BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA
Adjudicating Officer

Complaint No. CMP/181231/0001811

Dated: 27th MAY 2019

Complainant : Prathyush Jain
Vasundhara Vihar Colony,
Magan Bhai Market,
Bhalawar-326502,
State:Rajasthan
Rep. by : Sir. Abhilash. P.V, Advocate.

AND

Opponent : Skylark Ithaca,
Ithaca Estates Pvt. Ltd.,
37/21, Skylark Chambars yellapachetty layout, Ulsoor road, Sivanchetti Gardens
Bengaluru – 560042.
Rep. by :Lubna Fairoze, Advocate.

JUDGEMENT

1. Mr. Prathyush Jain, have filed this complaint jointly under Section 31 of RERA Act against the project **"Skylark Ithaca"** developed by Ithaca Estates Pvt. Ltd., bearing Complaint no. CMP/181231/0001811. The facts of the complaint is as follows:

> *"The complainants Mr.Prathyush Jain humbly submits as follows; 1. The complainants came to know about the Skylark Ithaca project located at Kurudu Sonnanahalli Village Bangalore through newspaper advertisements and M/s.Squareyards which is the marketing agency for Skylark Ithaca Pvt Ltd. The complainant booked Flat no. T18-802. 2. Thereafter the complainants entered into three agreements with M/s.Skylark Mansions Pvt Ltd & M/s.Ithaca*

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Estates Pvt Ltd ie; a) Agreement to sell b) Construction Agreement c) Exit Option Memorandum of Understanding . As per the scheme of the builder (M/s.Skylark Mansions) the complainants has to communicate their option to exit within 30 months from the date of first loan disbursement from bank. The builder has promised to discharge the loan availed on the expiry of 35 months from the date of first disbursement.The builder has promised in the exit agreement to refund the advance amount of Rs.9,35,106/- and also pay Rs.7,08,635/-as opportunity cost. 3. The complainants has communicated their intention to exit to opposite party 2018.

Relief Sought from RERA: 1. Direct the M/s.Skylark Mansions Pvt. Ltd., & M/s.I"

2. In pursuance of the summons issued by this authority the complainant was present on 24/01/2019. Sri Abhilash P.V advocate filed vakalath on his behalf. The developer was represented by advocate Smt. Lubna. Case was adjourned to 14/05/2019. On that day the developer has filed his objections.

3. Heard the arguments.

4. The complainant is seeking exit from the project under the Exit Option Agreement. The developer filed his objection to the same. According to the developer, the complainant is not entitled for the relief on the ground that the Adjudicating Officer has no jurisdiction to pass the order based on this kind of agreement. In this regard the developer has said in Para 3 of his objection statement which states as follows:

> *"It is submitted that the complainant has not made payments as per the schedule and the complaint 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 averments made by the complainant against the respondent are denied as false unless specifically admitted by the respondent herein"*

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5. The developer has field the additional objection by taking shelter under Section 71 of the Act. It is his argument that the Adjudicating Officer is having the jurisdiction for the only with respect to Section 12, 14, 18 and 19and 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. 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.

6. As per Section 18 in case of delay in delivering the possession the complainant is entitled for the compensation. Further Section 17 prescribes regarding execution of deed of conveyance. Section 19 determines the rights and Liabilities of developer as well as consumer.

7. Further 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 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.

8. The complainant is seeking benefit under the scheme which is called as Exit Option and the same was executed on 25/06/2016. According to clause the complainant shall avail this benefit within 30 months. It means on or before December 2018 he ought to have shown his willingness to take this option.

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In this regard the complainant has got issued a letter dated 19/11/2018 claiming the benefit under the scheme. It means the complainant has opted for the benefit within the time. As per the agreement it is the duty of the developer to honor the same since it was agreed as such. The developer has no any other option to take any kind of new defense to defeat the interest of the parties who have entered into. In view of the same the contention taken by the developer loses its importance and the developer is liable to return the amount.

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 31/12/2018. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties appeared on 22/02/2019. Hence, there is some delay in closing this complaint. With this observation I proceed to pass following order.

ORDER

The complaint no. CMP/181231/0001811 is allowed.

a. The developer is directed to return amount of Rs.9,35,106/- to the complainant along with interest @ 10.75% P.A., from today till the realisation of the amount.
b. The developer shall pay Rs. 7,08,635/- as opportunity cost after the end of 36 months.
c. The developer is also directed to discharge loan amount along with all the EMI and interest, if any attached to the said loan amount.
d. Further the developer shall pay Rs. 5000/- as cost.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 27/05/2019)

(K.PALAKSHAPPA)
Adjudicating Officer

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