

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 22nd OCTOBER 2020

Complaint No.	CMP/200206/0005373
Complainant	Pragathi N Prasad No. 272, 4 th Main, 3 rd Avenue Teachers Colony, Koramangala, Venkatapura Bengaluru-560034 In person
Opponent	Maxworth Realty India Limited Rep. by Kesava .K. MD KMP House,12/2, Yamuna Bai Road, Madhavanagar, Bengaluru-560001 Rep. by Sri K.S. And Associates Advocate

J U D G M E N T

1. The complainant has filed this complaint no. CMP/200206/0005373 under Section 31 of RERA Act against the project "Max green orchids ", developed by 'Maxworth Realty India Limited' seeking for the relief as under:

Booking Date - 16-10-2011. Plot Size - 30X40 feet size. Advance Payment - Rs 100000(One Lakh) Cheaque Date - 24-11-2011. The Project not ready Till 01-05-2019, hence cancelled for refund with Interest. On asking for refund delay - Getting shouting from MD Mr Kesava K and using filthy language.

Relief Sought from RERA: To get Advance Refund amount with Interest from the date of Payment made till date. And also compensation for appreciation Loss.

D. K. S. K.
22/10/2020

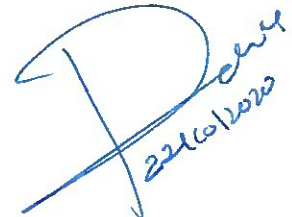
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2. After registering the complaint notice has been issued to the parties, the complainant has appeared in person where as the respondent has appeared through his advocate and filed his objections.
3. This case was to be called on 20/04/2020 but on 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?
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 amount.
8. This Complaint is filed for the refund of the amount mainly on the ground that there is no completion of the project. The Complainant has paid Rs. 1 Lakh as booking amount on 16/10/2011. Till this date the Developer neither returned the amount nor completed the project.


22/04/2020

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9. The Developer has contented in his objection statement as under:

It is submitted that, when the purchaser has not paid the full consideration amount, it is meaningless to ask for register the plot in his name. The complainant in his compliant, he acknowledges that he paid only Rs.1,00,000/- which is 18.51% of the total consideration amount. As per agreed terms of the Booking form dated 16/10/2011, between parties, the complainant failed to perform his obligations, and his demand to register the plot in his name is filed with ill motives and to harass the Respondent. Therefore, the Complainant is liable to dismissed on this ground alone.

It is further submitted that the earlier respondent offered other sites that are ready to sell projects, but the complainant ignored the offer. Hence, it appears that the complainant is more interested to harass the respondent then resolving disputes. Therefore, the complainant is liable to be dismissed.

It is submitted that as per agreed terms and conditions of the Booking. Form dated 16/10/2011 , "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 agreed terms of booking and bad motives. It is evident that complainant trying to unjustly enrich through judicial machinery.

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

[Handwritten Signature]
22/10/2020

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MahaRERA in
Complaint No. CC00600000000180,
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. CC00600000000089,
Venkata 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. 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.
12. 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 even today but the present booking amount was collected in the year 2011 and utilized for his project. Now we are in the year 2020.


22/01/2020

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 far as forfeiture is concerned it is said by the Maha RERA Appellate tribunal as

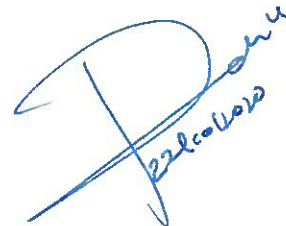
Relying upon the principle laid down in the case of Central Intand Water Vs. Brinc Nath Ganguly & Ann On 06.04.7986 (7986 AIR SCR (2) 278), the Hon'ble Supreme Court, while deciding the case in favour of an allottee, held the view in Pioneer Urban Land and Infrastructure Vs. Govindan Raghavan in Civil Appeal No. 72238 of 2078 on 02.04'20' signifying 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, 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.

13. 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

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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 2011 which was being used by the developer for the development of his project but unfortunately it was not completed even today.

14. 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 S.3 of the Act and later the present complaint was transmitted Adjudicating Officer in the month of March 2020 and notice has been issued. It was posted to 20/04/2020 for objections. In the meanwhile on account of natural calamity COVID-19 lock down was declared completely from 24/03/2020 till 17/05/2010. After lifting the lock down the case was heard through Skype 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.


22/04/2020

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ORDER

1. The Complaint filed by the complainant bearing No. CMP/UR/200206/0005373 is hereby allowed.
2. The developer is directed to return Rs. 1,00,000/- 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.
3. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 22/10/2020).

(K. PALAKSHAPPA)
Adjudicating Officer

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