

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
PRESIDED BY SRI K. PALAKSHAPPA
DATED 29th SEPTEMBER 2020

Complaint No.	CMP/200108/0005167
Complainant	Pradeep Kumar Gupta Gupta House Survey NO. 51-A, Meetha Nagar, Kondwa Khurd, Pune-411048 Rep. by his advocate Sri Taji George
Opponent	Godrej Properties Limited, Godrej one, 5 th Floor, Pirojshanagar, Eastern Express, Highway Vikroli-400079 Mumbai City, Maharashtra Rep. by Sri K.R. Lakshmana Rao Advocate

JUDGMENT

1. Pradeep Kumar Gupta, the complainant has filed this complaint no. CMP/200108/0005167 under Section 31 of RERA Act against the project "Godrej Aqua" developed by 'Godrej Properties Limited., seeking for refund of his booking amount. The complaint is as under:

Complainant was approached by the representative of Respondent Company and made attractive presentation and offered an Apartment unit I-1402 Godrej Aqua on the 14th floor and collected a payment of Rs. 5,00,000/- towards booking. Later this Complainant for obvious personal reasons decided not to proceed with the purchase and this complainant had made a request for the cancelation of the said booking vide Email dated 19/02/2019 and also request for the refund of booking amount of Rs. 5,00,000/- vide email dated 19/02/2019, 12/05/2019. this Respondent issued a Cancellation Acceptance Letter (CAL) on 30/09/2019 wherein it has

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29/09/2020

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been stated that the Respondent has unilaterally forfeited the booking amount paid by the Complainant. This Respondent has collected the booking amount illegally in violation of Sec 13 of the RERA Act. No agreement was signed by the Complainant and Respondent and not even proper receipt was provided while collecting the booking amount. The said act is illegal.

Relief Sought from PERA: Refund of Booking Amount, Interest and compensation

2. Complainant had approached Godrej Properties limited for the purchase of apartment unit GDAQ1-1402 Godrej Aqua on the 14th floor and collected a sum of Rs.5,00,000/- towards booking. Later this complainant for obvious personal reasons decided not to proceed with the purchase and the complainant had made a request for the cancellation of the booking.
3. After registering the complaint notice has been issued to the parties, the complainant has appeared through his advocate Sri Taji George where as the respondent has appeared through his advocate Sri K.R. Lakshmana Rao and filed his reply.
4. The matter was posted on 26.03.2020, but due to lock down the case was not taken up. After lifting the same and in order to maintain the social distance the parties have been called for hearing through Skype. On 29.07.2020 argument was heard and posted the matter for judgment.
5. The point that arise for my consideration is
 - a. Whether the complainant proves that he is entitled for the relief as sought in the complaint?
 - b. If so, what is the order?

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29/07/2020

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2. My answer is affirmative in part for the following

REASONS

3. In this case the complainant is the customer of the developer is not in dispute. By going through the case of the complainant which is clear that he is seeking refund of his amount which is not returned by the developer. The developer has filed his objections and totally denied the case of the complainant. It is the specific case of the developer is as under:

The Respondent submits that the as on date, the Complainant has made a total payment of Rs.5,00,000/- (Rupees five Lakhs only) towards application money for booking of the said apartment and the same has been acknowledged by the respondent.

The Respondent submits that upon allotment of the apartment unit, the complainant had sought for cancellation of the said booking of the unit vide e-mail dated 19th February 2019. In furtherance thereto, the respondent accepted the complainant's request for cancellation of the booking of the said unit through Cancellation Acceptance Letter(CAL) dated 30th September 2019 and as a consequence of cancellation, the respondent had forfeited the Earnest Money (which includes the Application Money) which forms part of the Non-Refundable Amount, in terms of the said Application Form.

The Respondent submits that with regards to the refund of advance amount, it was well informed to the Complainant through Cancellation Acceptance Letter that upon cancellation of the Apartment Unit/non-signing of the agreement in terms of the apartment Unit, the amount received from the complainant shall be forfeited in accordance with clause (j) & (i) of the Annexure - 'A' to the Application Form without prejudice to other rights and remedies available to the respondent.

The Respondent submits that the advance amount paid by the Complainant shall come under the meaning of

D. S. Rao

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Application money as defined in Annexure – A clause (e) of the Application form, which are stated below:

Clause (e): “Notwithstanding the fact that developer may have issued an acknowledgement by way of a receipt for the money tendered with this Application Form (“Application Money”).

