

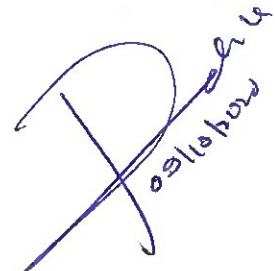
ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

BEFORE ADJUDICATING OFFICER
PRESIDED BY SRI K. PALAKSHAPPA
DATED 09th OCTOBER 2020

Complaint No.	CMP/200203/0005358
Complainant	Arun RadhaKrishan Pillai, r/o 17B/8, Jamuna Darshan CHS, Bangur Nagar, Goregan West, Mumbai-400090. Rep.by Smt. Sharadha, Advocate
Opponent	Skylark Ithaca Ethatca Estates Pvt. Ltd., Skylark Chambers Ulsoor Road, Bengaluru-42.

JUDGMENT

1. Arun Radhakrishna Pillai, the complainant has filed this complaint no. CMP/200203/0005358 under Section 31 of RERA Act against the project "Skylark Ithaca" developed by Ithaca Estates private limited", seeking for refund of the amount.
2. The complainant has booked the apartment with respondent in phase-II of skylark Ithaca and the entered into an agreement for sale & construction along with an Exit Option MOU with respondent. As such respondent was supposed to handover the possession of the flat by 31.3.2019 with 6 months grace period. But the developer has failed to complete the project and as such this complaint is filed.



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

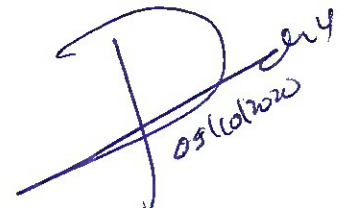
Karnataka Real Estate Regulatory Authority Bangalore

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

3. After registration of the complaint notice has been issued to the parties and called to appear on 03/04/2020. But on account of Covid-19 the state Government has declared lock down from 24/03/2020 till 17/05/2020. The parties have been called for hearing through Skype On behalf of complaint Smt. Sharada Advocate has filed the vakalath. When the case was called a common mail was sent by Kumar. Lubna Advocate submitting that the matter is pending before the NCLT and no further order may be passed. In this regard I would like to say that the advocate Lubna has failed to file her appearance memo.
4. I have taken the matter for judgment on merits.
5. The point that arise for my consideration is
- Whether the complainant proves that he is entitled for the relief as sought in the complaint?
 - If so, what is the order?
6. My answer is affirmative in part for the following

REASONS

7. The complainant has entered into agreement with the developer on 04/08/2016 towards purchase of flat bearing No. T-15-1003 where the developer has agreed to complete the project on or before September 2019 including the grace period. The complainant has filed this complaint to exit from the project since the developer has failed to complete the project as agreed in the agreement of sale.


05/06/2020

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

8. As against the case of the complainant the developer though not filed the objections but filed a common memo along with Xerox copy of the order passed by NCLT Bengaluru bench in case No. C.P. (IB) No. 389/BB/2019 filed under S.7 of the IBC,2016 r/w rule 4 of I&B (AAA) Rules 2016 stating that the authority has passed Moratorium order.
9. By the virtue of the same it is submitted that no orders may be passed. Except this memo the developer has not filed any specific objection statement either to deny or to admit the plea of the complainant.
10. In view of the same now I have to see the case of the complainant. The learned counsel for the complainant has said that the order passed by NCLT Bengaluru bench in case No. C.P. (IB) No. 389/BB/2019 filed under S.7 of the IBC, 2016 r/w rule 4 of I & B (AAA) Rules 2016 has been set aside by the Hon'ble High Court of Karnataka in W.P. 6635/2020.
11. In this regard I would say that many number of cases have been filed against the developer where a counsel appearing for the complainant in some other case has filed a memo which is reproduced from the said case where it is said as under:

The respondent builder filed a Writ Petition bearing No. 6635/2020 before the Hon'ble High Court of Karnataka to stay the order dated 20/8/2019 passed by the Hon'ble NCLT in CP (IB) NO. 389/BB/2019, where in insolvency proceedings was initiated against the respondent/builder and an order for Moratorium was passed accordingly. The Hon'ble High Court of Karnataka was pleased stay the order dated 20.08.2019 passed by the Hon.ble NCLT for a period of 8 weeks vide order dated 24/3/2020. The

[Handwritten signature]
21/10/2020

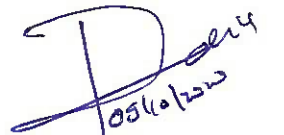
ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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

above-mentioned Writ Petition was disposed of by granting the liberty to the Respondent builder to approach the Hon'ble High Court if the lock down persist. The respondent builder approached the Hon'ble High Court and vide Order 5/6/2020 the stay was extended. The matter was subsequently heard on 10/6/2020 and 24/6/2020, and the stay continues to be extended. Hence, the order of moratorium dose not continue.

12. This is the answer given by the complainant to the memo filed on behalf of the developer. At the time of argument the learned counsel of the developer admitted that there is direction to file an appeal but the same is not done so far. It means there is no any legal hurdle to the complainant seeking the relief since the developer has failed to complete the project. As per Section 18 in case of delay in delivering the possession the complainant is entitled either for compensation or for refund of amount along with applicable interest.
13. As per the agreement it is the duty of the developer to honor the same since it was agreed as such. The developer has no any other option to take any kind of new defense to defeat the interest of the parties who have entered into. In view of the same the contention taken by the developer loses its importance and the developer is liable to return the amount. Smt. Sharada Advocate has filed a memo stating that the complainant is entitled for opportunity cost of Rs. 5,55,503/-but in order to exercise the same the complainant ought to have issued a notice 6 months earlier to completion date but in this case the complainant has sent a notice on 07/01/2019 expressing his willingness to exit from the project which is within 6 months from the date of assurance given by the developer since the date of assurance given by the developer was 31/03/2019. Hence, it is not a valid notice to exercise the Exit Option Agreement and hence the

D
05/06/2020

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

complainant is not entitled for exit as per Exit Option Agreement but he is entitled for refund as per S.18 of the Act.

14. As per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 03/02/2020. In the present case, the parties ought to be appeared on 03/04/2020. When the case was posted for physical hearing of the cases has been stopped in view of Covid-19 and from 24/03/2020 lock down was declared till 17/05/2020. Hence the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

ORDER

- a. The complaint no. CMP/200203/ 0005358 is allowed by directing the developer to return Rs. 7,32,633/- to the complainant.
- b. The developer is directed to pay simple interest @ 9% P.A. on the respective amount paid on the respective date till 30/04/2017 and simple interest @ 2% above the MCLR of SBI commencing from May 2017 on the said amount till it is realised.
- c. The developer is directed to discharge bank loan along with interest, EMI paid by the complainant on behalf of the developer and any other statutory charges.
- d. The developer is also liable to pay cost of Rs.5,000/- to the complainant.
- e. Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 09/10/2020)

K.PALAKSHAPPA
Adjudicating officer

NOT AN OFFICIAL COPY