

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

Present

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

Dated 14th March 2023

COMPLAINT No: CMP/210107/0007403

Complainant..

**KIRAN NANDAKUMAR &
KAVITHA V.R.
No.9, Chenna Krishnappa
Street, Palace Guttahalli
Bengaluru North
Malleshwaram
BENGALURU URBAN-560003**

**(BY SRI. YESHU MISHRA,
ANOOP HARANAHALLI,
ADVOCATES)**

V/s

Respondent....

**1. M/s MANTRI CASTLES
PRIVATE LIMITED
Mantri House, #41
Vittal Mallya Road
BENGALURU URBAN-560001**

**(BY SHRI. E.SUHAIL AHMED
JASLEEN KAUR,
ADVOCATES**

ASB

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**2. INDIA BULLS HOUSING
FINANCE LIMITED
M-62 & 63, First Floor
Connaught Place
NEW DELHI-110001**

**BRANCH OFFICE AT:
Plot No. 87, 6, Richmond
Road, Shanthala Nagar
Richmond Town
BENGALURU-560025.**

INTERIM ORDER

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**MANTRI SERENITY-3**" developed by "**M/s MANTRI CASTLES PRIVATE LIMITED**" for the relief of refund of amount with interest.
2. This project is registered in RERA bearing registration no. PRM/KA/RERA/1251/310/PR/171016/000500
3. The gist of the complaint is that the builder has failed to complete construction as per schedule and has illegally appropriated the entire sale consideration without adhering to the schedule for payment. The complainants have been paying exorbitant interests on the loan amount and incurred huge loss due to the delay in construction of the flat. Since the promoter failed to complete the

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construction of the flat within the timeline, he chooses to withdraw from the project. Further, the builders are bound to pay interest/penal interest and other charges on the loan availed from bank and interest on the down payment made by the complainants to the builder and such other expenses. The complainant has approached this Authority for the relief of direction to the respondent to refund of amount along with interest. Hence, this complaint.

4. After registration of the complaint, in pursuance of notice served, the respondent-1 has appeared before this Authority and filed vakalat and subsequently filed statement of objections on its behalf. Whereas the respondent no.2 did not appear before this Authority in spite of notice served on him.
5. The learned counsel for the complainant in 7403 has filed an interim application u/s 36 of the Real Estate(Regulation and Development) Act, 2016 dated 15/02/2023 to stay the proceedings initiated by the respondent no.2 u/s 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to take over the possession of schedule apartment on the grounds that the complainants have agreed to buy an apartment in the project of respondent no.1 and availed loan from respondent no.2. The sanctioned amount was Rs.95,00,000/- out of which Rs.89,44,126/- was disbursed to respondent no.1 towards construction by respondent no.2.

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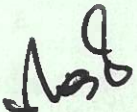
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Further, respondent no.1 was responsible to pay the pre-EMI interest for a period of 36 months.

6. Due to delay in completion of the project, the complainants have requested the respondent no.1 to refund the amount but he failed to refund the amount. The respondent no.1 has not paid the pre-EMI to respondent no.2 as assured. Now it is the duty of the respondent no.1 to pay the amount to respondent no.2 for the loan amount disbursed towards construction and complainants are in no way responsible for the same.
7. Further, the complainants have already intimated the respondent no.2 through e-mails on various dates to cancel ECS with immediate effect and demand the respondent no.1 to discharge or duly account for the said loan amount. But the respondent no.2 has not cancelled the ECS and sending notices to the complainants threatening to initiate criminal proceedings for non-payment of EMI's. Later, respondent no.2 has issued demand notice dated 11.1.2023 u/s 13(2) of the SARFAESI Act. The complainants have replied for the same stating that they are not liable to make any payments as they have not given the possession of the said flat and have initiated the RERA proceedings against respondent no.1 for the relief of direction to respondent no.1 to terminate the home loan availed with respondent no.2 without any further liability on them.
8. Perused the application and heard the counsel appearing for complainants. Complainant advocate has filed an application under order 1 Rule 10(2) read with Section 151 of CPC to implead



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Indiabulls Housing Finance Limited as respondent no.2 on the grounds that the complainants have availed a loan from proposed respondent no.2. Thereafter respondent no.2 was got impleaded as a necessary party. On issuance of notice, respondent no.2 have failed to appear before this Authority. Due to delay in completion and failure to hand over the possession of the said flat, the complainants have preferred this complaint seeking relief of refund along with interest. As per the agreed terms, the respondent no.1 is liable to pay pre-EMI which is not complied by respondent no.1. The respondent no.2 is harassing the complainant. It is the responsibility of respondent no.1 to discharge or duly account to respondent no.2 for the loan amount disbursed towards the construction and that the complainants are in no way responsible for the same.

9. On consideration of the above aspects, the following order is passed.

INTERIM ORDER

The Respondent no. 2 is hereby directed to stay the recovery proceedings initiated by them against the complainants till further orders. Office is directed to intimate the same to the respondent no.2 with immediate effect.



(H.C. Kishore Chandra)

Chairman

K-RERA

