

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Complaint No. CMP/190305/0002188
Presided by Sri K.P. LAKSHAPPA
Adjudicating Officer
Date: 23rd September 2019

Complainant : Rahul Gore
302, intermodal house, Rustam Bagh
Third Cross, Murugesh palya
Bengaluru- 560017.
Rep. By K.J. Bhojanna Advocate

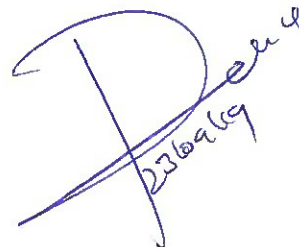
AND

Opponent : MANTRI WEBCITY 2A
Mantri Developers PVT. LTD,
No.41 Mantr House, Vittal Mallya Road,
Bengaluru - 560001.
Rep. by Sri Veersh R. Budihal Advocate

J U D G E M E N T

1. Rahul Gore has filed this complaint under Section 31 of RERA Act against the project "MANTRI WEBCITY 2A" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no. CMP/190305/0002188. He has filed this complaint for refund of his amount with 2x amount. The facts of the complaint is as follows:

I have booked a flat in Mantri Webcity(K906 Tower K of Mantri Webcity project), Bangalore under assured buyback scheme in Jun-2014. The add said ?Assured 100% Retrurns Double your money in just 3 years?. The scheme, (signed by Mantri) agreed to pay the double of my money at the end of 3 years (March 2017 in my case)


23/09/19

if I decide not to pursue further with Mantri and return the flat back to Mantri. As per agreement, I had informed about my decision to exit Mantri Webcity project six months before the end of pre-emi closure March-2017. I had requested for arranging my loan closure and 2X amount as discussed (This email was acknowledged by Mantri). However, this has not happened till date. Mantri has defaulted paying pre-emi for more than 25 months now.

Relief Sought from RERA :Refund, closure of home loan as mentioned in facts

2. In pursuance of the notice issued by the authority, the parties have put in appearance through their respective advocate. The complainant has filed this complaint for refund of the amount. The same was strongly opposed by the other side.

3. Heard Arguments.

4. The point that arise for my consideration is

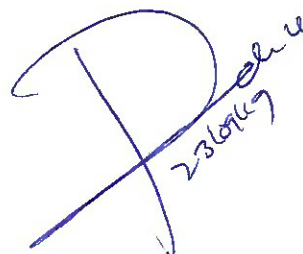
a) Whether the complainant is entitled for Refund Under the scheme as prayed in the compliant?

My answer to the same is affirmatively for the following

REASONS

5. Advocate representing the complainant submits that as per section 18, the allottee to whom the developer has failed to deliver the possession of the flat, plot or building as the case may be as agreed to deliver or failed to complete the project then only the consumer could claim the relief.

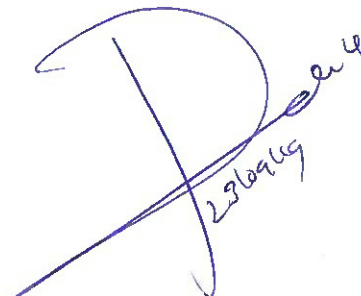
6. Per Contra it is the argument on the side of the developer that Section 18 cannot be invoked to seek this kind of relief. He also read Section 12 & 71 before me and submits that there is no violation of either Section 12 or 14. When that being the case the complainant cannot file this complaint before the Adjudicating



Officer. He also submits that the claim made by the complainant is out of jurisdiction of this authority.

7. The developer has taken his own stand as under:

- a. The complainant, after verifying the title, plan sanction and after having understood and being agreeable to the sanctioned plan, being satisfied about the efficacy of the Assured Return & Pre EMI/Buyback Scheme that has been formulated by the Respondent herein, who is the developer, approached the respondent, being desirous of investing his money in the project 'Mantri Webcity 2B' of the respondent, in July 2014.
- b. The complainant had approached the respondent in July 2014, with the proposition to invest in the above mentioned development project of the respondent. The complainant signified his intension to cause an apartment to be constructed, which would later be sold to respondent/another Purchaser as nominated by the Respondent, under a scheme named "Assured Returns & Pre EMI/ Buy -back Scheme"
- c. It is submitted that as per the Scheme, the complainant would a home loan from Punjab National Bank and the amount disbursed by the bank to the complainant, would be paid to the respondent, in order to cause to be constructed, the allotted Apartment Unit, booked in the name of the complainant by the developer. Thereafter, the Pre-EMI's would be paid by the Appellant to the complainant, on a monthly basis, as per the terms and conditions of the Scheme. An investor coming under the Assured Returns & Pre EMI/Buy-back Scheme could avail of one of two options:
- d. Assured return of 2x amount on the own contribution made by the investor at the time of booking/ Allotment of

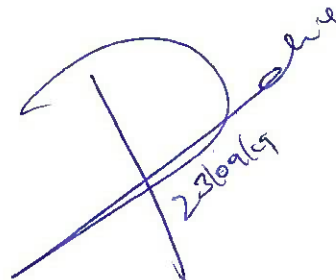


the Apartment Unit by the Developer: and handing over possession of the Apartment Unit Back to the developer.

e. Further, as per the terms and conditions of the scheme, inter alia, the investor would be required to give six(6) months prior notice to the respondent/developer before the Scheme end date, if he wished to return the Apartment Unit in favour of the developer, in order for the developer to buy back the said apartment unit. In the event of failure of the investor to notify the developer, as mentioned above, it was agreed between the parties that it would be deemed that the investor had willingly retained the Apartment Unit i.e. he has foregone the Buy-Back option. It was specifically agreed between the complainant and respondent herein that once the complainant had agreed to retain the apartment, the Buy-Back Scheme would not be applicable. Copy of 'MOU' for the Assured Return & Pre-EMI proposal' is produced.

