

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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
Date 4th of June 2020

Complaint No.	CMP/190805/0003715
Complainant	Ma ^g esh Nandakumar Subramanya Nagar, 2 nd stage Chennai, Tamil Nadu-600024 In Person
Opponent	Purvankara Limited 130/1, Ulsoor road, Bengaluru - 560001

J U D G E M E N T

1. Ma^gesh Nandakumar, the complainant has filed this complaint bearing no. CMP/190805/0003715 under Section 31 of RERA Act against the project "Purva Sunflower" developed by Purvankara Limited., for the relief of delay compensation.
2. In pursuance of the notice issued by the authority, the complainant has appeared in person where the respondent who is the developer has appeared through his representative and filed objection.
3. Heard the arguments.
4. The point that arise for my consideration is
 - a) Whether the complainant is entitled for the relief as sought in the complaint?
 - b) If so, what is the order?

Devi
04/06/2020

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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5. My answer to the above point is affirmative in part for the following

REASONS

6. This complaint is filed by the complainant seeking for the relief of compensation of Rs.15,08,750/-. It is the case of the complainant that the developer has to pay this compensation since he has not complied order of this authority passed in his previous complaint No. CMP/180424/0000775. The developer has filed his objection stating as under:

- Complainant had originally filed CMP/0000775 in respect of which this Hon'ble Authority had passed an order dated 22.06.2018, a copy of which is attached to this memo and marked as Annexure-A.
- Pursuant to the order and in partial compliance thereof, complainant paid a total amount of Rs.10,02,507/- against principal amounts outstanding, report of which the company acknowledge in its email dated 29.06.2018. The emails exchanged between complainant and company during the period 27.06.2018-29.06.2018 are also marked to the Hon'ble Adjudicating Officer and attached to this memo and marked as Annexure-B.
- In light of complainants failure to Pay all amounts due to the company, particularly interest on delayed payments, company was constrained to file a counter complainant (CMP/0000979), Which was adjudicated by this Hon'ble Adjudicating officer and order dated 30.10.2018 was

Devi
04/06/2018

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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passed. A copy of this order is attached to this memo and marked as Annexure-C.

- The complaint has failed to disclose the order passed in CMP/0000979 in this complaint, in an attempt to mislead the Hon'ble Adjudicating Officer.*
- Starting from 30.06.2018, the complainant has consistently refused to, and failed to clear all dues payable to the company and instead has sought possession without clearing such dues. The company has been ready and willing to handover possession to the complainant by executing and registering the sale deed, on the explicit condition that complainant immediately pay all remaining dues forthwith.*
- Complainant has failed to abide by the orders of this Hon'ble Adjudicating officer in CMP/0000979 by refusing to pay the interest due on delayed payments, which the company is entitled to recover under sec.19(7) of the Real Estate(Regulation & Development) Act,2016. A copy of the interest statement is attached to this memo and marked as Annexure-D.*

7. Now the difference between the complainant and the developer is clear. I would like to say that this Authority has passed in order CMP 775, where this Authority has directed the developer to deliver the possession on or before 30.06.2018 and at the same time the complainant is directed to pay the amount payable to the developer. In view of the said finding given in CMP NO.775 filed by the complainant, this authority has closed the complaint filed by the developer in CMP NO.0000977. The gist of the finding of the authority is that the developer had to comply Section 17 &19(10) of the Act. The complainant had to comply Section 19(6) and 19(7) and

Devi U
04/06/2018

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Real Estate Regulatory Authority Bangalore

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19(10) of the Act. It means this Authority had given the finding to clear the dispute but the complainant has again approached this authority by filing this complaint by making the allegation against the developers as in this complaint.

8. I would like to say that Section 19 of the Act prescribes some obligations and duties on both by evaluating the same. I directed the parties to take Sale Deed within the particular time but the developer has failed to execute his own grounds. The complainant also failed to comply Section 19(6) of the Act.

9. I would say that the complainant has alleged in this complaint and sought for grant of compensation of Rs. 15,08,750/-. But I would say that what is the basis for the calculation is not explained. As per S.18 of the act, the delay compensation will be calculated based upon the amount paid by the complainant under agreement of sale. But here no such situation is prevailing. The complainant has given some tips regarding history of his dispute which reads as under:

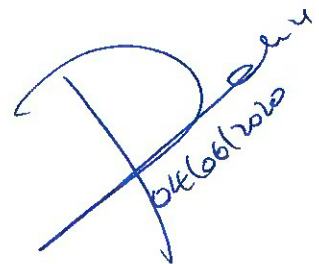
- a. Copy of the agreement between Purvankara and Magesh
- b. Payment schedule as agreed between Purvankara and Magesh dt.07 Oct 2013
- c. RERA judgment issued on June 25, 2018 for my complaint no.775.
- d. RERA judgement issued on October 30, 2018 for Purva complaint no. 979
- e. Nov 2, 2018 – Email received from Purva for registration.
- f. Nov3, 2018 receipt conforming to block Nov 28 for registration. Nov 14, 2018 – Sent a remainder to Purvankara to provide details for completion of registration.

