

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟ 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: 28th MAY 2020

Complaint No.	CMP/191123/0004700
Complainant :	M.P. Sajumon Vila NO. 3, Force Avenue Orchid wood layout , behind brookefields, Kundalahalli, Bengaluru - 560057. Rep. By Sri Dhananjaya Advocate
Respondent	Ozone Urbana Infra Developers Pvt. Ltd., No. 38, Ulsoor Road Bengaluru- 560042 Sri Deepak Bhaskar Advocate

J U D G M E N T

1. The above complainant has filed his complaint under Section 31 of RERA Act against the project "Ozone Urbana" developed by Ozone Urbana Developers private Limited. I would like to say that the complainant has sought for refund of the amount paid by him towards purchase of flat.

2. His complaint reads as under:

The Complainants were interested in purchasing a residential Flat in Devanahalli. The Respondent's sales and marketing representatives approached the Complainants and represented that the Respondent is launching a high rise residential apartments project called Urbana Avenue situated at Kannamangala Village Kasaba Hobli Devanahalli Taluk, Bangalore and that the Respondent has obtained all the necessary licenses approvals / sanctions for the project. The Respondent's representatives also informed the Complainants

Deepak Bhaskar
28/05/2020

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that the project is pre-approved with several financial institutions and that the Respondent is offering the Flat under a subvention scheme, i.e. no payment of EMIs on the loan until the Complainants receive possession of the Flat. Relying on the Respondent's representations and assurances the Complainants signed a Sale Agreement with the Respondent on 19.01.2017 for purchasing a Duplex Flat, bearing No. Q 003, located on the Ground Floor in the Block No. Q, more particularl

Relief Sought from RERA : Refund the entire sum along with the interest

3. In pursuance of the summons issued by this authority Sri. Dhananjaya Advocate has appeared on the behalf of the complainant. Sri. Deepak Bhaskar, Advocate has appeared on behalf of the developer.
4. The developer has filed his written objections with necessary documents where as the complainant has filed his written arguments.
5. I have heard the arguments on both sides.
6. The points that arise for my consideration are:
 - a) Whether the complainant proves that he is entitled for refund of the amount?
 - b) If so, what is the order?
7. My answer is affirmative in part for the following

REASONS

8. I would like to say that the Complainant has entered into the agreement of sale with the developer where he has agreed to complete the project on or before September 2019 including the grace period.

Deepak Bhaskar
29/05/2019

9. The complainant has filed the complaint seeking the relief of refund of his amount paid to the developer towards purchase of flat bearing No. Q-003 located on the ground floor in block Q. The complainant and the developer have entered into agreement on 19/01/2017 where the developer has agreed to complete the project on or before 30/09/2019 including the grace period. Even though the project has not been completed within the time as mentioned in the agreement, the learned counsel for the developer submits that he is not liable to refund the amount since the date given to the RERA Authority has not yet completed. In addition to the above submission it is also his case that he has given the date of completion to the authority as 31/12/2022.
10. As per Section 18 (1) proviso the developer has an obligation towards allottee who is going to withdraw from the project shall return his amount with interest. The Developer has failed to complete the project on or before the date mentioned as above including grace period of 6 months. Further it is alleged that there was no any violation of S.72 of the Act. No allegation regarding the deviation of the amount to other projects and as such it is submission that the relief as sought by the complainant is not covered.
11. As per the construction agreement the project was to be completed on or before the date mentioned in the above paragraph but even till today the project is not completed. In this connection it is the argument of the developer that the complaint is premature one since he has given the date for completion of the project as December 2022. In this regard the learned counsel for the developer has relied upon the decision of the Bombay High Court. *By taking the support of this decision where it is his submission that as per S.4(2)(1)(c) the date given to RERA be considered.* But I would say that it is not correct to submit in such a fashion on the ground that the Act has facilitated the developer to complete the project by giving a fresh

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date only to complete the project but it does not mean that the demand of refund cannot be calculated from the date mentioned in the agreement. Hence, the stand taken by the developer has no force. In support of the same I would like to refer to some decisions:

"In case of Praveen Kumar v. SVS Buildcon CMP No. N-BPL-17-0010, Madhya Pradesh Real Estate Regulatory Authority and Shashi Gupta v. SVS Buildcon CMP No. N-BPL-17-0006, MPRERA,(para 6)

Proposition: Compensation for delay can be claimed regardless of registration and the date given for registration

c) *"Tufail Ahmed Abdul Quddus and ors v. Pramod Pandurandg Pisal and Ors. CMP no. CC006000000023023 AND*

d) *Subodh Adikary v. Reliance Enterprises CMP no. CC006000000055349" wherein the Maha RERA has said that completion of every month of delay should be given to the allottee from the date of possession as agreed in the agreement*

I am fully agreed with the finding given by Maha RERA and as per judgment of this authority in different complaints the delay compensation/order for refund of the amount has been computed from the date mentioned in the agreement.

12. Now I have to say why the complainant is seeking refund of his amount without waiting for completion of project. In this connection the complainant has said in his written argument stating that he has obtained bank loan of Rs. 1,05,52,900/-and the same has been paid to the developer and he is waiting for his unit as assured by him as 30/09/2019 including grace period. But it is his submission that the developer has sent a mail on 26/06/2019 stating the probability of completion of the project would be end of December 2020. According to the complainant it

*Dear
Trustees*

is shocking news to him and further because the said memo is indication of deviation from the date given in the agreement of sale. Another ground is that the developer has asked the complainant to pay Pre-EMI of Rs 67,719/-per month even though it was not the burden on the complainant to pay it.

13. The Advocate who represent the complainant submits that he is seeking the refund of the amount on the ground that the developer has failed to comply with the terms of the agreement as well as he has shifted the burden of pre-emi on the complainant. In view of the same the complainant had got issued c-mail notice on 3rd July 2019 requesting the developer to cancel the transaction. Further complaint has demanded to refund the amount without any deduction. Further the complainant has commenced to pay pre-emi from July 2019 though it was not the burden on him to pay it. Since the developer has breached the terms of agreement; it is settled position that the complainant is entitled to claim for refund as per section 18 of the act. In this regard I would like to say that the developer has to complete the project before March 2019 with 6 months grace period. The mail sent by the complainant was in the month of July 2019 for cancellation of the agreement of sale but it is not correct since it was issued even before the completion of date given by the developer in the agreement. However the present complaint has been filed in the month of November 2019 and therefore this complaint is very well maintainable. In view of the same the argument of the developer that the complaint is premature holds no water.

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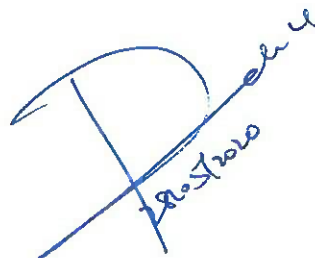
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14. But the learned counsel for the developer has urged many other points in support of his contention with different view from the stand taken by the complainant. The developer in his objection statement admitting so many things but denied the claim of the complainant that the developer has failed to make the PRE-EMI to the bank. In this regard the developer has said in his objection statement stating that subsequent to agreement of sale a tripartite agreement was executed where in the developer has no liability in relation to the loan other than making the interest payment to the bank till December 2017 or till the date of intimation of the unit. For the tripartite agreement under clause 4 and clause 8 provides that even on assumption of interest by the respondent the liability of the complainants is not reduced or relinquished the liability to pay the loan amount will be that of the complainants, notwithstanding any other terms of any agreements executed between the complainants and the respondent.
15. It is submitted that the respondent has always prioritized the complainants welfare and kept the complainants best interest in mind. The respondent has never skipped any pre-EMI payments, to ensure that there is no negative impact on the complainants CIBIL Credit rating. The complainants have admitted to the same in the email dated 3rd July 2019.
16. It is reiterated that the Lender Bank has refused to accept payments by the builder/developers under the subvention scheme. The regulatory constraints imposed by the Lender Bank is in furtherance of a circular dated 19th July 2019 issued by the National Housing Bank Advising all such Housing Finance Companies to "... desist from offering loan products involving servicing of the loan dues by builders/developers etc.. on behalf of the borrowers".


