

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 4th of NOVEMBER 2020

Complaint No.	CMP/UR/190737/0003495
Complainant	Shri Kaustubha S Gudi F8, 1 st floor, Narayan, Residency, 6 th cross Malmaddi, Dharwad - 580007. In person.
Opponent	M/S Vanishree Builders M/S vanishree Builders Managing Partner. Shri Chandrakant meghraj (S/O. Vasudev Meghraj) aged 45 years (as on 20 th may 2019) Office Adress Vinayaka Complex, 1 st main, 2 nd cross, Jayanagar, Dharwad-580001. R-2. Authorized Officer of HDFC Limited (under SARFAESI Act, 2002) HDFC House, No. 51, Kasturba Road Dharwad -560001 Rep. by Smt. H.H. Sujatha Advcoate.

JUDGEMENT

1. After registering the complaint notice has been issued to the parties, the complainant has appeared in person where as the respondents have appeared through their advocate and filed objections.

D. Palakshappa
04/11/2020

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2. This case was to be called on 20/03/2020 but on that day it was not called on account Covid-19 and 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 was present and the advocate for developer has appeared and submitted the arguments.
3. On going through the case papers it is noticed that the Secretary has called the parties where the developer has filed a memo in the form of objection statement admitting the liability.
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 in part for the following

REASON

7. This complaint is filed by the complainant seeking for the relief for refund of the amount. The Complainant has booked the flat bearing No. FF-101 for a total consideration of Rs 42 Lakh. In this regard an agreement was executed. It is the case of the complainant that on 21/6/2016 he entered into tripartite agreement and obtained the sanction of loan for a sum of Rs 33.66 lakh but the bank has released only Rs. 31,5000/-.
8. It is the case of the complainant that the developer has failed to complete the project as agreed and therefore the complainant has filed this complaint.

D
10/4/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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9. The respondent has filed his objections stating that as per the tripartite agreement, inter alia casts an obligation to perform in terms of the loan agreement which the Complainant has failed to undertake and has defaulting in repaying the said loan amount. Accordingly, the HDFC bank sent a notice to the Respondent No: 1/Promoter on 23/6/2020 to cancel the allotment of the said property made in favour of the Complainant and directed to arrange the refund as per the tripartite agreement, directly to HDFC.
10. It is submitted that, as on today, the Complainant has paid Rs. 10,50,000/- (Rupees Ten Lakhs Fifty Thousand Only) to the Promoter as self-funded amount and availed bank loan for Rs.33,60,000/- (Rupees Thirty Three Lakhs Sixty Thousand Only), out of which Rs.31,50,000/- (Rupees Thirty One Lakhs Fifty Thousand Only) was disbursed by the bank to the Respondent No.1/Promoter.
11. It is submitted that, as per the direction issued by the HDFC Bank and as per the obligation under Tripartite Agreement, the Respondent No.1/Promoter is hereby agreed to discharge the loan amount and the same is under progress. The Respondent No.1/promoter is hereby agreed to return the self-funded amount of Rs.10,50,000/- (rupees ten lakhs fifty thousand only) to the complainant in three consecutive installments as the promoter has to discharge the loan amount to Bank immediately. Making parallel payments to the said bank and to the customer would cause huge financial burden on the Respondent No.1/promoter under Covid-19 situation as the Builder is not able to sell the said flat to other party in this situation. Hence the Respondent No.1, hereby request the authority to grant permission to make payments to the complainant on three installments.
12. It is further submitted that, the complainant has also requested the respondent No.1/promoter to register the project under K-RERA and to pay Rs.1,00,000/- as legal costs and compensation of

Prashant
04/11/2020

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Rs.2,00,000/- towards rent. For the same the respondent has given his explanation to each of the allegation made by the complainant.

13. The said project 'SAI PARIMALA' is an ongoing project, the building plan and license was taken during the year 2016 and the construction was completed during the month of May-2017. Immediately after completion of the said construction, the application has been filed before the concerned authority on 12/5/2017 i.e, much prior to the notification of the Real Estate (Regulation and Development) Rules 2017. The said clause states as "where all the development works have been completed as per the Act and Certified by the Competent agency and application has been filed with Competent authority for issue of completion certificate/occupation certificate". According to the said clause, the project 'SAI PARIMALA' is totally coming under exemption category and the same is not relevant to the complainant when the prayer is made for refund.
14. As per Sec.71(1) of the RERA Act, 2016, the Adjudicating Officer can hold an enquiry and adjudging compensation which fallen u/s 12,14,18 and 19 of RERA Act, 2016, hence the other reliefs what the complainant has sought is not maintainable, hence the same shall be dismissed in the interest of justice and equity.
15. In view of the above said facts, the respondent no.1 is hereby request following relief;

1.Permission to refund the self-funded amount of the complainant Rs.10,50,000/- in three installments as the Respondent No:1/ promoter is under Financial crisis due to Covid – 19 and to discharge the bank loan parallelly.

