

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

**BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA**

**Presided by Sri K Palakshappa
Adjudicating Officer**

DATED 24th JANUARY 2020

Complaint No.	CMP/UR/190822/0003980
Complainant	Mrs.Lalitha Murthy & Mr.Abhishek Narsipur, C-30, Shankara Park Basavanagudi, Bangalore-560004 Rep.by Kum.Jasleen Kaur, Advocate
Opponent	M/s Adarash Development No.10, Vittal Malya Road Bengaluru -560001 Rep. by: Sri V.B.Shivakumar, Advocate

"JUDGEMENT"

1. Mrs.Lalitha Murthy & Mr.Abhishek Narsipura have jointly filed this complaint bearing complaint No.CMP/UR/190822/0003980 under Section 31 of RERA Act against the project 'Adarsh Premia' developed by "M/s Adarsh Developers" seeking for the relief of refund of the amount with interest, as the complainants are the consumers in the said project. The brief facts of the complaint is as follows:

GIST the complainants Mrs.Lalitha Murthy and Mr.Abhishek Narsipur, W/o Sahadev Shetty are filing this complaint against M/s Adarsh Developers who executed the agreement to sell dated 27.10.2014 in favour of the complainants and a supplementary agreement dated 25.04.2017 in respect to apartment No.302 having super built up area of 2,905 sq.ft. on the 3rd floor in the project named as Adarsh premia situated in properties bearing sy.Nos.52/1A, 57, 53 and 56/2 all situated at Kadhirenahalli village, uttarahalli hobli, Bangalore south taluk, which are duly converted for non-agricultural residential purpose. The respondent has formulated a scheme

Devi
24/01/2020

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of development of a residential apartment building and the complainants have paid a sum of Rs.1,87,42,586/-. The respondent executed the above agreement in favour of the complainants and have agreed to convey the apartment hereinafter referred to Schedule C property along with undivided share, rights, title and interest therein referred to as the Schedule B property. Under the aforesaid agreement, the complainants ought to be handed over the completed Schedule C property on or before January 2018 (inclusive of the grace period of three months). However, the respondent failed to deliver the completed Schedule C property to the complainants and that the complainants have been continuously following up with the respondent vide notices dated 07.07.2018 and 26.10.2018. The respondent under the supplementary agreement promised to deliver the apartment by December 2018 but failed to do so till date. On 26.08.2018, the respondent issued a letter stating that the apartment shall be completed only in the month of June 2020. The said non-delivery of the Schedule C property amounts to an offence under the Real Estate (Regulation and Development) Act, 2016. In these circumstances, the above complaint has been filed praying for the following relief: a. Direct the respondent to refund the amount of Rs.1,87,42,586/- paid towards advance sale consideration, slap completion and TDS along with interest as prescribed under the Real Estate (Regulation and Development) Act, 2016 and b.Pass any other order which this Hon'ble authority deems fit to be passed in the facts and circumstances of this case and in the interest of justice and equity. The detailed complaint is annexed as attachment No.1.

Reliefs sought from RERA: Refund + interest @ SBI MCLR +2%

2. After registering the case notice has been issued to the developer. On behalf of the complainants Kum.Jasleen Kaur has filed vakalat, whereas the developer is represented by Sri V.B.Shivakumar, Advocate. On behalf of the developer several documents have been fled. Similarly the complainant also has produced physical copy of the complaint and also other necessary documents.
3. I have heard the arguments.
4. The points that arise for consideration is:



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Whether the complainant is entitled for refund of amount?
If so, what is the order?

5. My answer is affirmatively for the following

REASONS

6. At the time of the argument, it was brought my notice, the complainants have booked flat No.302 and entered into agreement of sale with the developer on 27/10/2014. The developer had agreed to complete the project within 39 months including the grace period which comes to 27/01/2018. Now, this complaint is filed seeking refund of the amount on the ground that the developer has failed to complete the project as agreed. In response to the same, the developer has contended in his written objections stating that on 25/04/2017 a supplementary agreement came to be executed. The developer has admitted there is some delay but he has given his own explanation stating that there was lot of consumption of time towards securing the permission from the authority. Further, the developer has contended that he has given the completion date to the RERA authority as 20/06/2020. He further submits that the complainant has rushed to this authority seeking the relief which is not permissible under law.

7. I would say that this authority held in so many cases to the effect that the date given in the agreement of sale is important to determine the right to invoke Sec.18. As per the date of completion mentioned in the agreement it was in the month of January 2018, but the date given by the developer to the authority is not material so far as dispose of this complaint is concerned. It is not the case of the developer that he has completed the project as on the date of the filing of this complaint. Therefore, the complainants have produced the copy of information furnished by the developer himself to this authority, wherein as on the date of filing of the application for registration the project was completed only to an extent of 45%. The payment made by the complainant is admitted. The delay is proved by the complainant,

D. Devi
24/06/2020

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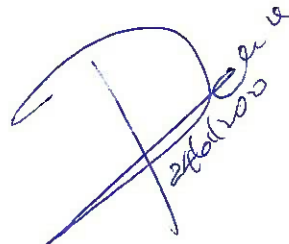
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because the developer is not yet obtained the Occupancy certificate and therefore, the reasons given by the developer for delay will not absolve him from liability. The complainants have given the decision of Hon'ble Apex Court in Pioneer case, which reads as under:

(3 LGC)

8. In view of the observation made by the Hon'ble Apex court, the developer cannot deny the claim of the complainants. Now two years is going to be elapsed and till today the developer has yet able to produce the Occupancy certificate means the complainant cannot be prevented from claiming the relief.
9. At the time of the argument, it is submitted that on behalf of the developer that in case this complaint is allowed, the other consumers will follow the same and thereby the developer will be put to hardship. The Hon'ble Apex Court has said that the consumers cannot be made to wait indefinitely and it is also observed in the same decision that two years is maximum period to a consumer to wait from the due date. I have already said that 29/01/2018 was the deadline given to the complainant for completion of project, now we are already in edge of this month means in case January 2020 is over it will cross two years. At this stage I would say that different authorities have held that at the end of the project it is not correct to ask the developer to refund the amount which may cause halt on the development of the project. Therefore, by considering the same, I would say that as per the observation made Hon'ble Apex Court 2 years is not yet completed as on today. By taking into consideration of all these events six months' time may be given to the developer to complete the project, if not the complainant may be awarded to return of the amount.



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10. 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 22/08/2019. 60 days be computed from the date of appearance of the parties. In the present case, the parties have appeared on 01/10/2019. After taking the objection statement the argument was heard and posted for judgment. Hence the complaint is being disposed of with some delay. With this observation, I proceed to pass the following

ORDER

- a. The Complaint filed by the complainant bearing No.CMP/UR/190822/0003980 is hereby allowed in part.
- b. The developer is hereby directed to give compensation @ 2% above the MCLR of SBI on the amount paid by the complainant commencing from February 2018 till their receipt of Occupancy certificate.
- c. In case the developer fails to obtain the Occupancy Certificate within 6 months it is ordered to return the whole amount received from the complainant with interest @ 9% on the respective amount paid on the respective date till 30/04/2017 and @ 2 % above the MCLR of SBI commencing from May 2017 till realisation.
- d. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.
- e. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 24/01/2020).


K. PALAKSHAPPA
(Adjudicating Officer)

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