shall pay interest 9% interest on the respective sum paid on the respective date prior to 30/04/2017 and @10.75% commencing from May 2017 till the entire amount is realised.
3. The developer shall discharge the home loan with its interest, EMI, payments if any made by complainant.
4. The developer shall return the GST to the complainant and to recover the same from the concerned department.
5. The complainant shall execute the cancellation of Agreement of Sale after realisation of entire amount.
6. The developer is also liable to pay cost of Rs.5,000/- to the complainant.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 31/07/2019)


K.PALAKSHAPPA
Adjudicating officer