

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Real Estate Regulatory Authority Bangalore

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

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Date 11th March 2020

Complaint No.	CMP/190628/0003413
Complainant	Rakesh V.S, No.14, NRN Residency, Flat 5, BSK 3 rd Stage, 9 th Cross, Kamakya Layout, Bengaluru-560085. Rep.by: Shri M.Mohan Kumar Advocate.
Respondent	1.MANTRI DEVELOPERS PVT. LTD, #41, Mantri House, Vittal Mallya Road, Bengaluru - 560001 Rep.by:Shri. Sunil P Prasad Advocate 2. Sushil Pandurang Mantri 3. Pratik Sushil Mantri No.41, Vittal Mallya road, Bengaluru-560001 R.2 and R.3 remained absent.

J U D G E M E N T

1. Rakesh V.S has filed this complaint under Section 31 of RERA Act against the project "MANTRI WEBCITY 2B" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no.CMP/190628/0003413. The facts of the complaint is as follows:

I state that the Promoter/ Respondent ie., Mantri Developers Pvt ltd., herein had offered a scheme to buy apartment in a residential project Mantri Web City, wherein the Promoter offered to pay PRE-EMI instalment until completion of the project and handing over the

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project with an option to exit out of the project with assured returns of 100% of the initial payment. I state that in pursuance of the same, i booked an Apartment bearing No. L-1606 in Tower L for a total consideration of Rs.66,08,631/- including all taxes and amenities charges. Out of the said Sale Consideration, I have paid a sum of Rs.6,97,576/-. I state that the condition of the promoter was that I should be eligible for Bank loan from PNBHFL/INDIABULLS/AXIS Bank based on my financial capacity. I state that the promoter raised loan through us to finance the project giving certain option either to retain the apartment or return the project after certain period of time, if the project is not built satisfactorily to us or any other reason which need not be informed by me. I state that i got arranged for a loan from Axis Bank to an extent of Rs.45,47,810/- and out of the said loan a sum of Rs. 41,12,989/- same was disbursed to the Respondent / Promoter, as such we have totally paid a sum of Rs.48,10,565 /-. I state that the Respondent/promoter as per the scheme for purchasing apartment by way of Buy-Back scheme/Assured Return Scheme, whereby, the promoter promised and assured to pay PRE-EMI instalment till the completion of the project.

I request to file detailed claim statement and additional documents during the course of hearing. I state that even after the lapse of consider time the promoter has failed to show any development and non payment of the PRE-EMI has created huge financial crisis as such I intend to exit out of the project and seek for refund of my money, pre-emi, interest, delayed compensation etc., Hence for the brief facts mentioned above we are seeking for following Reliefs :- 1. Direct the promoter to refund a sum of Rs.6,97,576/- paid by me along with interest for delay compensation at the rate of 12% from the date of payment till repayment. 2. Direct the Promoter to pay all delayed PRE-EMI instalment along with interest on the Delayed PRE-EMI instalment at the rate of 12% per annum from the respective date of delay, which has been paid by me to the Axis Bank including all processing fee etc. 3. Direct the Promoter to close the Bank loan and get me No Due certificate. 4. Compensation for the Mental Agony and pain and Damages to an extent of Rs.5,00,000/-. 5. Compensation for unfair Trade practice to an Extent of Rs.3,00,000/- 6. Cost of litigation and expense to an Extent of Rs.50,000/-. We kindly request RERA to look at our case with compassion and allow our complaint.

[Handwritten Signature]
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Relief Sought from RERA :As prayed in facts

2. In pursuance of the notice issued by the authority, the complainant has appeared through his advocate. The first respondent has appeared through his advocate where as 2nd and 3rd respondents remained absent.
3. Complainant has filed this complaint for possession and delay compensation. The same was strongly opposed by the other side.
4. Heard Arguments.
5. The point that arise for my consideration is
 - a) Whether the complainant is entitled for Refund Under the scheme as prayed in the compliant?
 - b) My answer to the same is affirmatively for the following

