

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/181115/0001636

Dated: 22nd MAY 2019

Complainant : AZEEZ ABDUL SAMATH
10/56, Fakir St Kalmndapam,
Royalpuram, Tamil Nadu- 600013
Rep. by Smt. Sharada, Advocate

AND

Opponent : Skylark Ithaca,
Skylark Mansion Pvt. Ltd.,
37/21, Skylark Chambers yellapachetty
layout, Ulsoor road, Sivanchetti Gardens
Bengaluru - 560042
Rep.by:Smt.Lubna, Advocate

J U D G E M E N T

1. Mr. Azeez Abdul Samath, has filed this complaint under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Skylark Mansion Pvt. Ltd., bearing Complaint no. CMP/181115/0001636. The facts of the complaint is as follows:

"Project Skylark ITHACA Property T12 1005 ? 2BHK - Buyer/complainant A. Abdul Samath and Farida Parveen Developer ? Ithaca Estates Pvt Ltd (Subsidiary of Skylark Mansions Pvt Ltd, Regd Office at No 37/21 Yellappa Chetty Layout, Ulsoor Road, Bangalore 560 042.) RERA Old Regn No- PR/KN/170731/000308 RERA New Regn

No- PRM/KA/RERA/1251/446/PR/170915/000308 T12
1005 phase 2 For RERA Short Description of the case
Property purchase agreement entered under subvention
scheme 5:80:5:10 with EXIT OPTION. 10% paid by myself.
80% loan from bank ? the pre EMI should be reimbursed
by the builder every month by 7th, balance 10% to be paid
on possession. However under exit option buyer can
exercise the exit option whereby builder to repay the
amount paid by buyer along with opportunity cost and
relieve the buyer from bank loan and no obligation to take
possession. After taking monies the builder not responding,
stopped pre EMI reimbursements, not constructed. Facts
Total property value Rs 6,029,804/, Down payment by
myself Rs. 5,94,742/ (297,153 on Feb 2016 and 297,589
in Mar 2017), Property Agreement and Exit Option
agreement date 9 April 2016. (buyer and builder)
Tripartite agreement date 25 April (buyer , builder and the
lender Indiabulls Housing Finance) Loan disbursed from
27 June 2016 to 13 July 2017 42,13,753/- which is 88%
of loan sanctioned. Till Nov 2017 pre EMIs reimbursed
with shortages, much delay and follow up. Pre EMIs not
reimbursed from the month of Dec 2017. Exit option
requests by email sent many times not responded by the
builder. Remedy requested from the Builder a. Discharge
of loan in full and NOC from the banker b. To pay back the
below 1. Pre EMIs from Dec 17 to till settlement date.
Outstanding from Dec 17 to Nov 18 Rs 3,91,014/ 2. Initial
payment of Rs. 5,94,742/ (due in March 2019) 3.
Opportunity cost promised 4,50,372 (due in March 2019)
4. Any charges to be charged by India Bulls due to delay
in EMI reimbursement in future. All of the above with 18%
pa interest till the settlement date.

Relief Sought from RERA : loan discharge+ pending
EMIs+Exit money+interest"

A handwritten signature in blue ink, with the date '22/6/19' written below it.

2. In pursuance of the summons issued by this authority the complainant was present on 11/12/2018. The developer was represented by advocate Smt. Lubna. Case was adjourned to 26/4/2019. 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 additional 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"

5. The developer has filed the additional objection by taking shelter under section 71 of the Act. It is his argument that the Adjudicating Officer is having jurisdiction only with respect to Section 12, 14, 18 and 19 and he has no power beyond the scope of these Sections. 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.

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22/6/19

6. But I'm not going to accept his argument because Section 18 of the RERA Act empowers 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.
7. 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.
8. In this regard the complainant has sent a mail dated May 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 honour the same since it was agreed as such. The developer has no any other option to take any kind of new defence 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.

D. Deiv
22/05/19

9. In this case the complainant has produced the Exit Option Agreement wherein the developer and complainant have entered into an agreement under a particular scheme. In the said agreement the complainant is having option to go out of the project by receiving amount 5,94,306/- along with opportunity cost of Rs. 4,59,372/-. It means the complainant can exercise the option within 30 months. Under this background now I am going to consider this matter. In this case the agreement was executed on 09/04/2016, within 30 months from this date; he has to opt for the exit option. It means on or before October 2018, the complainant has to opt for the said scheme. Accordingly in this case the complainant sent mail on 10th May 2018 and exercised his right of option. When that being the case the developer has no other option except to honor the same. Though the developer has taken so many other contentions, it will not survive in view of this agreement.

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 15/11/2018. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties appeared on 11/12/2018. Hence, there is no delay in closing this complaint. With this observation I proceed to pass following order.

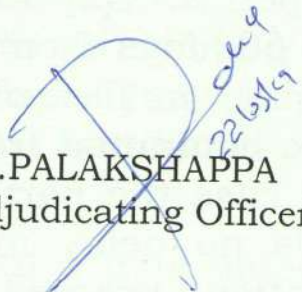
ORDER

The complaint no. CMP/181115/0001636 is allowed.

- a. The developer is directed to return amount of Rs.5,94,306/- to the complainant along with interest @ 10.75% P.A., from today till the realisation of the amount.
- b. The developer shall pay Rs.4,50,372/- 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 22/05/2019)


K.PALAKSHAPPA
Adjudicating Officer