

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

Present

SHRI. G.R. REDDY HON'BLE MEMBER

Dated 03rd AUGUST 2023

COMPLAINT NO: CMP/201120/0007100

COMPLAINANT...

**Indi Vivekanand
IC Universal Legal, 5th Floor,
Phoenix PinnacI,
No. 46, Ulsoor Road,
Bangalore-560042.
(Srinivas, Advocate)**

Vs

RESPONDENT.....

**Mantri Developers Pvt Ltd.,
No. 41, Vittal Malya Road,
Bengaluru-560001.
(Jasleen Kaur, Advocate)**

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Mantri Serenity Phase 5" developed by Mantri Developers Pvt Ltd., for the relief of refund along with interest and to close bank loan.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/310/PR/171019/000504.
3. This project is situated at, Kanakpura Road, 1.7kms from Metro Cash & Carry, Bangalore South, Bengaluru.

Brief facts of the complaint are as under:-

4. The complainants had booked a flat bearing No. R-604 in Block 5, 6th Floor of the project in the respondent namely

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'Mantri Webcity5' and entered into an agreement of sale and construction on 05/11/2015 for a total sale consideration of Rs.79,60,800/-(Rupees Seventy Nine Lakhs Sixty Thousand Eight Hundred only). At the time of entering into an agreement of sale, the complainant had paid the sum of Rs.9,44,879/-(Rupees Nine Lakhs Forty Four Thousand Eight Hundred and Seventy Nine only) on various dates to the respondent. If complainant desired to surrender the flat, the complainant has to exit with return of 2x of their own contribution, vide MOU dated 19-10-2015. As per the terms of MOU the developer confirmed to discharge the home loan and return the double of the investment amount by end of 3 years from the date of booking i.e., September 2015.

5. The complainant received a notice from PNHHFL that demanding the complainant to clear the entire outstanding loan amount on account of default committed in payment of Pre-emi's. Subsequently, the complainant issued an e-mail dated 16th November 2018 expressing his anguish against the developer for failure to adhere to their assurances and representations with respect to diligent reimbursement of the pre-emi payable by the complainant in respect of the aforementioned home loan.

6. As per the terms of the Construction Agreement, the developer had confirmed the date of possession and hand over on or before 28-02-2018. But the developer issued a letter to the complainant for extension of timeline to handover the said flat till June 2019. Further, the developer failed to adhere to the extended timeline and the complainant made repeated requests and demands to consider the complainant within the



purview of Buyback scheme and return investment as per the said scheme and also close the bank loan. The complainant requesting his own contribution of Rs. 9,44,879/- (Rupees Nine Lakhs Eight Hundred and Seventy Nine only). Hence this complaint.

7. After registration of the complaint, in pursuance of the notices, the respondent has appeared before the Authority through its counsel and filed statement of objections as under.
8. The respondent has denied the entire allegation made against them by the complainant as false. The respondent had promised to handover possession of the flat bearing No. R-604 to the complainant on 28-02-2018, after receiving the occupancy certificate from statutory authority as set out in Clause 6.4 of the said agreement which is reproduced hereunder for the sake of convenience:

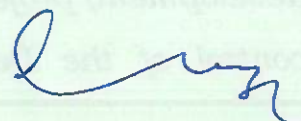
“The condition stipulated for handing over of possession or delivery of the Apartment described in clause 6.1 above is subject to variations on account of Force Majeure or acts of God or non-availability of steel, cement, other vital building materials, water and electric supply, riot, strike or labour availability/problems etc., or war, civil commotion or any notice, order, rule, notification of the Government and/or other public or competent authority or any dispute or matter relating to the property pending final determination by the court or any other authority or change in any Rule, Regulation or Bye-law of any statutory body or authority from time to time affecting the development/project or other reasons which are beyond the control of the Developer. The Developer will make every



reasonable effort to obtain the Occupancy Certificate, electrical, sanitary and water connections within the stipulated period; however, as these services are related to various Govt. Departments in respect of which the Developer does not have any control, no responsibility will be accepted by the Developer for delays in obtaining such connections, clearances, certificates, et. **The purchaser shall not be entitled to claim any damages/losses against the Developer under these circumstances on the ground of delay/deficiency”.**

9. The above clause had been added in the Construction Agreement after much deliberation regarding the aspects concerning marketing and sale of ongoing projects. The respondent faced certain unforeseen difficulties in its endeavour to deliver possession of the completed unit along with amenities in the same project such as:

- a. Legal and Licensing issues.
- b. Due to heavy and continuous rainfall and flooding in the project site during monsoon season, the construction work could not be carried out for three to four months in the year 2015 to 2018.
- c. Due to demonetization of currency declared by the Central Government in the year 2016 there was major financial crises and there were no sufficient currencies with the banks for more than 6 months. The respondent was also affected financially and faced various issues to continue with the construction work in a smooth manner.
- d. Due to curb on sand mining, there was strike by the sand suppliers in the past and hence, there was non-availability of good quality of sand, the respondent could not continue with the construction.



