

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/221226/0010535

COMPLAINANT.....

**MISS SAACHI RAMKUMAR
NO.6, KILPAUK GARDEN ROAD
1ST STREET, KILPAUK
CHENNAI-600010.**

**(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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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. The complainant is a minor and duly represented by her mother Mrs. Vineeta Badawe has entered into the agreement of sale and agreement of construction dated 29/9/2016 for the purchase of the Flat bearing No.A-1101, 11th Floor, Wingh-A in the project of the respondent and has paid a substantial sale consideration amount of Rs.76,76,291.31p as advance to the respondent. In spite of receiving the substantial sale consideration amount, the respondent has failed to complete the project and handover possession of the flat by the end of December 2017, though the complainant was ready and willing to pay the balance amount. However, the respondent vide their letter dated 22/6/2017 revised the time line for completion and handing over possession to December 2020, but they could not complete the project in time due to Covid-19 pandemic and lockdowns but so far no steps have been taken from their side to complete the project.
4. The complainant submits that she 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 15/4/2021 calling upon the respondent to refund the entire amount with interest. The respondent has failed to refund the amount with interest to the complainant.
5. The complainant submits that her complaint was dismissed by the Hon'ble Authority as the complaint was premature vide its order dated

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- 1/8/2022 and that they have preferred the present complaint against the respondent.
6. 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 prays direction to the respondent for refund of entire amount with interest. Hence, this complaint.
 7. 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 have failed to appear before the Authority for the hearing. The respondent has neither 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.
 8. In support of her claim, the complainant has produced documents such as copies of Agreement of Sale, Construction agreement, copy of the letter dated 22/6/2017 from the respondent, Legal Notice dated 15/4/2021, Statement of account from 1/4/2016 to 31/3/2017 issued by Dhanlaxmi Bank Ltd., Kilpauk Branch, Chennai, RPAD acknowledgements for having served documents on the respondent and memo of calculation as on 21/12/2023.
 9. On the other hand, the respondent has not produced any documents on their behalf.
 10. 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.



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11. **On the above averments, the following points would arise for my consideration:-**

1. Whether the complainant is entitled to the relief claimed?
2. What order?

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

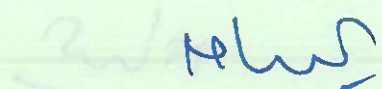
1. In the Affirmative.
2. As per final order for the following

REASONS

13. **My answer to point No.1:-** From the materials placed on record, it is apparent that 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 either through their counsel nor representative to participate in the proceedings by filing statement of objections and producing documents on their behalf.

14. 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.

15. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid



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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.

16. 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 her of owning her own flat.

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



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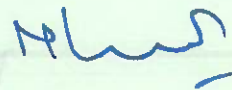
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by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made "without 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 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 complainant has submitted her memo of calculation as on 21/12/2023 claiming refund with interest of Rs.1,34,12,557/- (Rupees One Crore Thirty Four Lakh Twelve Thousand Five Hundred and Fifty Seven only).



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22. Having regards to the above aspects, the Hon'ble Authority upholds the refund amount claimed by the complainant vide her memo of calculation as on 21/12/2023.

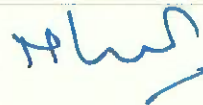
23. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

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	08-07-2016	70,00,000	296	30-04-2017	5,10,904
2	11-07-2016	6,76,292	293	30-04-2017	48,859
3		76,76,292		TOTAL INTEREST (I1)	5,59,763

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	76,76,292	2425	21-12-2023	8.15	10.15 as on 01-05-2017	51,76,502
2	TOTAL AMOUNT	76,76,292				TOTAL INTEREST (I2)	51,76,502

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)
76,76,292	57,36,265	0	1,34,12,557

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



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25. **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:

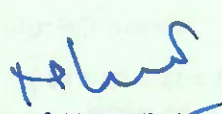
ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/221226/0010535** is hereby allowed.

The Respondent is directed to pay a sum of Rs.1,34,12,557/- (Rupees One Crore Thirty Four Lakh Twelve Thousand Five Hundred and Fifty Seven only) towards refund with interest calculated at 9% from 08/07/2016 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