

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 06th October 2020

Complaint No.	CMP/180918/0001283
Complainant	Arvid ved G-601, Corona Optus Apartment Sector-37 c Haryana-122005 In person
Opponent	Maxworth Realty India Limited Rep. by Managing Director Kesava .K. @22/1, Railway parallel road Opp. Reddy petrol bunk. Nehru Nagar, Bengaluru-560001 Rep. by Sri K.S. And Associates Advocate

JUDGMENT

1. The complainant has filed this complaint no. CMP/180918/0001283 under Section 31 of RERA Act against the project "Max Nandana Residency", developed by 'MAXWORTH REALTY INDIA LIMITED' seeking for the relief as under:

We have booked 2 plots in Max Nandana project of Maxworth Realty, India Limited Bengaluru in 04/2014, for which we have paid an initial booking amount of Rs. 2,00,000/- on the commitment from the promoter/developer that project will be completed in a duration of 6 months and then we have to pay the rest of the amount to get the plots registered, attaching the receipts of booking amount for your reference. But the project never got completed rather it came to the light during our discussions with his employees that the part of the land which developer was trying to sell us was never in the name of the developer. After knowing this we demanded our money back via

P. D. D. D.
06/10/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಎ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

email dated 15/07/2016 and subsequent emails and telephonic requests, for which they promised that money will be given to us in within 6 months of duration (which should be around 15/01/2017), but they keep on giving excuses and have not paid back our money till date. More than 2 years have already passed since we have asked for our money back, but they are not giving back our money. When my father called them for the same around 01/02/2017, the developer's manager abused my father on phone. During our discussion on the telephone, they keep on telling us that they will not transfer the money in our account and asking to pay rest of the amount for undeveloped land/unapproved plots. We were too scared to go to developers office because they talked to us only in the threatening language, it seems highly possible that he/his workers can harm us physically. Kindly it is intimated that these plots are not RERA approved.

Relief Sought from RERA: Our booking amount of INR 200000/- plus demurrages

2. After registering the complaint notice has been issued to the parties, the complainant has appeared in person where as the respondent has appeared through his advocate and filed his objections.
3. This case was to be called on 02/04/2020 but on account covid-19, it was ordered to stop the hearing in open court. Further from 24/03/2020 till 17/05/2020 lock down was declared and as such hearing was not possible. Further as per office note, the personal hearing was deferred and as such the parties have been called for hearing through Skype. Complainant and the advocate for developer has appeared and submitted their respective argument.
4. In view of the same I posted the matter for judgment.
5. The point that arise for my consideration is
 - a. Whether the complainant proves that he is entitled for refund of his amount?
 - b. If so, what is the order?

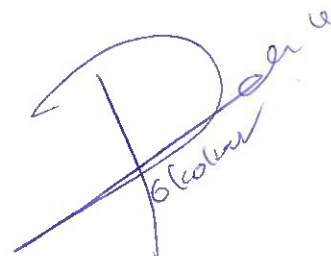
[Handwritten Signature]
06/04/20

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

6. My answer is affirmatively for the following

REASONS

7. In this case the complainant is the customer of the developer is not in dispute. The complainant has filed this complaint seeking refund of his booking amount of Rs. 2,00,000/-. According to the developer the total sale consideration amount for the plots was Rs. 10,20,000/- and price fixed with mutual consent. Out of total sale consideration amount (Rs.10,20,000/-) the complainant has paid only Rs.50,000/- as advance amount i.e. 4.9% of total consideration amount. It is further submitted that the prerequisite condition for execution assignment agreement is a minimum payment of 30% of the total consideration amount but till today the complainant alleges that no registration was done till date. This reveals the malafide intention of the complainant to harass the respondent. Therefore, the complaint is liable to be dismissed on this ground alone.
8. It is his case that in order to execute a sale deed the buyer has to pay "Sale agreement will be executed only on 30% payment of the total sale consideration."
9. According to the developer the complainant has paid total consideration which is against the terms of the agreement. As per clause 12 of the agreement the developer can forfeit 15% of the total amount in case of cancellation of booking amount. Further it is the case of the developer that the delay was only because of some obstructions of the land lord and it is his case there was no any role in delaying the completion of the project. Under the above said reason it is his case he is not liable to pay anything to the complainant.



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

10. In support of the same he has given some decisions of Maha Rera which are as under:

*Maha RERA in
Complaint No. CC006000000000180,
Sagar Nilkam and Aur
Vs
space Builders Pvt. Ltd.*

Held that, when the delay in delivery of possession was due to an interim order by the Hon'ble high court in a PIL, directing the planning authorities to maintain status quo, by not issuing occupancy certificate to certain projects, it was held to be a reason beyond the control of the respondent.

*MahaRERA in
Complaint no. CC006000000000089,
Enkata Phanidra kumar
vs
Akshar Space and others*

held that, if the delay is caused by any event of force majeure or for reasons beyond the control of the promoter, held that the said circumstances in this case wherein the delay is caused on the part of the government , revenue authority or any other local authority / body the date of possession shall be extended accordingly.

11. Therefore the complainant is liable to be dismissed on this ground alone. It is submitted that as per agreed terms and conditions of Booking Form dated 8/3/2013, "Clause -12 cancellation without a valid reason 15% of booking amount will be deducted towards service and transport charges,". It is submitted that the cancellation request was sent by the complainant without valid reason and the demand to refund the full amount is against the

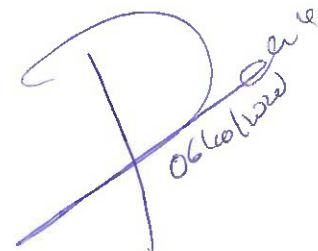
*Devi
06/10/2013*

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

agreed terms of booking forms and bad motives. It is evident that complainant trying to unjustly enrich through judicial machinery.

12. In view of the same it is submitted that the complaint is not maintainable. I would say that the stand taken by the developer proves the relationship and transaction. Now the only question arisen for my consideration as to forfeiture of amount as contended by the developer in his objection statement.
13. I would say that the right of forfeiture does arise only when the developer is also in a right path. He has not completed the project which was under litigation. The amount was booking amount paid in the year 2014 and now we are in the year 2020. No efforts have been made by the developer to complete the project but reminding the terms of the agreement to the complainant. Further the decision referred by him will help him if the case is one for delay compensation. Has he complied with the other terms of the agreement? Answer is no. Further so for as forfeiture is concerned it is said by the Maha Rera Appellate tribunal as -----

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 to a contract or to sign on the dotted line in a prescribed or standard form.... as a part of the contract, however unfair,



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಹಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

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.

14. 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. I say that as per the observation made by the Apex court the agreement shall not be applied only for the purpose of forfeiture and hence, the plea of the developer falls on the ground. Further the developer shall return the same along with applicable interest from the date of payment because the said amount with the developer since 2014 which was being used by the developer for the development of his project but unfortunately it was not completed even today.

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. Here the complaint has been filed against the unregistered project and as such the Secretary has initiated the action against the developer for violation of Sec.3 of the Act and later the present

Dew
06/10/20

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

complaint was transmitted Adjudicating Officer and notice has been issued. It was posted to 2/04/2020 for objections. 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.

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/180918/0001283 is hereby allowed.
- b. The developer is directed to return Rs. 2,00,000/- along with simple interest @ 9% from the date of payment till 30/04/2017 and @ 2% above the MCLR of SBI from May 2017 till realization.
- c. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 06/10/2020).

K. PALAKSHAPPA
Adjudicating Officer

NOT AN OFFICIAL COPY