- e. Due to non-availability of labour, steel and good quality of sand on proper time the construction was stopped, this also added upto the alleged delay.
10. The respondent states that the above reasons are true and requested to dismiss the complaint.
11. In support of his claim, the complainant has produced documents such as copies of agreement of sale and construction, pre-emi scheme, email conversation with the respondent and payment receipts and memo of calculation as on 03-08-2023.
12. On the other hand, the respondent has furnished the statement of objection.
13. Both parties have submitted their written arguments.
14. This matter is heard on 26-07-2022, 16-08-2022, 07-09-2022, 17-01-2023, 31-05-2023 and 22-06-2022.
15. **On the above averments, the following points would arise for my consideration:-**
1. Whether the complainant is entitled for the relief claimed?
 2. What order?

13 . My answer to the above points are as under:-

1. In the Affirmative.
2. As per final order for the following.

REASONS

14. **My answer to Point No.1:-** From the materials available on record, it is apparent that in spite of entering into an agreement of sale and construction agreement having received a substantial sale consideration from the complainant, the respondent has neither completed the



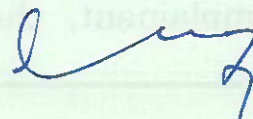
project, handed over the possession of the flat nor refunded the amount with interest till date as agreed. The respondent has also failed to pay pre-emis to the PNBHFL bank as agreed. There seems to be no possibility of completing the project or handing over the possession of the apartment in the near future.

15. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters v/s The State Of Uttar Pradesh it is held as under:

Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf.

16. In the judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

"In terms of section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee



wishes to withdraw from the project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himanshu Giri came under the letter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment."

17. As per section 18(1) of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

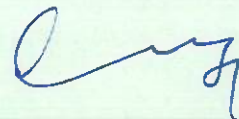
18. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.



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19. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that the complainant has paid substantial sale consideration to the respondent towards the purchase of said flat. Having accepted the said amount and failure to keep up promise to handover possession of the flat even after lapse of 08 years and not paying pre-emi to the bank as agreed, certainly entitles the complainant for refund of entire amount with interest.
20. The complainant has filed his memo of calculation as on 03-08-2023 claiming a refund of Rs.16,71,548/- (Rupees Sixteen Lakhs Seventy One Thousand Five Hundred and Forty Eight only) including interest. The respondent has not resisted the said memo of calculation filed by the complainant and he has not submitted his Memo of calculation inspite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainant reveals that his claim is genuine.
21. Having regard to all these aspects as mentioned above, this Authority concludes that the complainant is entitled for refund along with interest as claimed vide his memo of calculation date 03-08-2023.
22. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	05-11-2015	9,44,879	542	30-04-2017	126,277



3		9,44,879	TOTAL INTEREST (I1)		126,277
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Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	9,44,879	2285	03-08-2023	8.15	10.15 as on 01-05-2017	6,00,392
2	TOTAL AMOUNT	9,44,879				TOTAL INTEREST (I2)	6,00,392

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 31-05-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
9,44,879	726,669	0	1,671,548

23. Accordingly the point raised above is answered in the Affirmative.

24. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I proceed to pass the following

ORDER

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/201120/0007100** is hereby allowed. Respondent is directed to pay a sum of **Rs.16,71,548/- (Rupees Sixteen Lakhs Seventy One Thousand and Five Hundred and Forty Eight only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from

07/10/2015 to 30/04/2017 and at MCLR + 2%
from 01/05/2017 till 03/08/2023.

2. The interest due from 03/08/2023 up to the date of final payment will be calculated likewise and paid to the complainant.

3. Further, the respondent is directed to clear the loan amount whatever is due from the complainant to his loan account No. HOU/BAN/1015/246156.

4. The complainant is hereby directed to cooperate with the respondent for cancellation of agreement of sale and construction agreement dated 05-11-2015 on receipt of entire amount as directed to be refunded by the respondent.

5. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

No order as to the costs.


(G R REDDY)
Member, K-RERA