

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 6

Dated 10th NOVEMBER 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/201228/0007332

COMPLAINANTS.....

**IRIS CHARLES &
GERSON CHARLES
NO.306, 1ST E CROSS, III BLOCK
HRBR LAYOUT
ST.THOMAS TOWN POST
BANGALORE-560084**

**(BY MR.M. VINAY KEERTHY &
MR. PRABHU PUJAR S, ADVOCATES)**

Vs

RESPONDENT.....

**M/S MANTHRI DEVELOPERS PRIVATE
LIMITED
MANTRI HOUSE
NO.41, VITTAL MALLYA ROAD
SHANTHALA NAGAR, ASHOK NAGAR
BANGALORE-560001.**

(EX-PARTE)

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "MANTRI WEBCITY" developed by M/S MANTHRI DEVELOPERS PRIVATE LIMITED situated at Nageshwara Nagenahalli Village, Kothanur Village, K.R. Puram Hobli, Bangalore South Taluk, Bengaluru Urban District for the relief of refund with interest.
2. This project has been registered under RERA bearing registration No.PRM/KA/RERA/1251/310/PR/171015/000550 and valid till 30/6/2020. The project was extended till 30/3/2021 due to Covid-19. The Authority has extended its validity till 30/3/2022.

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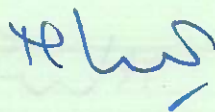
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Brief facts of the complaint are as under:-

3. The complainants had booked a residential flat bearing No.S-301, 3rd Floor, Tower S in the project of the respondent and have paid an amount of Rs.9,00,000/- (Rupees Nine Lakh only) as per the agreement and the remaining amount was financed by Indiabulls Housing Finance Limited to the respondent. On 16/3/2016 the complainants have entered into an agreement of sale and construction agreement with the respondent towards purchase of the flat. The respondent was supposed to handover the flat to the complainants by 30/04/2018. The complainants further submit that believing the words of the respondent, they have entered into a third party agreement with Indiabulls Housing Finance Limited and applied for housing loan of Rs.1,00,00,000/- (Rupees One Crore only) of which Rs.79,00,000/- (Rupees Seventy Nine Lakh only) was directly transferred to the respondent's account. The complainants have paid Rs.79,49,947/- (Rupees Seventy Nine Lakh Forty Nine Thousand Nine Hundred and Forty Seven only) to the respondent on various dates. The complainants submit that the respondent has failed to construct the flat and handover possession to the complainants even after five years. Thus the complainants have approached this Hon'ble Authority and pray for direction to the respondent to refund the entire amount with interest, Rs.1,16,864/- being EMIs paid by the complainants with interest, withdrawal from the project and compensation of Rs.15,00,000/- towards mental agony, subjecting them to criminal prosecution including conveyance and boarding expenses for proceeding to Gurgaon and engaging advocates. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has failed to appear before the Authority for hearing either



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through its counsel/representative nor produced any documents on their behalf.

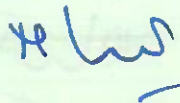
5. The complainants counsel served a notice dated 23/9/2023 on the respondent which has been received and duly acknowledged by the respondent's office under date and seal (dated 25/9/2023).
6. The complainants submit that the respondent had advertised that they would bear PEMI till June 2018 or handing over possession of the flat whichever is earlier. Thereafter on the request of the complainants, the respondent advised them to avail loan from IBHFL and entered into MOU on 16/3/2016. The complainants submit that as per letter dated 3/3/2016, the respondent was required to pay PEMI till June 2018 or upto handing over possession of the flat, whichever is earlier. The respondent had paid PEMI for couple of months and later defaulted. The financial institution issued notices to the complainants calling upon them to remit the EMIs. The matter was brought to the notice of the respondent, but they did not remit the EMIs due and the complainants were forced to pay EMIs hoping that the respondent would adjust the same later. Though the IBHFL issued notice to the respondent directly, the respondent again paid for couple of months and stopped paying EMIs. The financial institution has initiated criminal proceedings against the complainants under Negotiable Instruments Act seeking cancellation of the loan and repayment of Rs.79,00,000/- with interest.
7. The complainants submit that they have been forced to endure pain and suffering of criminal proceedings only due to the default in payment of EMIs on the part of the respondent and as such, the complainants call upon respondent to cancel the booking of flat No.S-301 immediately and

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return the amount to them as mentioned below in the interest of justice and equity.

