

**PROCEEDINGS OF THE AUTHORITY**

**BEFORE BENCH 5**

**Dated 26<sup>th</sup> OCTOBER, 2023**

**PRESIDED BY HON'BLE MEMBER G.R. REDDY**

**COMPLAINT NO.CMP/UR/190912/0004182**

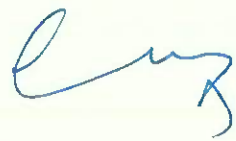
COMPLAINANT : Mr.Onkarnath Jaiswal  
H6, 7<sup>th</sup> Floor, Manish Tower  
No.84, JC Road,  
Bangalore : 560 002  
  
(By Ms.Sujatha, H, Advocate)

RESPONDENT / : M/s.Mantri Developers Pvt Ltd.  
PROMOTER : Mantri House, 41, Vittal Mallya Road  
Bangaluru : 560 001  
  
(By Mr.Srinivas, Advocate)

PROJECT NAME & : MANTRI DSK PINNACLE  
REGISTRATION NO. : Un Registered

**J U D G E M E N T**

This complaint is filed before this Authority under Sec-18 of the Real Estate (Regulation and Development) Act, 2016 against the project **MANTRI DSK PINNACLE** praying for a direction to Respondent to pay compensation or refund:

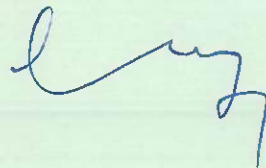


**BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-**

1. The complainant has entered into an agreement of sale and Construction Agreement with the Respondent on 15.02.2010. The project completion date as per agreement was 31.03.2014. The complainant has paid on various dates an amount of Rs.1,43,57,224/- (Rupees One Crore Forty three lakhs fifty seven thousand two hundred twenty four only) to the respondent. Since there was delay of more than five years in handing over the apartment on the date of filing the above complaint, the complainant has filed the above complaint before the Authority praying for a direction to pay delay period compensation.

2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 31.03.2014. The promoter-respondent was required to complete the project and hand over possession of the apartment by 31.03.2014 which is much before RERA Act came into force. The complaint was pending adjudication before the Adjudicating Officer. Subsequently, in view of the judgment dated 11.11.2021 passed by the Hon'ble Supreme Court of India in the case of M/s.Newtech Promoters and Developers Pvt Ltd., Vs. State of UP & Others, this complaint is transferred from Adjudicating Officer to this Authority for further action in the matter.

3. After transfer of the complaint from the Adjudicating Officer to this Authority, the Authority has issued Notice to both the parties for appearance before the Authority. In pursuance of the notice, the Complainant has appeared before the Authority



through his counsel and the Respondent has not appeared before the Authority on 28.06.2022. Subsequently, the hearing was adjourned to 14.7.2022. On 14.7.2022, the Respondent entered appearance and sought time for submission of statement of objections. It is noted that this project is not registered. On 01.06.2021 the complainant filed amended complaint praying for the following relief:

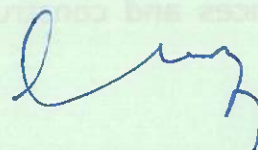
- a) To direct the Respondent to register the Project MANTRI DSK PINNACLE as an ongoing project before the Authority;
- b) To direct the Respondent to pay the delay period compensation from 01.04.2014 and
- c) Direct the respondent to delete the extra cost of Rs.8,80,000/- charged towards AC & Home Automation charges which they have installed without taking consent of the complainant.

4. On 17.8.2022, the Respondent filed statement of objections. The Respondent in its statement of objection contended that the project has not been completed within stipulated time due to force majeure events such as scarcity of raw materials, non availability of skilled labours, clearances from the Authorities / Government, obtaining modified plan, heavy and continuous rainfall, curb on illegal sand mining mafia or such other reasons beyond the control of the respondent. The respondent has sought to explain the delay by referring to above issues which are nothing but routine requirements of compliances and construction related issues which are required



to be handled by the Promoter of any project who has undertaken to develop the real estate project. None of the reason submitted by the Respondent has any force and legal validity to justify the delay in completion of the project and provide any exception from the application of Section-18 of the Act. Therefore, as per Section 18 of the Act, the promoter is liable pay the delay period interest.

5. Further, the respondent also submitted that this Project is pre-RERA and hence there is no requirement of registration and relied on various documents to support its contention such as Completion certificate dated 24.04.2017 issued by K.S.Achar & Associates, Architects and Engineers. It is seen that the said certificate nowhere states that it pertains to the Project under dispute, it is a printed certificate mentioning only survey number and place. No project name is mentioned to rely on the said document. The Respondent also submitted that the complaint of the complainant is filed after terminating the sale and construction agreement entered into between the complainant and the respondent. The said statement of the respondent is totally false as the complaint of the complainant was filed on 12.09.2019 much before issuing the letter of termination stated to have been sent by the respondent on 12.11.2021. When the complaint is pending adjudication before the Authority, the Respondent cannot terminate the sale agreement entered into between the complainant and the respondent.