3. I would like to say that the submission made by the Advocate for the developer clearly proves now that the complainant is an allottee.

9. I would say that in order to attract the customer, the developer uses number of ways by giving advertisement. In the same way the present case stands by attracting the scheme released by the developer for which the complainant has entered in to agreement with the developer. By reading the clauses of the agreement all the terms and conditions are giving the status of complainant as purchaser and respondent as developer. The document called as TERMS AND CONDITIONS wherein the parties have agreed for certain conditions.



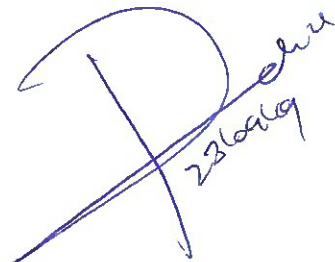
10. I have taken two important conditions which are as under:

- a. *Mantri developers will bear the Pre- Emi till March 2017.*
- b. *Mantri developers will assure return of 100% on the own contribution made by the unit purchasers at the end of March 2017.*

11. The above two conditions clearly proves the relationship of Developer and Customer and indirectly proves the case of the complainant. In view of the same I have no any hesitation to say that the argument of the developer has no force. The developer cannot blow hot and cold at the same time. In view of the above discussion his objection losses its importance.

12. It was the case of the developer that one who sells the flat becomes the developer. This kind of submission has been made to say that the present complaint is in the buyback scheme. Where the consumer will sell the unit to the developer as such he is not an allottee. In other words it is submitted that the consumer is an investor not allottee. I would say that the term investor has not defined in the RERA. In order to become the investor he must have some characters. In this regard I would like to take some legal provisions:

1. *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.

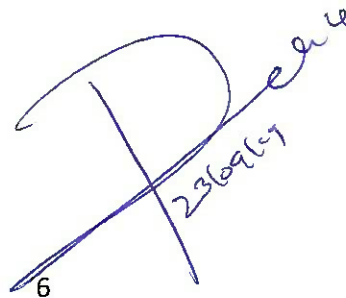
2. For the kind perusal and reference - Few NCDRC judgments have been mentioned which cases are clearly held by the Apex forum that what amount to investor and who is a Costumer. An investor is defined as under:

An investor is a person that allocates capital with the expectation of a future financial return. A person who puts money into something in order to make a profit or get an advantage. That is, someone who provides a business with capital and someone who buys a stock are both investor. An investor who owns a stock is a shareholder.

- The Hon'ble NCDRC in the matter of DLF Limited vs Abdul Azim-II(2015) CPJ344(NC)- held:

"Booking in two different projects by complainant is investment. Purpose cannot be residential. It is for commercial gain through investment. The complainant cannot be treated as consumer."

- In another case the Hon'ble NCDRC in the matter of Manhar Damecha vs Ravasa Corporation Ltd.III (2016) CPJ318(NC)- it has been held " Booking of 4-5 plots is investment and for commercial purpose. Thus were not purchased exclusively for purpose of livelihood by means of self employment in NRI's like complainant are allowed to save court fees, very purpose of ordinary consumer or as defined by Act shall stand defeated. Complaint not maintainable.


6

13. In this case the complainant cannot be termed as investor since by reading the details of the case of the complaint it is also clear that it is the scheme introduced by the developer for the development of their project.

I have booked a flat in Mantri Webcity(K906 Tower K of Mantri Webcity project), Bangalore under assured buyback scheme in Jun-2014. The add said Assured 100% Returns. Double your money in just 3 years. The scheme, (signed by Mantri) agreed to pay the double of my money at the end of 3 years (March 2017 in my case) if I decide not to pursue further with Mantri and return the flat back to Mantri. As per agreement, I had informed about my decision to exit Mantri Webcity project six months before the end of pre-emi closure March-2017. I had requested for arranging my loan closure and 2X amount as discussed (This email was acknowledged by Mantri). However, this has not happened till date. Mantri has defaulted paying pre emi for more than 25 months now. The amount sums more than 10 lacs.

14. In view of the same there is no doubt in the case of the complainant. The learned counsel for the complainant had given Memo. According to this Memo the complainant has paid Rs.13,22,628/- which was the initial amount paid by the complainant. He also demanding 2X amount of Rs 12,75,575/- this is the scheme in which the complainant has entered into and now the developer cannot go away from this scheme. This was the scheme introduced by the developer himself. Now he cannot twist the status of the complainant as investor and therefore the complainant is entitled for the same.

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. This complaint is filed on 05/03/2019. In this case the complainant and the developer were present on 30/04/2019 and hence, the complaint is being disposed of with some delay. Hence , I proceed to pass the following:

ORDER

The complaint No. CMP/190305/0002188 is allowed.

- a) The developer is hereby directed to return the own contribution amount Rs.13,22,628 /- to the complainant within 30 days from today. If not it will carry interest @ 2%p.a above the SBI marginal lending rate of interest on home loans from 31st day.
- b) The developer is hereby directed to return the 2X amount of Rs. 12,75,575/- to the complainant.
- c) The developer is hereby directed to discharge the loan raised in the name of the complainant with all its EMI due, EMI paid, statutory charges and interest if any.
- d) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
- e) The developer shall pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 23/09/2019)


(K.PALAKSHAPPA)
Adjudicating Officer