

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI K. PALAKSHAPPA
DATED 26th MAY 2020

Complaint No.	CMP/190729/0003684
Complainant	Srinivasa Reddy Beerreddy, Plot 1162, Swami Ayyappa Society, Madhapur, Relangana-500033 Hyderabad.
Opponent	M/s Marvel Infrabuild Private Limited, No.213/3, Veeraswamy Reddy Colony, Kadugodi, Bengaluru-560067 Rep. by Sri R. Santhosh Kumar Associates

J U D G E M E N T

1. Srinivasa Reddy Beerreddy, the complainant has filed this complaint no.CMP/190729/0003684 under Section 31 of RERA Act against the project "SEQUOIA" developed by 'Marvel Infra build Pvt. Ltd.,' seeking for the relief of refund of amount. His complaint reads as under:

2 BHK Flat bearing No B - 306 in the 3rd floor Belle Block in the apartment/ building known as 'SEQUOIA' situated at Property bearing Survey No 139 (Old Sy No 115, thereafter 115/P3) Channasandra Village, Bidarahalli Hobli, Bangalore East Taluk and 2 (Two) car parking space was purchased by the complainant for a total consideration of INR 77,00,503 (Rupees Seventy Seven Lakhs Five Hundred Three only). The Complainant/ I had paid a sum of INR 76,80,418 (Rupees

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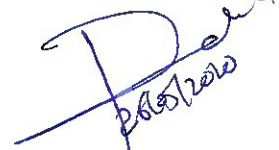
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಪಿ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560021

Seventy-Six Lakh Eighty Thousana Four Hundred Eighteen only) and the balance of the sale consideration for the property, a sum of INR 20,085 (Twenty thousand eighty-five only) is to be paid at the time of registration. The complainant wants to file a complaint against the promoter for the reasons mentioned below:

1. As per Clause 5 of the signed and registered agreement of sale dated January 18, 2018, the developer was mandated to deliver the possession of the above unit to me by June 30, 2018. A grace period of 6 months is also mentioned in the agreement. However, till date, the possession of the unit has not been given to me and the Developer has been repeatedly refusing to register the unit in my name citing some issues, which are no way relevant to our transaction.

2. As per Clause 14(a) of the signed and registered agreement of sale dated January 18, 2018, the property purchased should be free from attachments, encumbrances, court of acquisition or charges of any kind. However, the flat purchased is a part of builder mortgage with DHFL for a project loan. The Developer has neither informed me about such mortgage nor provided any NOC in this regard from DHFL.

3. As per the provisions of the GST law, the effective rate of GST rate to be paid on property transaction should be 12%, as GST at the rate of 18% is levied only on 2/3rd of the amount for the property (1/3rd of the amount is deemed as value of land or undivided share of land supplied to the buyer and is not taxable under GST). However, as per Clause 1 (b) of the signed and registered agreement of sale dated January 18, 2018 the Developer has charged GST @ 18% on total sale consideration, which is in excess to the rate provided under the applicable GST laws. On account of the above grievances, the Complainant wants to cancel the agreement of sale dated January 18, 2018 and recover all the amount paid till date to the Developer, along with applicable interest and recovery of all costs (direct and incidental) related to proceedings before the RERA Authorities. Clause related to "Consequences of Breach" on Page 13 of the signed agreement of sale specifically provides that in the event of either party committing breach, the aggrieved party shall be entitled to enforce specific performance of the contract and also recover all costs, expenses and losses incurred by the aggrieved party as a consequence of such breach from the party committing breach. In relation to the above, copy of the signed and registered agreement of sale dated January 18, 2018 and e-mail communication with DHFL have been attached for your kind reference. We request your goodself to take the above on record.



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and direct the Developer to refund all the amount paid till date by me, along with applicable interest and reimbursement of all costs (direct and incidental) related to proceedings before the RERA Authorities. We also request you to grant us an opportunity of being heard for explaining our submissions more cogently, in case required. Should you require any further clarifications or details in this regard, please feel free to contact me.

Relief Sought from RERA : All amount paid till date, costs, interest.

