

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY

Dated 13th JULY 2022

COMPLAINT NO: CMP/201113/0007055

COMPLAINANT.....

DR ASHA A,

R/a No. 66/2032,
Nehru Extn, Maluru,
Kolar - 563130.

(Rep. by Sri. N.V. Vasanth, Advocate)

V/S

RESPONDENT.....

BCV DEVELOPERS PVT. LTD.,

29th & 30th Floor, World Trade Center,
Brigade Gateway Campus 26/1,
Dr. Rajkumar Road,
Malleswaram-Rajajinagar,
Bengaluru - 560055.

(Rep. by Kum.Sonali S.K, Advocate)

* * * * *

This complaint is filed under section 31 of the RERA Act against the project "Juniper at Brigade Orchards" for the relief of refund with interest.

Brief facts of the complaint are as under:-

The complainant has entered into an agreement of sale in respect of a flat with the respondent in his project for a sale consideration of Rs.73,07,938/-. Accordingly, they have entered into an agreement of sale on 07/09/2016 and she started paying the instalments as agreed. Till now, she has paid Rs.69,15,935/-. The respondent was supposed to handover the possession of an apartment

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to the complainant before 31/12/2019. In the meantime the complainant had visited her flat on 25/02/2020 to see the progress of work and she was shocked to see that her flat was constructed in different plan than the actual plan shown in the brochure. The respondent has failed to rectify the issue. Hence, this complaint.

Objections filed by the respondent:-

It has denied each and every allegation made against it by the complainant as false. It contends that the plans provided in the agreement of sale dated 07/09/2016, RERA brochures, sale plans all consists of the same plan that was provided to the complainant. They did not carry out any sort of deviation whatsoever as alleged. There is absolutely no variation in the construction of the apartment as the same is carried out in accordance with the sanctioned plan.

Further, it has contended that in the flat allotted to the complainant, a linear kitchen was planned which did not have any circulation place for cooking and utility area. Thus, slight modifications on the kitchen layout were made to suit for a comfortable living apart from this there is absolutely no change in the said plan. When the complainant raised objection to that effect, the said modifications were agreed to be rectified by the respondent. The complainant vide her e-mail dated 07/03/2020 sought for certain changes in the plan and the respondent upon consulting with the structural engineer agreed to the possible demands by removing the wall in the kitchen and also agreed to cover the small opening in the master bedroom. But the complainant kept demanding to remove the wall in the master bedroom which was not possible as the said wall is a load bearing wall and any change to the said wall would result in possible collapse of the entire building. In spite of agreeing to carry



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out the necessary changes as per requirements of the complainant, she chose to cancel the agreements. Further, the complainant was offered to provide an alternative flat in another block. But she has denied the same without any reason. Even the respondent had offered to refund the amount vide e-mail dated 24/05/2021 which was addressed to her counsel. She has refused to settle the issues. Hence, prayed to dismiss the complaint with cost.

Respondent has filed additional objection as under:-

That the complainant has not produced any documents to prove that the respondent has deviated the plans while constructing the apartment. As per clause 9 of the construction agreement dated 07/09/2016 the respondent may at its sole discretion may make minor changes in the apartment within permissible limits and as per the bye-laws.

The complainant has just invested her money in the apartment with an intention to sell the same subsequently for a higher gain. Thus, prayed to dismiss the complaint with cost.

In support of her claim, the complainant has produced in all 10 documents such as copies of Agreement to sale dated 07/09/2016, typical floor plan, deviated floor plan, letter correspondence in regard to payment, construction agreement, title certificate, statement of account for having paid the sale consideration, letter through e-mail for modification, reply regarding modification through e-mail, legal notice dated 25/08/2020 and postal acknowledgement.

On the other hand the respondent has produced in all 2 documents such as copies of e-mails exchanged between complainant



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and respondent regarding modification and e-mail sent to complainant advocate offering full refund of amounts.

Heard arguments of both sides.

On the above averments, the following points would arise for my consideration:-

1. Whether the complainants are entitled for the relief claimed?
2. What order?

My answer to the above points are as under:-

1. In the Affirmative.
2. As per final order for the following

REASONS

My answer to the point No. 1:- The grievance of the complainant is that on account of the substantial deviation from the plan shown in the brochure is not inclined to purchase the apartment. On the other hand, contention of the developer is that except the kitchen which was linear as per original plan, they have not done any substantial deviation as alleged by the complainant. In addition to that they have carried out all modifications as per the demands made by the complainant. Only thing is that they did not remove the wall in the master bed room since it was a load bearing wall as its removal could result in collapse of entire building. Even then, the complainant opted out of the project. Even they have offered to refund the amount vide e-mail dated 24/05/2021.

The contention of the developer in the additional objections that the complainant intends to purchase the apartment as an investment, so that she can sell the same subsequently for higher gain. In the



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considered view of This Authority, the developer is not concerned with the purpose behind acquisition of property. His role is confined to do anything or everything which comes within the terms of agreement between the parties and nothing else. If the demand of the complainant is unreasonable and is not coming within the terms of agreement, he can very well refuse to yield to such demands. He need not bother as to why complainant is seeking such modifications. During the argument, it was admitted by the promoter that there is a deviation from what was actually proposed in agreement of sale and the actual construction. That being the case, it is well within the legal right of the complainant to seek refund for entire amount.

That brings us to the question whether the refund of amount ordered to be made with GST or without GST. It is apparent that complainant is not going to purchase the property. Therefore, it would not be fair to ask her to bear her the GST in respect of property which she is not going to purchase. It is needless to say GST is to be paid in respect of property only once. If at all GST is already deposited to the Government and is not refundable even then the developer is bound to make the refund in full i.e., with GST and respondent can very well collect the GST from the subsequent purchaser as he has already paid the GST out of his own pocket. For these reasons, point No. 1 is answered in the Affirmative.

My answer to the point No. 2:- In view of the above discussion, complaint deserves to be partly allowed. Hence, I proceed to pass the following order

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ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/201113/0007055 is hereby allowed. Respondent is directed to pay Rs.95,37,114/- to the complainant within 60 days from the date of this order. Further, the interest at the rate of SBI MCLR + 2% shall be calculated from 12/07/2022 till the date of payment paid to the complainant. Failing which complainant is at liberty to enforce this order in accordance with law.

No order as to costs.


(H.C. Kishore Chandra)

Chairman

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