

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

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

Dated 7th DAY OF NOVEMBER 2023

COMPLAINT No: 00167/2023

COMPLAINANT..

ANANTHA KRISHNA SHIVRAM
PRATHIBA S
135, 7TH "A" CROSS, HMT
LAYOUT, R.T. NAGAR
BENGALURU URBAN-560032.

(BY SRI. SKANDA R.K. RAO
ARCHANA, ADVOCATES)

V/s

Respondent....

1. M/S MANTRI TECHNOLOGY
CONSTELLATIONS PRIVATE
LIMITED, MANTRI HOUSE
NO; 41, VITTAL MALLYA ROAD
BENGALURU URBAN-560001

2. M/S MANYATA REALTY
MANTRI HOUSE
NO; 41, VITTAL MALLYA ROAD
BENGALURU URBAN-560001

(BY SRI. SUNIL PRASAD
SRINIVAS R, ADVOCATES)

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "MANTRI MANYATA LITHOS" developed by " M/s MANTRI TECHNOLOGY CONSTELLATIONS PRIVATE LIMITED" for the relief of refund with interest.



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2. This project is registered in RERA bearing registration No. PRM/KA/RERA/1251/309/PR/171201/000444.
3. The promoter has developed this project in the limits of Sy.No: 35/1, 35/2, 34/3, 34/2, 34/1, 33/2, 33/1, 32/1, 32/2, 32/3, 31/5, 30/3, 29/1, 42/2, 43/3, 43/2 and 43/1 situated at Rachenahalli Village, K.R. Puram Hobli, Bengaluru South Taluk.
4. The gist of the complaint is that the complainants have booked a unit number A-704 situated on 7th floor, Block-A in the project "MANTRI MANYATA LITHOS" of the respondents by entering into an agreement of sale and construction agreement both dated 17/12/2013 for a total sale consideration of Rs.1,10,33,800/- (Rs. One crore ten lakhs thirty three thousand eight hundred only). The complainant has paid an amount of Rs.23,00,000/- on 30/10/2013 and Rs.10,00,000/- on 7/1/2015 altogether Rs.33,00,000/- (Rs. Thirty three lakhs only) to the respondents which has been duly acknowledged by them. The respondents were required to hand over the possession of the said unit to the complainants by 1st July 2017. It is contended that the developer has miserably failed to hand over the possession of the said flat within the stipulated timeline as promised. Despite numerous efforts and correspondences made by them in this regard, the team personal of the respondents project did not update the status regarding handing over of the schedule property. Due to inordinate delay, the complainants were compelled to cancel the agreement and allotment of the schedule property on 11/7/2018. Therefore, the complainants have approached this forum for the relief of

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direction to the respondent to refund the entire amount paid along with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the advocate for the respondent no. 1 & 2 did appear before this Authority on 21/7/2023 and filed vakalat. Thereafter, during the hearings held on 11/8/2023, 31/8/2023, 19/9/2023, 29/9/2023, 13/10/2023 neither the counsel for the respondents nor the respondents 1 & 2 did appear before this Authority and has been continuously remained absent. Hence, they have been placed as Ex-parte.
6. In support of their claim, the complainants have produced documents such as (1) copy of agreement of sale and construction dated 17/12/2013 (2) payment receipts dated 31/12/2014 (3) email seeking cancellation and refund due to delay in completion. (4) cancellation proposal issued by the respondent builder (5) legal notice dated 30/7/2022 (6) memo of calculation.
7. Heard arguments of the complainant.
8. On the above averments, the following points would arise for my consideration:-
 1. Whether the complainants are entitled for the relief claimed?
 2. What order?
9. **Findings on the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following:



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FINDINGS

11. Findings on point No.1:- The complainant has approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainants have booked a unit flat no.A-704 situated on the 7th floor in Block-A in the project "MANTRI MANYATA LITHOS" of the respondent-promoter. Accordingly, both the parties have entered into an agreement of sale and construction agreement both dated 17/12/2013 for a total sale consideration of Rs.1,10,33,800/- (Rs. One crore ten lakhs thirty three thousand eight hundred only). The respondent had promised to hand over the possession of the said flat within 1/7/2017. Despite numerous efforts and correspondences, the respondents did not update the status regarding handing over of the schedule property. The respondents have miserably failed to hand over the possession of the said unit to the complainant within the stipulated timeline.

12. Looking to the averments of agreement, parties herein have entered into an agreement of sale and construction agreement dated 17/12/2013. The agreement of sale is key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale and construction agreement dated 17/12/2013, the respondents were supposed to handover the possession of the said flat to the complainants by 01/07/2017. But the respondents have not completed

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and handed over the possession of the said unit to the complainants till date.

13. As per the decision of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

"23. 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 RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

14. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021 (arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, 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 of his business as a developer either on account of suspension or revocation

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of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund or the amount with interest at such rate as may be prescribed in this behalf

The said principle is aptly applicable to the present case on hand.

15. As per Section 18 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.

16. 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 /plot in accordance with sale agreement.

17. From the averments made in the complaint, it is obvious that the complainants have paid the substantial sale consideration and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the complainants. The complainant have claimed an amount of Rs.62,71,957/- (Rs. Sixty two lakhs seventy one thousand nine hundred fifty seven only) as refund with interest. The respondents have not submitted any memo of calculation in spite of several opportunities given to them.

18. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Memo Calculation submitted by the complainant as on 01/06/2023



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PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 01/06/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
33,00,000	29,71,957	0	62,71,957

19. Having regard to all these aspects, this Authority is of the opinion that the complainant is entitled for refund along with interest.

26. Sum and substance of the case is as under:

Date of agreement of sale	17/12/2013
Date of construction agreement	17/12/2013
Sale consideration	1,10,33,800/- (Rs. One crore ten lakhs thirty three thousand eight hundred only)
Amount paid	Rs.33,00,000/- (Rs. Thirty three lakhs only)
Promised date of possession as per agreement of sale	01/07/2017
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	No
Prayer	Refund of amount paid along with interest.

20. Despite of several notices served upon the respondents, the counsel for the respondent did appear before this Authority on 21/7/2023 and filed vakalat. Thereafter, during the subsequent hearings neither the counsel for the respondents nor the respondents did appear before this Authority and have been continuously remained absent on all the dates of hearings. Further, they have failed to file statement of objections and furnishing



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documents in support of their defence and hence not contested the matter. In the absence of any resistance by the respondents and considering the claim of the complainants which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the complainant. Considering all these aspects, the point raised above is answered in the Affirmative.

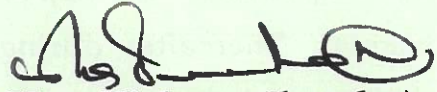
21. Findings on point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I proceed to pass the following:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: 00167/2023 is hereby allowed as under:

1. The respondents 1 & 2 are hereby directed to pay a sum of Rs. **62,71,957/-** (Rupees Sixty two lakhs seventy one thousand nine hundred fifty seven only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate of 9% from 30/10/2013 till 30/4/2017. Further, at the rate of SBI MCLR + 2% from 1/5/2017 till 01/06/2023.
2. The interest due from 02/06/2023 shall be calculated likewise and paid to the complainants till the date of entire realization.
3. The complainants are at the liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
K-RERA