And as given in the clause (j) “Earnest Money including but not limited to the Application Money from the amounts paid till such date...” shall be non-refundable, which we shall be entitled, without prejudice to other rights and remedies available to us, to forfeit.

4. It is the case of the developer that as on the date, the complainant has made a total payment of Rs 5,00,000/-as booking amount and therefore it is the case of the developer that the whole amount is liable for forfeiture. But it is not correct for two reasons. First reason is that the complainant has given Rs. 50,000/-and paid Rs. 4,50,000/-after two days. It means the booking amount may be only Rs. 50,000/-but not Rs. 5,00,000/-as contended by the developer. Therefore the forfeiture of the whole amount is not correct.
5. The second reason is that as per the observation made the Maha Appellate tribunal the forfeiture of entire amount is not correct.

Relying upon the principle laid down in the case of Central Intand Water Vs. Broio Nath Ganguly & Ann On 06.04.7986 (7986 AIR SCR (2) 278), the Hon'ble Supreme Court, while deciding the case in favour of an allottee, held the view in Pioneer Urban Land and Infrastructure Vs. Govindan Raghavan in Civil Appeal No. 72238 of 2078 on 02.04'20Tgsignifying that court will not enforce an unreasonable, unfair contract or an unreasonable and unfair clause in a contract where contracting parties are not equal in bargaining power and where a man has no choice or rather a meaningful choice but to give his assent

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29/6/2020

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to a contract or to sign on the dotted line in a prescribed or standard form.... as a part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rule may be' In view of this judgment, Respondent cannot be allowed to act disadvantageously to the Interests of Appellant who was not made aware of interpretations and implications of ex-facie ambiguous, one-sided and inequitable terms used by Respondent in Application Form/Allotment letter which Appellant had no choice but to sign on dotted line in a prescribed or standard form.

6. The opinion of the appellate tribunal was based upon the observation made by the Apex Court and the principle is very much applicable to the case on hand. The terms of agreement were never honoured by the developer but trying to expect the same from the side of buyer alone which is not correct. Therefore the terms of agreement have not been carried out by any other mode the developer shall not expect the compliance from the buyer. In view of the same the observation made by the apex court is exactly applicable the present case and as such I have no any reason to dismiss the case of the complainant.
7. From the above observation made by the Appellate Tribunal based upon the Hon'ble Apex Court the forfeiture of whole amount or a major amount is not correct.
8. The complainant has put forward his claim before the de veloper which reads as under:

You have ignored the contention of your application form (which is just a form and not an agreement since it does not even bear your Company seal or signature) in which you have given no assurance for allotting the subject flat and the application money would only be expression of Interest.

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With you giving no assurance of allotment I felt uncomfortable and decided to withdraw from the project vide my email dated 19th February 2019.

Please read again Cl (e) and Cl (f) of Annexure A Terms of condition set out by you unilaterally.

Once again you are converting this purely application money without any assurance of allotment into Earnest money and decide to confiscate it unilaterally.

This tantamount to malicious intentions, malafide purpose and grabbing an applicant's money arbitrarily.

Please also note that you are not the final word on this and any effort to confiscate my money without court ruling and selling that apartment to another party will tantamount to taking law in your own hands and selling disputed property. This will also be informed to prospective buyer of the said flat and will unnecessarily be dragged into dispute making other purchasers wonder about the sanctity of your commitment. The case will not be dropped at any stage.

Hence, I am the opinion that the forfeiture of whole amount is not correct and at the best the developer may exercise his power of forfeiture to the extent of Rs, 50,000/-

9. 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 08/01/2020. The parties have appeared on 27/02/2020. 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.

*Per
Rajeshwari*

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ORDER

- a. The Complaint filed by the complainant bearing No. CMP/200108/0005167 is hereby allowed in part.
 - b. The developer shall return Rs. 4,50,000/-to the complainant along with simple interest @ 2% above the MCLR of SBI from the date of payment till the realization.
 - c. The developer shall pay Rs. 5,000/-as cost of this petition.
 - d. Intimate the parties regarding the order.
- (Typed as per dictated, corrected, verified and pronounced on 29/09 /2020).

K. PALAKSHAPPA
Adjudicating Officer

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