2. After registering the case, notice has been issued to the parties. On behalf of the complainant his power of attorney holder was present and on behalf of the respondent his advocate Sri R. Santhosh Kumar was present.
3. I have heard arguments on both sides.
4. The points that arise for my consideration are:
 - a. Whether the complainant is entitled for relief as sought in the complaint?
 - b. If so, what is the order?
5. My answer is affirmative for the following

REASONS

6. The parties have entered into agreement on 18/01/2018, which is registered one where the developer has promised the complainant to complete the project on or before 30/06/2018. It is the case of the respondent that the complaint is liable for dismissal on the ground that the complainant has failed to give full consideration amount. At the time of argument, the learned counsel for the developer has drawn my attention to the recital of the agreement of sale dated 18/01/2018. It was submitted that the complainant has not approached this authority with clean hands. The total consideration amount was Rs.77,00,503/-, but according to the complainant he has paid a total amount of Rs.48,89,050/-, Rs.

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27,91,368/- and it is submitted that balance amount of Rs.20,085/- will have to be paid by the complainant at the time of registration of the unit. It is the case of the complainant that as per the agreement of sale the developer ought to have delivered the possession of the unit on or before December 2018 including the grace period, but he failed to give the same. It is also alleged by the complainant that the developer has suppressed the mortgage created over the project. Further it is also alleged that the developer has levied GST in excess. Therefore it is his submission that he was forced to lodge this complaint for the relief of refund of his amount.

7. The developer has denied the case of the complainant mainly on the ground that the agreement itself is not in accordance with law because the complainant has not paid the consideration amount as agreed. In this regard, the learned counsel for the developer has drawn my attention at page-6 of the agreement of sale, I would like to reproduce the same as under:

"Now this agreement witnesses as follows:

1. *That, in pursuance of the foregoing and in consideration of the benefits and obligations respectively accruing to and undertaken by the parties hereto, and vendor/developer hereby agrees to sell and the purchase hereby agree to purchase:*
 - a) *450 Sq.ft. of undivided right, title and interest out of Schedule 'A' properly and 2 bedroom flat No.B-306 in the 3rd floor of Belle Block main door facing towards North in the apartment/building known as 'Sequoia' with 2 car parking in basement/ground for a total sale consideration of Rs.77,00,503/- (Rupees seventy seven lakh five hundred and three only) the undivided share of land and apartment which is subject matter of this agreement is more fully described in the schedule hereunder a schedule 'B' and 'C' property respectively.*
 - b) *The schedule 'B' and schedule 'C' hereinafter referred to as the schedule property to be conveyed for total sale consideration of Rs.77,00,503/- (rupees seventy seven lakh five hundred three only) which includes the basic cost of*

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construction, 2(two) car parking spaces and GST @18% on total sale consideration.

2. The purchases/s has/have paid a sum of Rs.76,80,418/- (Rupees seventy six lakh eighty thousand four hundred and eighteen only) in the following manner:

i) A sum of Rs.48,89,050/- (Rupees forty eight lakh eighty-nine thousand and fifty only) dated 04.04.2013, by online transfer, Bengaluru.

ii) A sum of Rs.27,91,368/- (Rupees twenty seven lakh ninety one thousand three hundred and sixty eight only) received for Marvel Homes Pvt. Ltd., shares purchased by developer.

8. At the time of argument, the counsel for the developer has drawn my attention to see that as per the recital of the agreement itself Rs.27,91,368/- has been received by 'Marvel Homes Pvt. Ltd.,' shares purchased by the developer. But it is the case of the developer that the present project is Marvel Infra build Pvt. Ltd., the complainant had paid Rs.27,91,368/- in the form of shares to one 'Marvel Homes Pvt. Ltd.,' which is not the project developed by the developer. Therefore, the agreement itself is invalid and therefore the question of refund of amount as paid by the complainant does not arise.