- a) Down payment of Rs.9,00,000/- with interest;
 - b) Housing Loan amount of Rs.79,00,000/- with interest;
 - c) EMIs paid by the complainants – Rs.1,16,864/- with interest;
 - d) Rs.15.00 Lakh compensation towards damages, mental agony and for subjecting them to criminal prosecution including conveyance and boarding expenses for proceeding to Gurgaon and availing services of advocates.
8. Despite several opportunities were given, the respondent has failed to file their memo of calculation.
9. In support of his claim, the complainant has produced documents such as copies of agreement to sell, memo of understanding, payment receipts, statement of account issued by the respondent company as on 30/11/2020 and memo of calculation as on 7/11/2023.
10. This case was heard on 15/11/2022, 19/1/2023, 14/3/2023, 13/4/2023, 22/6/2023, 13/7/2023, 7/9/2023 and 11/10/2023. Heard arguments of both sides.
11. **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?
12. **My answer to the above points are as under:-**
1. In the Affirmative.



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2. As per final order for the following:-

REASONS

13. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of the flat within 30/4/2018 and receiving substantial sale consideration amount, the respondent has failed to abide by the terms of the agreement and has not handed over the possession of the flat to the complainants till date.
14. The Hon'ble Authority has perused the written submission submitted by the complainants. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, and hence it is necessary that it shall be from any ambiguity and vagueness. Here in this case, the respondent has not given possession of the said flat to the complainant as agreed and have not complied with the terms of the said agreement of sale.
15. The Hon'ble Authority also noticed that the respondent never appeared before the Authority for hearing despite several notices was sent to them. The Authority served summons on the respondent through the complainant's counsel, which was received at the respondent's office duly acknowledged under date and seal. The Hon'ble Authority also noticed that the respondent despite receiving the notice on 25/9/2023 again failed to appear before the Authority for hearing and hence, placed the respondent as **EX-PARTE**.

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16. The Hon'ble Authority had also directed the complainants to submit fresh memo of calculation as they had not included the component of housing loan in their MOC. Accordingly, the complainants have submitted MOC as on 7/11/2023.

17. 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 that:

"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."

18. 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)

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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 later 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."

19. 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, flat, 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.
20. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
21. The complainants vide their memo of calculation as on 07/11/2023 has claimed an amount of Rs.1,33,63,179/- as refund with interest.
22. Having regard to the above aspects, this Authority concludes that the complainants are entitled for refund with interest as claimed in his memo of calculation as on 07/11/2023.
23. Further the complainants have sought for compensation of Rs.15,00,000/- for damages, mental agony, subjecting them to criminal



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prosecution, conveyance, boarding expenses, engaging advocates, etc. at Gurgaon, which does not come under the jurisdiction of this Authority. Hence, the same is not considered.

24. Therefore, it is incumbent upon the respondent to pay refund with interest 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	22-02-2016	9,00,000	433	30-04-2017	96,090
2	01-11-2016	58,432	180	30-04-2017	2,593
3	31-03-2017	69,33,083	30	30-04-2017	51,285
4		78,91,515		TOTAL INTEREST (I1)	1,49,968

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	78,91,515	2381	07-11-2023	8.15	10.15 as on 01-05-2017	52,25,080
2	01-06-2017	58,432	2350	07-11-2023	8.15	10.15 as on 01-06-2017	38,184
3	TOTAL AMOUNT	79,49,947				TOTAL INTEREST (I2)	52,63,264

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 07-11-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
79,49,947	54,13,232	0	1,33,63,179

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25. Accordingly, the point raised above is answered in the Affirmative.
26. **My answer to Point No.2:-** In view of the above discussion, I proceed to pass the following order –

ORDER


In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.**CMP/UR/201228/0007332** is hereby allowed.

The respondent is directed to pay a sum of **Rs.1,33,63,179/- (Rupees One Crore Thirty Three Lakh Sixty Three Thousand One Hundred and Seventy Nine only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 22/2/2016 to 30/4/2017 and MCLR + 2% from 01/05/2017 to 07/11/2023.

The interest on refund due from 08/11/2023 till the date of final payment will be calculated likewise and paid to the complainants.

The complainants are 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.


(Neelmani N Raju)
Member, K-RERA

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