28/6/2020

17. The contents of Para 10 and Para 11 are partly admitted as true. In order to ensure that complainants are not affected adversely, the respondent has assured the complainants that the landed cost of their Apartment will not suffer thereby ensuring that there is no added financial burden and the spirit of the subvention scheme is maintained. The respondent has offered to pass an advance credit note in favour of the complainants in lieu of the pre-EMI payment made by the complainants that would in effect reduce the cost of the purchase and save them all the incidental costs associated with the same, thus ensuring that the landed cost of the complainants Apartment Unit will not suffer, thereby retaining the essence of the subvention scheme.
18. The content of Para 12 and Para 13 are denied as false. It is false to say that the respondent has not acknowledged the complainants concerns. The respondent has time and again assured the complainants that the spirit of the subvention scheme will be maintained and all the pre-EMI payments made by the complainants will be adjusted against the landed cost, this has also been acknowledged by the complainants. The respondent has informed the complainants of the advanced credit note raised in favour of the complainants in lieu of the respondent is been paying the interest as per the Tripartite Agreement till May 2019 under subvention scheme and further the respondent, as committed in its email dated 11th July 2019 is passing the credit note to the complainant for the interest being paid by him effective June 2019.
19. On these grounds the developer is trying to put forward his defence for denying the case of the complainant but as per Section 18 when once the developer fails to complete the project as per schedule a right will accrue to the complainant either to seek delay compensation or refund of the amount paid to the developer.

A handwritten signature in blue ink, appearing to be 'R. S. Srinivas', is written over a large, stylized blue 'D' or 'R' shape.

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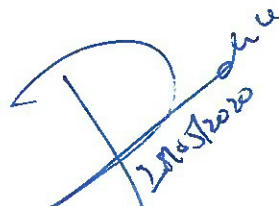
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20. So far as grant of compensation under mental agony is concerned. Coming to the relief towards mental agony is also not applicable since the Hon'ble Apex Court held that compensation under mental agony cannot be granted under a general agreement. In this regard I would like to refer a decision:

When compensation for mental agony can be granted: - in the case of Ghaziabad Development Authority v. Union of India, (2000)6 SCC 113 wherein whilst considering a case of breach of contract under Section 73 of contract Act, it has been held that no damages are payable for mental agony in case of breach of ordinary commercial contract.

21. In view of the above position of Law question of giving the compensation of under mental agony does not arise. However as per discussion made by me it is clear that the complainant is seeking the refund of his amount on the ground that the developer has failed to complete the project within the due time as agreed in the agreement of sale. Now the developer has taken a new stand by saying that he has given the date of completion of the project to this authority as December 2022 and as such the present complaint is premature one. But as per discussion made by me with the aid of decisions it is settled position of law that the date of completion shall be computed from the due date which is given the agreement and accordingly as per S.18 the complainant is entitled for refund of his amount. According to developer himself his project is going to be completed in the month of December 2022. It further means the developer has not completed his project as per the terms of the agreement entailing the complainant to demand for refund of his amount. It is not correct on my part to direct the complainant to wait till December 2022 as against the date of completion given in the AOS where the date of completion was September 2019. Hence, I allow this complaint.



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22. As per Section 71(2) of the Act the complaints shall be disposed of within 60 days from the date of filing, 60 days to be computed from the date of appearance of the parties. This complaint was filed on 23/11/2019 whereas the parties have appeared on 20/12/2019. After tried for settlement the arguments was heard on merits of the case. In the meanwhile on account of natural calamity COVID-19 the whole nation was put under lock down completely from 24/03/2020 till 17/05/2020 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.

ORDER

- a. The complaints filed in CMP/191123/0004700 is hereby allowed in part.
- b. The developer is hereby directed to return a sum of Rs.13,25,934/- pay delay compensation in the form of simple interest @ 2% above the MCLR of SBI commencing from August 2017 till the possession is delivered after obtaining Occupancy Certificate. (MCLR be calculated @ prevailing as on today)
- c. The developer is directed to discharge the bank loan with its interest, EMI if paid by the complainant on behalf of the developer, EMI if due and any other statutory charges.
- d. The developer is also directed to pay Rs. 5,000/- as cost to each case.
- e. Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 28.05.2020).

(K.PALAKSHAPPA)
Adjudicating Officer.

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