REASONS


6. The parties have entered into agreement on 27/06/2015 with respect to apartment No L-1606. According to complainant he has entered into agreement with the developer on 27/06/2015 toward purchase of flat bearing No. 1606, 16th floor in Tower L of Project Manthri Webcity 2B. The complainant has paid Rs.6,97,576/- as self contribution and Rs.41,12,989/- was sanctioned from the bank. Further he also says that he has paid Rs. 15,06,653/- towards Pre Emi instalments.
7. The developer has appeared and filed his objection by giving his explanation as against the case of the complainant:

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- Thus, even as per his own averments before the Hon'ble Authority, the complainant is seeking recovery of money in terms of "Pre-EMI/Buy back Scheme/ assured return scheme" and the same establishes that complainant is not as much the end user or the consumer, or an allottee, as much as he is an investor and therefore, the understanding between the respondent and complainant herein was only a commercial contract for investment, not coming within the purview of the Act. The complainant has admitted that he has opted for the buy back and as established herein above, he has sought for return of her investment on 17.09.2016. Thus, the intention of the complainant is very clear and unambiguous that he has declared herself to be an investor but not an allottee.
- Admittedly, complainant always intended to sell the apartment herein for a valuable consideration with double the benefit on own contribution, and the same takes the complainant out of the purview of the RERA Act. To put it in the right perspective, it is submitted that the contract between the parties being a buy back contract with assured returns upon return of the apartment, the complainant could neither be termed as a "consumer" or an "allottee" in as much as, it would be a preposterous interpretation to give to the term "consumer" and "Allottee", when the investment, runs in lakhs of rupees, which cannot be held to be for the livelihood of complainant, in view of the definition of consumer, under the provisions of the consumer protection Act,1986 and allottee under the provisions of the Real Estate(Regulation & Development) Act,2016. In the above circumstances, it is submitted that the complainant is not an allottee and cannot invoke the


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provisions of the Act, and on this ground alone, the instant complaint deserves to be dismissed.

- *It is further submitted that complainant cannot take take shelter under the definition "Allottee" under section 2(d) of the Act, in as much as no right, much less any title, has been transferred by the respondent herein to complainant, or was intended to be transferred to complainant, in as much as, it was never the intension of complainant to become the owner of the Apartment and hence, Complainant cannot at all be considered to be "Allottee" under the provisions of the Act, and under the circumstances the complaint is not sustainable at law.*

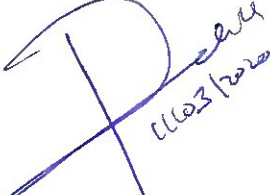
8. From the above averments it is clear that the developer also admitting the scheme launched by him. But at the time of arguments the developer has submitted that the complainant is not entitled for the relief under this Act because complainant is not a consumer but he is an investor. Further it is his submission that he is not an allottee and therefore provisions of Section 18 are not applicable to him. He also says that in order to have the benefit of scheme he had to issue 6 months prior notice to the developer.
9. However, the counsel for the developer submitted that the Real Estate Appellate Tribunal in Appeal no.70/2018 has opined that as per the observation made by the Appellate Tribunal the present complaint is liable for dismissal. Copy of the said judgment is also produced by the developer and sought to dismiss the complaint on the ground that the complainant is not an allottee.

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10. The learned counsel for the developer submitted his argument by stating that the observation made by the Appellate Tribunal in Appeal No.70/2018 is to be adopted and the present case may be dismissed holding that the complainant is not an allottee and the claim made by the complainant will not cover either under S. 12 or 14 or 18 and 19 of the Act. The learned counsel for the complainant has strongly opposed the same. I would say that the argument canvassed on behalf of the developer holds no water for 2 reasons.
11. The finding given by the Appellate Tribunal in Appeal no.70/2018 as against the case CMP/180403/0000640 and dismissed the said complaint on the ground that the complainant is not allottee, but he is an investor. In this regard the counsel for the complainant has said that every complaint shall be heard by the authority case by case based on the documents produced and submission made by the complaint. It means he wanted to say that the present case may not be dismissed holding that the present complainant is not a consumer based upon the finding given by the appellate tribunal in Appeal no. 70/2018. I would say that the submission made on behalf of the complainant be accepted.
12. The counsel for the complainant submits that he is not an investor but he is an allottee. In this regard the learned counsel submits that as per rules framed, the Adjudicating Officer may hear the complaint case by case. It means the observation made by the Appellate Tribunal cannot be adopted Mutatis Mutandis. I find some force in his submission. Further the complainant has submitted that he has made his mind to buy a flat based upon the advertisement given by the developer. It means the nature of this


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buyback scheme also launched by the developer to attract more number of allottees. The present complainant has given the amount to buy a flat as per the advertisement given by the developer. Now the developer cannot take U turn and submits that the complainant is not an allottee but an investor.

