

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority, Bengaluru

ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಎ.ಕಾಂಪೌಂಡ್,
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K. PALAKSHAPPA

Adjudicating Officer

Date: 2th March 2020

Complaint No.	CMP/191014/0004070
Complainant	Jayapal Reddy, No.24, 7 th Cross, HSR Layout, Sector 1, Agara, Bengaluru-560106 Rep.by: M.Mohankumar Advocate
Opponents	1. Mantri Developers Pvt. Ltd, 2. Sushil Pandurang Mantri 3. Pratik Sushil Mantri #41, Mantri House, Vittal Mallya Road, Bengaluru - 560001 R.1 is Rep.by:Sri Sunil P. Prasad Advocate R.2 and R.3 are absent.

4. PNB Housing Finance
Limited.

5. 'Mathureshree' Arcade,
2nd floor, 100A Ring Road
1st phase, final stage
BTM Layout Bengaluru-560076

BTM Layout Bengaluru-560076

J U D G E M E N T

1. Jayapal Reddy has filed this complaint under Section 31 of RERA Act against the project "MANTRI WEBCITY 3B" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no. CMP/191014/0004070. The facts of the complaint is as follows:

I N.Jayapal Reddy state that I along with my wife N.Uma booked an apartment bearing number P-104 in Tower P currently known as Mantri Webcity-3B for a total consideration of Rs.88,94,043/- in the Respondents developed residential project in the name and style of Mantri Webcity. It is pertinent to state that the apartment was

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booked under Pre-Emi Assured Buy-Back scheme, wherein the respondent was to pay 20% of the consideration value and balance 80% of sale consideration was to be paid by way Bank Loan obtained from PNBHFL which was financial partner for the scheme as per the understanding between the Respondent promoter and Respondent Banker. I state that as per the Pre-Emi scheme the builder had to reimburse Pre-Emi installment till the completion of the project and handing over of the apartment to us. I state that we have paid a sum of Rs.17,78,808/- as our 20% contribution and we obtained a Bank loan from PNBHFL for a sum of Rs.70,91,000/- vide Loan Account No.00196660004421 and out of which a sum of Rs.69,91,000/- same was disbursed. I state the entire payment of self contribution and as well as from Bank loan was paid on following date- (1) On 10.04.2014 paid Rs.2,00,000/-; (2) On 16.04.2014 paid a sum of Rs.2,50,000/-; (3) On 16.04.2014 paid a sum of Rs.4,00,000/- (4) On 22.04.2014 paid a sum of Rs.1,00,000/- (5) On 22.04.2014 paid a sum of Rs.8,12,470/- (6) on 18.06.2014 paid a sum of Rs.16,338/- (7) On 03.05.2014 a sum of Rs.69,25,646/- (8) on 05.6.2014 paid a sum of Rs.78,953/- and (9) on 18.06.2014 a sum of Rs.62,615/-, as such we have totally paid a sum of Rs.88,46,022/-. I state that the respondents were punctual in receiving the sale consideration however were not punctual with regard to reimbursement of the PRE-EMI. I state that the respondents have totally paid a sum of Rs. 28,59,873/- towards the PRE-EMI instalment between May 2014 to April 2019 and we have paid a sum of Rs.35,66,232/- towards PRE-Emi instalment. It is submitted that the Respondents are liable to reimburse a sum of Rs.7,06,359/- to us as on April 2019. I state that we have become defaulter of the Bank loan from May 2019. I state that due to acute financial trouble as payment of fee was due for our daughter we requested the Respondent to release pending PRE-EMI due in the month April, however the respondent paid a sum of Rs.5,00,000/- towards the and balance arrears of Rs.2,06,359/- is due as on April 2019. I state that I had communicated to the Respondent builder to close the loan close the buy-back scheme by settling the accounts I state that as per the Sale Agreement and Construction Agreement the Apartment was to be completed and handed over to us by 31.08.2016. I state that all agreements executed on dotted line format which along with all agreement were unilaterally drafted by the Respondent giving no scope for alteration etc. I state that we were prompt in making all payment and inspite of same, the Respondent have failed to complete the project on time and currently more than 16 month has lapsed, as we have decided to withdraw from the project and requesting to pay back all the money and interest and expenses and loss incurred due to delay in completions of project. I state that inspite of same and numerous assurances, it is submitted that Respondent failed to settle the same and defaulted on terms and conditions. I state that since the

Relief Sought from RERA :Refund, compensation as prayed above in facts

2. In this case the complainant has made the developer as well as other two persons as respondents. After issuance of notice the complainant has appeared through his counsel Sri M.Mohan Kumar and the 1st respondent has appeared through his counsel

P. Mohan Kumar
09/03/2019

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Sri Sunil P. Prasad, Advocate. The respondent Nos.2 and 3 remained as absent.

3. The 1st respondent has filed his objections in detail.
4. After filing the objections, I have heard the arguments.
5. The point that arise for my consideration is:
 - a. Whether the complainant is entitled for the Refund of the amount as prayed in the complaint?
 - b. If so, what is the order?
6. My answer to the above points are affirmative for the following

REASONS

7. The parties have entered into agreement on 24/04/2014 with respect to apartment No P-104, situated in P Wing, in 1st Floor of Mantri Webcity 3B. The complainant has paid Rs.17,78,808/- as self contribution and Rs.70,91,000/- was sanctioned from PNB bank.
8. The developer has appeared and filed his objection by giving his explanation as against the case of the complainant:

- *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*



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

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- *It is further submitted that complainant cannot 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.*
9. 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 month prior notice to the developer.
10. 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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11. 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.
12. The finding given by the Appellate Tribunal in Appeal no.70/2018 is 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.
13. 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

[Handwritten Signature]
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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.

14. 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.

15. 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.

16. 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

R. R. R.
07/03/2020

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months prior to the date. It means the scheme and its benefits is also admitted by the developer.

17. 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 February 2017 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 to liable to pay delay compensation or refund of the amount along with applicable interest. More over as per the agreement itself now 3 years has been elapsed and even now the developer is not in a position to complete the project means the developer has no any kind of defence. Hence, I have no any hesitation to allow this complaint.

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18. 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 14/10/2019. In this case the complainant and the developer were present on 28/11/2019. After hearing the 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. complaint No. CMP/191014/0004070 is allowed in part.
- b. The developer is hereby directed to pay Rs. 17,78,808/-
- c. The developer The 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. P-104 in Mantri Webcity 3B 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 9th
March 2020)

(K.PALAKSHAPPA)
Adjudicating Officer

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