9. Further it is submitted that he is going to seek for cancellation of the agreement of sale executed by the complainant because the agreement itself is invalid in the eye of law since the consideration amount has not been passed to the developer. In continuation of the same he further submitted that he had got cancelled such kind of agreement of sale where he had not received the sale consideration amount. In support of the same, he has produced xerox copies of the deed of cancellation of sale agreement which have been made in favour of some other persons. The same is strongly opposed by the complainant by submitting that the same is not having any connection to his case. The learned counsel for the developer submits that he is going to file necessary suit for cancellation of present agreement of sale also after dismissal of this complaint.

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10. Of course, as per the recitals made in the agreement of sale dated 18/01/2018 the complainant has paid Rs.48,89,050 on 04/04/2013 through online transfer and Rs.27,91,368/- received for Marvel Homes Private Ltd., and according to the recital of agreement of sale dated 18/01/2018 the complainant was expected to pay Rs.20,085/- only at the time of the registration. The only defense taken by the developer is that the sale consideration of Rs. 27,91,368/- as mentioned in the agreement of sale has not been received by the present developer since it was given to other project. But I am not going to accept his argument for the simple reason that he cannot go beyond the recitals of the agreement dated 18/01/2018, because, the developer has participated in the execution of the agreement of sale which is registered one where he admitted the passing of consideration to him. Further, he never questioned the recitals of this agreement before any competent court of law. Only at the time of argument before me, he submits that he is going to file a suit for cancellation of this agreement of sale. I say that it is a different issue. Till the cancellation of this agreement of sale, the recitals of the same are binding upon him. Furthermore, I would like to say that Sec.91 of the Indian Evidence Act prohibits him from taking any other different stand from the documentary evidence with respect to recitals of agreement of sale dated 18/01/2018. As per the recitals in page 6 and 7 of the agreement of sale, the developer had received the sale consideration amount of Rs.48,89,050/- on 04/04/2013 through on line and Rs.27,91,368/- in the form of shares. Therefore, now he cannot take different stand against this documentary evidence which is prohibited by law. Further the complainant has given his representation stating that argument canvassed on behalf of the developer is incorrect. I would like to reproduce the same here as under:

"B. Valid consideration: consideration is the foundation of every contract. The law enforces only those promises that are made for consideration. An agreement without consideration subject to certain exception is void. In the absence of consideration, a promise

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is purely gratuitous and creates no legal obligation. The term consideration is used in the sense of quid pro quo (something in return). Thus, consideration is the price for which the promise of other is bought. However, consideration does not mean payment of money only. In-kind consideration refers to payment, distribution, or substitution of goods or services in lieu of money. Consideration other than cash is a widely accepted phenomenon and also recognized by the statutes in India, including the Companies Act, 2013, Income Tax Act, 1961 and several other prevalent statutes. As per existing tax laws, if the consideration for a supply is not in money (as in a barter transaction) or the consideration is partly in money and partly something else (as in exchange offers), the tax value of the supply is the monetary equivalent of the consideration.

The complainant wishes to submit that sale consideration paid in the form of equity shares of MHPL as reflected in sub-clause (iii) of Para 2 of the registered agreement of sale in page 6 is a valid consideration. The word 'consideration' or 'price' is not defined under the Real Estate (Regulation and Development) Act, 2016 and related rules/regulations. Consequently, these words have to be construed by reference to other enactments/statutes.

Section 2(d) of the Indian Contract Act, 1872 'consideration' as: 'When at the desire of the promoter, the promise or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something such act or abstinence or promise is called a consideration for the promises'

Section 2(31) of the Central Goods and Service Tax Act, 2017 defines 'consideration' in relation to the supply of goods or services or both includes – (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Govt., or a State Govt. Section 118 of the Transfer of Property Act defines 'exchange' as follows:

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"When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing, or both things being money only, the transaction is called an exchange.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale 'Section 119 provides:

"if any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee, from him without consideration."

