

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190519/0003088

Dated: 19th September 2019

Complainant : Vijaykumar G
C220, Sumadhura Sandoval,
Sy No. 70, Thubarahalli Village,
Bengaluru-560066
Rep. by Girish Hegde Advocate.

AND

Opponent : Bharat and Bharath Properties,
17, 4th Floor, Shah Sulthan Complex,
Cunningham Road,
Bengaluru-560052.
Rep. by Varun S Advocate.

J U D G M E N T

1. This Complaint is filed by the Complainant against the Developer seeking for the relief of refund of the amount with interest. The Complaint reads as under:

I booked Flat Nos 603 & 604 in the 6th floor in the proposed project "Pearl Peridot" launched by "Bharat & Bharath Properties". The developer demanded a sum of Rs 20 Lakhs which was paid by me through Banking channel on 23/03/2013, 24/04/2013, 09/05/2015 & 30/05/2015 respectively which was acknowledged by the developer. Contrary to the understanding & assurances by the developer, the developer failed to execute formal agreement of sale and sale deed by giving one or the other reasons. The developer assured to deliver the possession by the end of 2015 itself. However, even today the project is not completed. Rather, there is no progress in the construction activities. In that circumstances, I demanded back the advance sale consideration paid by me on

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several occasions for which there is no positive response from the developer. I got issued a legal notice to the developer on 17/01/2019 which has been duly served on the developer. In spite of the receipt of the legal notice and request from me the developer wilfully avoiding to comply the demand.

Relief Sought from RERA : Refund with Interest & compensation

2. After registration of the case notice has been issued to the Respondent. The Developer has appeared through his Counsel Sri Varun S and filed the objections.

3. Heard the arguments.

4. The point that arisen for my consideration was:
Is the complainant entitled for refund of the amount?

My answer is affirmative for the following;

REASONS

5. At the time of Agreement the Complainant submits that he has entered into an Agreement to purchase two flats & paid Rs. 20,00,000/-. According to his submission he paid Rs. 5,00,000/- on 23/03/2013, 24/04/2013 paid Rs. 6,00,000/- on 09/05/2015 and Rs. 5,00,000/- on 30/05/2015. It means the entire amount of Rs. 20,00,000/- has been paid by the Complainant prior to the RERA Act. The Complainant agreed to purchase unit No. 603 and 604.

6. According to the Developer there is a fault on the part of the Complainant since he has not signed the Agreement of Sale. It means as on today also Agreement of Sale is not executed. It is alleged by the Complainant that the draft of the Agreement of Sale was sent by the Developer which has not been signed by the Complainant because the date of the completion of the project was wrong as promised. The Complainant has produced some photo showing that the project is not likely to be completed within a short period. The Complainant has got issued the legal

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notice on 17/01/2019 which is not replied by the developer. Therefore the complainant has filed this complaint making the same allegations. In response to the above allegations the developer has contended as under:

One of the other partners of the Respondent firm Mr. Bharath Chandrashekhar is refusing to co-operate with the respondent firm, in fulfilling any alleged contractual obligations owed by the respondent firm towards any person. Three of the partners of the Respondent firm i.e., Mr. Gaurav Bhandari, Mr. Bharat Bhandari and Ms. Ashu Bhandari. The respondent firm have been putting in their best efforts to fulfil the obligations owed by the respondent firm towards third parties. Mr. Gaurav Bhandari has in fact repeatedly requested Mr. Bharath Chandrashekhar to extend co-operation for the same, but in vain. In fact, the bank which had lent funds for completion of the project has taken possession of the building and is intent on selling the same at an auction. Therefore the other partners of the Respondent firm, such as Mr. Gaurav Bhandari have found an investor willing to purchase the property for a certain sum. However, Bharath Chandrashekhar is stalling such recovery efforts as well. In fact, the Complainant himself is privy of the lack of cooperation from Mr. Bharath Chandrashekhar.

7. I would say that the stand taken by the developer has no meaning. As per Section 19(4) it is the duty of the Developer to complete the project and if not, either he has to compensate the consumers or to refund the amount with interest as per Section 18 read with Rule 16. With this observation I hold that the Complaint deserves to be allowed. It further means that the prayer made by the Complainant for grant of interest @ 18% holds no water.

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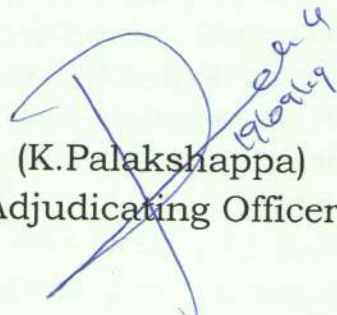
8. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 19/05/2019. In this case the Complainant has appeared on 25/07/2019 and as such there is no delay in completing the complaint. Hence I proceed to pass the following;

ORDER

The Complaint No. CMP/190519/0003088 is allowed.

- a. The Developer is directed to pay Rs. 20,00,000/- to the Complainant.
- b. The developer is hereby directed to pay the interest @ 9% p.a. on the respective amount paid on the respective date prior to 01/05/2017 and @ 2% p.a. above the SBI marginal rate of interest on home loan commencing from 01/05/2017 till realisation.
- c. The Complainant is directed to execute the Cancellation of Agreement of Sale after the entire amount is paid by the developer.
- d. Further the developer shall pay Rs. 5000/- as cost.
- e. Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 19/09/2019)


(K.Palakshappa)
Adjudicating Officer