

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

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

DATED 10TH JANUARY 2024

COMPLAINT NO: CMP/221226/0010534

COMPLAINANT.....

**MARKETS NEXT INC
SC, DEAUVILLE APARTMENTS
19, CHURCH STREET
BANGALORE-560001.**

**(MR.K. BHANU PRASAD,
AUTHORIZED PERSON))**

V/S

RESPONDENT.....

**MANTRI DEVELOPERS PRIVATE LTD
MANTRI HOUSE
NO.41, VITTAL MALLYA ROAD
BANGALORE - 560001.**

**(BY MR. SUNIL P PRASAD &
MR. SRINIVAS R, ADVOCATES)**

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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 Centrium**" developed by M/s Mantri Developers Private Limited situated at Sampige Road, Malleshwaram, Bengaluru North, Bengaluru Urban for the relief of Refund with interest.
2. This project is registered under RERA bearing registration No.PRM/KA/RERA/1251/309/PR/171016/000485 valid till



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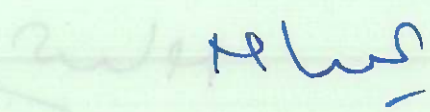
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01/07/2021. The Authority gave Covid extension for 9 months i.e. valid till 01/04/2022.

Brief facts of the complaint are as under:-

3. On 26/7/2016 the complainant (a company known as Markets Next Inc) had entered into agreement of sale and agreement for construction in respect of the Flat bearing No.B-903, Wing-B, 9th Floor in the project of the respondent and has paid a substantial sale consideration amount of Rs.71,21,200/- as advance to the respondent. The complainant submits that the respondent had agreed to handover the flat by December 2017. The respondent again assured that the flat will be handed over by December 2020 as they could not complete the project in time due to Covid-19 pandemic and lockdowns but so far no steps has been taken from their side to complete the project.
4. The complainant submits that their complaint was dismissed by the Hon'ble Authority as the complaint was premature vide its order dated 3/8/2022 and that they have preferred the present complaint against the respondent.
5. The complainant further submits that in spite of repeated requests, the respondent has failed to handover the possession of the flat, though the complainant was willing to pay the balance amount. The complainant submits that they have received a letter dated 15/2/2021 from the respondent calling upon the complainant to give a letter of consent for transferring the project to APV namely Centrium Promoters LLP (SPV). The complainant sensed that the respondent was not interested in completing the project and wanted to handover the project to some other company, issued a legal notice dated 3/6/2021 calling upon the respondent to refund the entire amount with interest. In their reply, the respondent has nowhere stated the stage of the construction which



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clearly goes to show that they have completely abandoned the project. The complainant submits that even on the date of filing the present complaint the respondent has not completed the project. Thus, the complainant has approached this Hon'ble Authority and pray for direction to the respondent for refund of entire amount with interest. Hence, this complaint.

6. After registration of the complaint several notices and summons were sent to the respondent at their given mail/postal address for appearance before the Authority. The respondent appeared before the Authority through their counsel only once to file their Vakalat and subsequently never appeared for the hearings. Though they had received summons on 13/10/2023, they failed to appear before the Authority during the hearings. The respondent has not filed their statement of objections nor produced documents on their behalf. The respondent has also not filed their memo of calculation despite several opportunities were given.
7. In support of their claim, the complainant has produced documents such as copies of Agreement of Sale, Construction agreement, Legal Notice dated 3/6/2021, Reply to the legal notice by the respondent dated 9/7/2021, Statement of account dated 21/5/2019 issued by the respondent, RPAD acknowledgements for having served documents on the respondent and memo of calculation as on 21/12/2023.
8. On the other hand, the respondent has not produced any documents on their behalf.
9. This case was heard on 1/6/2023, 4/7/2023, 9/8/2023, 4/10/2023, 19/12/2023 and 9/1/2024. Heard arguments of the complainant side.
10. **On the above averments, the following points would arise for my consideration:-**
 1. Whether the complainant is entitled to the relief claimed?



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2. What order?

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

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

REASONS

12. **My answer to point No.1:-** From the materials placed on record, it is apparent that in spite of entering into an agreement for sale and agreement for construction and receiving substantial sale consideration amount to hand over possession of the flat, the builder has not completed the project as per agreement and has delayed the project and has failed to handover the flat to the complainant till date. Though the builder had received summons at their office, did not appear before the Hon'ble Authority to participate in the proceedings by filing statement of objections and producing documents on their behalf.
13. The respondent has not at all disputed the claim of the complainant in any manner. Therefore, the claim of the complainant remained unchallenged and it is corroborated with cogent evidence. Hence the builder has failed to abide by the terms of agreement for sale and construction agreement. There seems to be no possibility of completing the project or handing over the possession of the flat in near future.
14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to hand over possession of the flat certainly entitles the complainant herein for refund with interest.



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15. 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 has not complied with the terms of the said agreement of sale and construction agreement. This conduct of the respondent clearly goes to show that they have taken the complainant for a ride and deprived them from owning their own flat.

16. 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."

17. 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

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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 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."

18. 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.
19. 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.
20. The complainant has submitted their memo of calculation as on 21/12/2023 claiming refund with interest of Rs.1,24,51,475/- (Rupees One Crore Twenty Four Lakh Fifty One Thousand Four Hundred and Seventy Five only).
21. Having regards to the above aspects, the Hon'ble Authority upholds the refund amount claimed by the complainant vide their memo of calculation as on 21/12/2023.

22/12/23
HLS

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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	10-06-2016	5,00,000	324	30-04-2017	39,945
2	05-07-2016	66,21,200	299	30-04-2017	4,88,154
3		71,21,200		TOTAL INTEREST (I1)	5,28,099

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	71,21,200	2425	21-12-2023	8.15	10.15 as on 01-05-2017	48,02,176
2	TOTAL AMOUNT	71,21,200				TOTAL INTEREST (I2)	48,02,176

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 21-12-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
71,21,200	53,30,275	0	1,24,51,475

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

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24. **Our findings on Point No.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, 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/221226/0010534** is hereby allowed.

The Respondent is directed to pay a sum of Rs.1,24,51,475/- (Rupees One Crore Twenty Four Lakh Fifty One Thousand Four Hundred and Seventy Five only) towards refund with interest calculated at 9% from 10/06/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 to 21/12/2023 to the complainant within 60 days from the date of this order.

The interest accruing from 22/12/2023 till the date of final payment will be calculated and paid likewise. Failing which, the complainant is at liberty to enforce this order in accordance with law.

No order as to the costs.


(Neelmani N Raju)
Member, KRERA