11. This is the position of law, which cannot be deviated by submitting that agreement of sale is invalid in the eye of law because of non-passing of consideration amount. Therefore, I would say that, as per arguments canvassed on behalf of the developer the present complaint is liable for dismissal holds no water. Further another important point is that the recital of the same agreement of sale where in the developer has agreed to receive the balance sale consideration amount of Rs.20,085/-out of total consideration amount of Rs. 77,00,503/-It means if we calculate the payments made by the complainant as per clause 2 of Agreement of sale the complainant has paid Rs. 48,89,050/-plus Rs. 27,91,368/- which comes to Rs.76,80,418/- to which if we add Rs. 20,085/- then it amounts to full sale consideration. Hence, the agreement says that balance sale consideration was only Rs. 20,085/- means the 2nd item of Rs.27,91,368/- paid in the form of shares to Marvel Homes Pvt., Ltd., is admitted in clear terms. When that being the case the oral argument made against to the same is not admissible since it would be against to S.91 of Indian Evidence Act.

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12. The learned counsel for the complainant has produced zerox copy of the judgment of the Hon'ble High Court of Karnataka passed in Writ petition No.36635/15 in the case between H.R. Satyanarayan versus the BDA and another wherein the Hon'ble High Court has held that the parties to the agreement of sale cannot take the cancellation unilaterally. It means it is the argument of the complainant that unless the other party of agreement gives consent or participate in the cancellation of agreement of sale it cannot be done. In view of the judgment of the Hon'ble High Court of Karnataka in the above said Writ petition as well as, as per the discussion made by me above, dismissal of this complaint does not arise.
13. In the present case the developer has taken the Occupancy Certificate on 14/10/2019 and as such generally when the OC was taken then question of refund may nor arise. But I would say that the developer is not submitting that the complainant is not entitled for refund since he has already received the OC but it is his submission that the complainant cannot maintain this complaint itself on the ground that the agreement is an unenforceable one since no proper consideration amount was passed under the agreement of sale. This complaint was filed before taking the OC and the complainant has alleged that the developer shall refund his amount on the ground that the property on which the project is being developed was mortgaged and the same was not disclosed to the consumers. This is the main reason for demanding the refund of the amount.
14. In addition to it the claim of the complainant is also based upon S.18 of RERA act since the developer had agreed to complete the project on or before 30th June 2018 with grace period of 6 months. It means on or before the end of 2018 he ought to have delivered the possession as per agreement. Now he has received the OC in the month of October 2019 means the project was not completed within the due time. This is one of the reasons to the complainant to seek refund and another reason is that the property was mortgaged which was not disclosed to the

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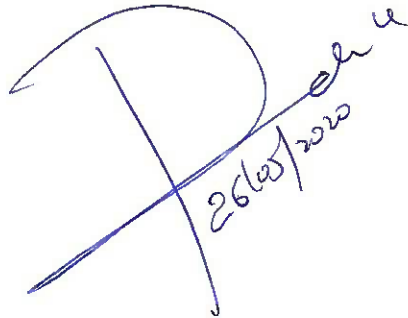
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complainant. I would like to say that instead of meeting this kind of submission the developer has concentrated his argument only on non-passing of consideration amount. It is established principle that the allottee can demand either for delay compensation or refund of the amount whenever there is violation of S.18 of the Act. It is proved that the developer has failed to complete the project within the due time as mentioned in the agreement of sale. The developer has failed to give any kind of explanation to the allegations made by the complainant. Hence, I am of the opinion that the complaint has to be allowed.

15. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 29/07/2019. In this case the parties were appeared on 04/09/2019. After hearing lengthy arguments of the parties and after going through the different documents and citation, the matter came up for judgment. In the meanwhile on account of natural calamity COVID 19 whole nation was locked down completely from 15/03/2020 till 18/05/2020 and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.


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ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190729/0003684 is hereby allowed.
- b. The developer is hereby directed to refund an amount of Rs. 76,80,418/- together with interest @ 2% above the MCLR of SBI on the respective amount paid on the respective date till realization of the entire amount. (The MCLR has to be calculated @ which is prevailing as on today)
- c. The developer is also hereby directed to pay Rs.5,000/- as cost of the petition.
- d. The complainant is hereby directed to execute cancellation of agreement of sale after realization of the entire amount.
- e. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 26/05/2020).

K. PALAKSHAPPA
Adjudicating Officer

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