2.To dismiss the other reliefs sought as not- maintainable.

D
04/11/2020

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16. By going through the case made out by the parties it is clear that the developer has admitted the case of the complainant to some extent. So for as registration of the case is concerned the Secretary has already initiated with regard to non-registration of the project and moreover the adjudicating officer has no any role regarding violation of S.3.
17. Now coming to grant of refund of the amount is concerned the developer has already admitted the transaction to some extent.
18. At the time of argument the learned counsel Smt.H.H. Sujatha on behalf of the developer submitted that the loan raised by the complainant has been discharged by the developer. In this regard the document issued by the HDFC is produced as document no.7. This is admitted by the complainant also but he claims that the developer has not discharged the bank Loan in toto because he has filed a memo of calculation claiming Rs.28,96,009/- from the developer even after discharge the bank loan.

According to complainant he has paid Rs.10,50,000/- from his pocket and Rs. 31,60,000/-from the bank.

In addition to it the complainant has claimed other charges from the developer like.-

Penalty paid to the developer: Rs. 29,736/-

Legal Consultation fee : Rs.40,000/-.

House Rent : Rs.2,32,000/-.

Interest and Additional Charges : Rs. 6,10,966/-.

E.M.I Paid by him : Rs. 5,21,184/-.

Interest Comes to Rs. : Rs3,92,123/-.

By this way the complainant still claims Rs.28,96,009/- from the developer.

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19. I would like to say that learned Counsel Smt. H.H. Sujatha has drawn my attention to the letter given by the HDFC bank dated 28/7/2020 where it is referred that the developer shall pay Rs.32,50,000/- on or before 30/7/2020. Further it is said by the bank that they will release the property which was mortgaged by the complainant. Based upon the said letter the builder has addressed a letter to the HDFC Bank requesting to issue NOC after receiving Rs.32,50,000/-. Based upon the same the banker had given a letter dated 10/8/2020 stating that the loan has been settled for a sum of Rs.32,50,000/-Based upon the document no. 5, 6, & 7 the learned counsel Smt. Sujatha representing the developer submitted that she has discharged the loan and there by the developer is only due to the complainant which is being paid by him as self funding.
20. I am satisfied with the submission made on behalf of the developer since it is substantiated with the documentary evidence. By this way I would say that the developer shall pay Rs.10,50,000/- to the complainant with admitted interest and the EMI paid by him. The loan raised in the name of the complainant has been fully discharged by the developer. At this stage I am going to take the document no. 9 which is produced by the developer where he submitted that he is ready to pay the sum of Rs. 10,00,000/-as self funding of the complainant. Rs. 36,972/-towards interest @ 9% on the sum of Rs. 4,00,000/-which has been paid by the complainant before 01/05/2017. Further she has calculated the future interest @ 10.75 % and it comes to Rs. 3,19,142/-and thereby the developer has filed a memo stating that he is ready to pay Rs.14,06,114 and Rs. 5,21,184/-which was paid by the complainant towards EMI. The complainant has admitted the payment of Rs. 5,21,184/-towards EMI.

D. Devaraj
04/11/2020

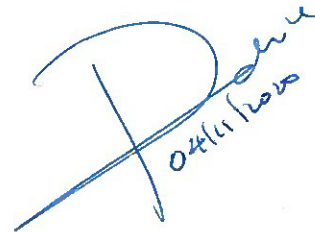
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21. The claim made by the complainant towards house rent is already covered by the interest portion. The other charges claimed by the complainant have no basis.
22. Further the claim made by the complainant of Rs. 6,10,966/-towards interest and additional charges pending to be paid to HDFC has no basis since the developer has discharged the loan in toto. When the bank has issued clearance certificate the claim made by the complainant has no reason and therefore I allow this complaint in part.
23. 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 07/07/2019. Originally the case was handled by the Secretary and afterwards it was transmitted to Adjudicating Officer in the month of January 2020. After issuance of notice the parties have appeared on 21/01/2020. When the case was posted to 20/03/2020 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.


04/11/2020

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ORDER

- a. The complaint no. CMP/UR/190707/0003495 is allowed in part.
- b. The developer shall return Rs. 10,50,000/- to the complainant.
- c. The developer is hereby directed to pay admitted interest as per document No. 9 on the respective amount paid on the respective date till 30/04/2017.
- d. Further the developer is directed to pay admitted interest commencing from May 2017 till the realization.
- e. The developer shall return the EMI paid by the complainant.
- f. The developer is also liable to pay cost of Rs.5,000/- to the complainant.
- g. The complainant may file memo of calculation after 60 days in case the order is not complied by the developer.
- h. The complainant is required to serve the copy of the same to the developer by granting two weeks time to file objections if any.(subject to other conditions as mentioned in the SOP dated 28.10.2020)
- i. Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 04/11/2020)


K.PALAKSHAPPA
Adjudicating officer