6. The complainant submits that the Respondent sent several emails on 6.12.2018, 17.12.2028 and 20.02.2019 to the complainant intimating the complainant to pay the balance sale consideration and get the property registered without obtaining occupancy certificate. Complainant did not opt for registration since the occupancy certificate is not obtained by the respondent and requested the respondent to pay the delay period interest till the date of handing over possession with occupancy certificate. The respondent sent communication dated 24.5.2019 giving the cost break-up of the flat booked by the complainant. In the said cost break-up the delay compensation shown was Rs.3,03,600/- which is not acceptable to the complainant. The Complainant on the same day i.e., 24.5.2019 sent a mail to the respondent that the delay period interest shown in the cost break-up is not acceptable and wanted the delay period interest should be paid as per RERA. The respondent did not reply to the said mail and the matter was adjourned on several days giving liberty to the respondent to appear before the Authority and submit its explanation on various issues including payment of delay period interest as per RERA. Since the dispute continued without settling the payment on account of delay period interest, the complainant did not proceed further for initiating registration of the flat even after obtaining occupancy certificate. The entire delay in not concluding the matters in controversy is totally attributable on the part of the respondent in not communicating either to the complainant or to the Authority in spite of availing several opportunities given by the Authority. Several opportunities were given to the Respondent to appear before the



Authority and offer its explanation in writing and the Respondent failed to utilise the opportunities given by the Authority nor submitted any written arguments.

7. Further, the Respondent has obtained fire clearance from the competent authority on 27.09.2017 subsequent to enactment of the Act and the Rules. Occupancy certificate was issued by the competent authority on 11.03.2019. All these documents clearly establish that the project is an ongoing project and the Respondent is required to register the Project as an ongoing project with the Authority.

8. Further, during the hearing before the Adjudicating Officer, the Respondent was issued notice under Sec-3 of the Act, directing the respondent to comply with Sec-3 of the Act and to offer explanation as to how the respondent is not coming under the RERA Act. Based on the notice issued the Under Secretary of the Authority, the Respondent submitted various documents and both the parties were heard. After hearing both the parties the Adjudicating Officer has opined that the prayer of the developer to exempt the project may be accepted. No order is passed by the Adjudicating Officer exempting the project from Registration before the Authority. Further, in view of the judgment of M/s.Newtech Promoters, the complaint was transferred before the Authority for consideration. Notice was issued to both the Complainant and Respondent to appear before the Authority. The complaint was heard on various dates. During the hearing the complainant has brought to the notice of



the Authority by relying on the judgment rendered by the High Court of Madras in the identical case citing that the respondent cannot claim exemption under Rule-4 of the Rules and filed written arguments on the above points as well as the statement of objections filed by the Respondent.

9. The Complainant was directed by the Authority on 02.03.2023 to serve the copy of the written arguments filed before the Authority to Respondents. Keeping in mind the principles of natural justice, one more opportunity was given to the Respondent to put forth its comments / counter to the written arguments filed by the Complainant with a copy to the complainant in advance before the next date of hearing i.e., 23.3.2023. The respondent was not present on the hearing day i.e., 23.3.2023. Again the Authority has given one more opportunity to the respondent to comply the directions issued on 02.03.2023 and the case was adjourned to 04.07.2023. Even on this date, the respondent failed to attend the hearing. Complainant has prayed for a direction directing the Respondent to execute the sale deed at the earliest after taking into account the delay period interest payable by the Respondent. Before concluding the matter, again on 2.8.2023 the Authority has issued Notice to Respondent under Section 59(1) of the Act to offer explanation in writing for not registering the project as an ongoing project and informed to initiate penalty proceedings, if the respondent fails to appear in person with regard to the violation of registration provisions of the Act and the hearing was scheduled on 13.09.2023.



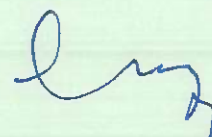
10. On 13.09.2023 the complainant, complainant Advocate and Advocate for the Respondent were present. Advocate for Complainant and Respondent prayed time for arguments. Accordingly final opportunity was given to both the parties and the date was fixed on 4.10.2023. During the hearing on 4.10.2023 again the Respondent was absent and did not adhere to the directions issued by the Authority or submitted any written arguments. The complainant was present and prayed for passing an award as the matter is pending for very long period.

11. The complainant has submitted the MOC for delay period interest with supporting documents and served the same on the respondent. The respondent did not file any MOC nor filed any objections to the MOC filed by the Complainant.

Hence, the Authority concludes in passing the following:

### **ORDER**

1. In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing CMP/UR/190912/0004182 filed by the Complainant is hereby partly allowed.
2. The Respondent is directed to register the Project namely '**MANTRI DSK PINNACLE**' as an ongoing Project before the Authority.
3. Respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 31.03.2014 till the date of handing over possession along with occupancy certificate. The





promoter shall pay the interest for the delay period as arrived at by the Complainant amounting to Rs.1,32,99,027/- (Rupees One Crore Thirty Two Lakhs Ninety Nine Thousand Twenty seven only) within 60 days from the date of this order. The Promoter-Respondent is also liable to pay delay period interest every month for the subsequent period of delay and up to the date of completion and handing over of the project as per the agreement of sale. 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 orders of this Authority.

4. Respondent-Promoter is directed to execute the Sale Deed in favour of the complainant after receiving the balance sale consideration, if any, payable by the complainant with all amenities as per agreement along with occupancy certificate within one month from the date of receipt of this order.

  
**(G.R. REDDY)**  
**MEMBER**  
**FIFTH ADDITIONAL BENCH**  
**K-RERA**