P. Devis
04/06/2018

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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- g. Nov 20, 2018- Sent another mail remainder despite numerous phone.
- h. Nov 21, 2018- Sent another mail remainder after Ramesh from CRM Team promised to provide details.
- i. Nov22, 2018- Received a claim for total amount of 16,79,632/- including advance maintenance fee. However, no detailed calculations provided in support of this claim amount. Hence, sent an email on the same day requesting for worksheet.
- j. Nov 23,2018 – reminder sent requesting for clarification of November 22nd email
- k. Nov 26,2018- Spoke to Ramesh from CRM team to provide clarification for Nov 22nd E-mail.
- l. Nov 26,2018- Received clarification for Nov 22 email. On the same day, sent an email highlighting numerous in the final payment calculation.
- m. Nov 30,2018- Sent reminder to ramesh/ Manisha for Nov 26 email highlighting errors
- n. Dec 11,2018- Received clarification for my November 26 email along with statement of account.
- o. However, the error was still not fixed.
- p. Dec 14, Dec19, Dec21, Dec 25, Dec26, Jan4, Jan 8, Jan22, Jan 30, Mar 5 , Mar7, Mar11, Mar15, Apr30-Numerous email reminder/ phone calls with their accounting team to fix the errors.
- q. May 2,2019- finally the errors were fixed. Worth to note there was no interest claim on that worksheet nor on the final statement of accounts. Total amount claimed including advanced
- r. Maintenance fees was Rs.16,13,149.


04/06/2019

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Real Estate Regulatory Authority Bangalore

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- s. *May 6,2019- received draft sale deed and confirmation for May16 registration.*
- t. *May 6 and May7 2019- total of Rs.16,13,149 paid to Purvankara including advanced*
- u. *Maintenance fees towards full and final settlement. Proof of payment attached.*

10. From the above details it is clear that on May 6th & 7th of 2019 finally the complainant had paid Rs. 16,13,149/-to the developer which was demanded by him. On going through the mail exchanged between the parties I didn't find any mail after 07/05/2019 either by denying the claim of the complainant or accepting his plea. I failed to understand the attitude of the developer who was expected to invite the purchaser immediately when the complainant has paid the amount. If the same is not in full, he ought to call upon him to tender the due amount. Surprisingly. In his objection statement he claimed that the complainant may be directed to take the Sale deed on or before 16/01/2020 by paying the dues if any but he has not specifically mentioned the due amount. The objection statement has filed in the month of January 2020 claiming due if any. There was no any difficulty to the developer to calculate the due amount if any.

11. I would like to say that since 2013 the complainant is waiting for his flat. In order to resolve the dispute between the parties this authority had directed the developer to execute the sale deed on or before 30/06/2018 but the same is not materialised and the dispute was continued for one or the other reasons. I would say that in order to put an end to the dispute, I am going to direct the developer to execute sale deed after demanding due only the legally acceptable without putting any kind of unnecessary interest. I would say that if there is a due the developer could have issued the

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04/06/2020

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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demand notice after 7th May 2019. With this observation I allow this complaint by directing the developer to comply the order of this authority passed in previous complaint filed by the same complainant. I am not going to say anything on the compensation since the developer has said that he did not execute the sale deed because the complainant has not paid the entire dues. Whereas the complainant has said that he has paid Rs.16,13,149/-on 7th May 2019 with an expectation to execute the sale deed from the side of the developer. I would say that the objection statement has been filed by the developer in the month of January 2020 but no where he has denied about the payment of Rs. 16,13,149/-made by the complainant towards full dues. If the payment of Rs.16,13,149/- was not towards full dues, the developer could have referred the same in his objection statement. If not, it is one kind of indirect admission. With this observation I would say that the developer shall execute the sale deed without dodging the same. Hence, I answer this issue affirmative in part.

12. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will has to be closed within 60 days from the date of filing. In this case the complaint was filed on 05/08/2019. The said 60 days be computed from the date of appearance of the parties. In the present case, the parties have appeared on 24/09/2019. Hence the complaint is being disposed of with some delay. In the meanwhile on account of natural calamity COVID-19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2010 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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04/06/2020

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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ORDER

- a) The complaints filed in CMP/190805/0003715 is hereby allowed in part.
- b) The developer is hereby directed to execute the sale deed within a month commencing from today. In case of failure, the developer has to pay the delay compensation of Rs.10,000/-per month till the execution of sale deed.
- c) The complainant shall comply S.19(10) of the Act by co-operating with the developer.
- d) Intimate the parties.

(Typed as per dictated, corrected, verified and pronounced on 04/06/2020).

(K.PALAKSHAPPA)
Adjudicating Officer