13. Further I would like to say that below explanation about the term investor makes it clear to accept the claim of the complainant:

It is further and more specifically submits that the Term "Investor" is not defined either in Agreement or nowhere defined under RERA. Any purchasers of the apartment is an allottee as per Sec.2(d) of RERA Act. Thus the connection of respondent that complainant is an Investor will not holds good to the facts of the case and it is neither sustainable on facts or in the Eyes of the Law. The concept of Investor is applicable under Consumer Protection Act and Not under RERA Act. Under RERA Act any buyer is an allottee since the project is registered under RERA, only the provision of the RERA act will be applicable, the provision of other laws will be applicable in coordination and not is derogation to defend the main object of the Act. Thus the concept of the Investor is not applicable under RERA and as such more specifically to the complainant.

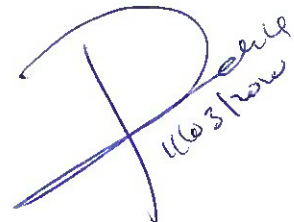
14. I would say that the present complainant is not covered with the above characteristics and therefore I would say that the argument canvassed on behalf of the developer that the complaint shall be dismissed holds no water.

[Handwritten Signature]
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15. Further I would say that the developer himself has admitted the scheme and his only contention is that in order to have the benefit of this scheme the complainant ought to have issued a notice 6 months prior to the date. It means the scheme and its benefits is also admitted by the developer.
16. From the above pleadings made by the developer it is clear that there was scheme launched by the developer himself where there is a provision to sell the apartment to avail the benefit. When it is an admitted fact that the scheme itself was launched by the developer and the agreement was executed in that behalf. But now the developer has taken different view by calling the complainant as investor. The only point remained for my consideration is that as to issuance of 6 months prior notice to avail the benefit. In this case the complainant has not placed any such notice and as such the complainant cannot take the benefit of 2x amount but however since the developer has not completed the project as admitted in his agreement of sale. He ought to have completed the project on or before 31/10/2018 including grace period. But till today it is not his case that he has received the occupancy certificate. When the developer is not able to complete the project then he is either liable to pay delay compensation or refund of the amount along with applicable interest. Hence, I have no any hesitation to allow this complaint.
17. 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 is filed on 28/06/2019. In this case the complainant and the developer were present on 21/08/2019. After hearing the


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parties the case was reserved for judgment. But the developer has filed a memo along with judgment copy of the Appellate Tribunal passed in Appeal No.70/2018 with a request to follow the same principle in the present case. As such I have heard the parties afresh on this point and now it is for disposal and hence, the complaint is being disposed of with some delay. With this observation, I proceed to pass the following.

ORDER

- a. The complaint No. CMP/190628/0003413 is allowed in part.
- b. The developer is hereby directed to pay Rs.6,79,576/-.
- c. The developer is hereby directed to pay simple interest 9% per annum on the respective amount paid on the respective date till 30/04/2017.
- d. The developer is directed to pay simple interest @ 2% above the MCLR of SBI as on today commencing from 01/05/2017 till the realisation of entire amount.
- e. The developer is hereby directed to discharge the home loan raised by the complainant towards the purchase of flat no. L-1606 in Mantri Webcity 2B in this case along with EMI, EMI if paid by the complainant on behalf of the developer and interest and any incidental charges, if any.
- f. The developer is also directed to pay Rs. 5000/- as cost.
- g. The complainant is hereby directed to execute the cancellation of agreement of sale after the realisation of entire amount.

Intimate the parties regarding the Order.

(Typed as per Dictates, Verified, Corrected and Pronounced
on 11th March 2020)

(K.PALAKSHAPPA)
Adjudicating Officer
16/3/20

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