

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 12TH JANUARY 2024

COMPLAINT NO:00823/2023

COMPLAINANTS.....

**GANGADHAR K DEVNANI &
VIDHI G DEVNANI
NO.117, 1ST FLOOR
CORNER BUILDING
8TH CROSS, RAILWAY PARALLEL ROAD
KUMARA PARK WEST
BANGALORE-560020.**

**(MR.K.R. NAGENDRA PRASAD,
AUTHORIZED PERSON, ADVOCATE)**

V/S

RESPONDENT.....

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

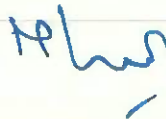
**2.ABHISHEK DEVELOPERS
NO.41, VITTAL MALLYA ROAD
BANGALORE - 560001.**

(ABSENT)

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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



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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 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 21/3/2017 the complainants booked a flat bearing No.A-2503, 25th Floor, Wing-A and entered into the agreement of sale and agreement of construction dated 06/12/2019 and have paid a substantial sale consideration amount of Rs.1,82,18,000/- (Rupees One Crore Eighty Two Lakh Eighteen Thousand only) as advance to the respondents on various dates. In spite of receiving the substantial sale consideration amount as advance, the respondents have failed to complete the project and handover possession of the flat by the end of December 2020, though the complainant was ready and willing to pay the balance amount.
4. The complainants submit that their complaint was earlier dismissed by the Hon'ble Authority as it was premature vide its order dated 5/9/2022 and that they have preferred the present complaint against the respondent.
5. The complainants submit that they received a letter from the respondents calling upon the complainants to give a letter of consent for transferring the project to APV namely Centrium Promoters LLP (SPV). The complainants sensed that the respondents were not interested in completing the project and wanted to handover the project to some other company, issued a legal notice dated 08/02/2021 calling upon the respondents to refund the entire amount with interest and compensation for damages. The respondents in their reply dated 9/7/2021 have

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nowhere stated about the stage of the construction of the flat, which clearly goes to show that they have completely abandoned the project. The respondent has failed to refund the amount with interest to the complainants and the project has come to standstill. The complainants have also produced photographs to the present stage of the building. Thus, the complainants have approached this Hon'ble Authority and prays direction to the respondents for refund of entire amount with interest. Hence, this complaint.

6. After registration of the complaint several notices and summons were sent to the respondents at their given mail/postal address for appearance before the Authority. Though they had received summons on 29/12/2023, they have failed to appear before the Authority for the hearing. The respondents have neither filed their statement of objections nor produced documents on their behalf. The respondents have also not filed their memo of calculation despite several opportunities were given.
7. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Construction agreement, Legal Notice dated 8/2/2021, reply dated 9/7/2021 from the respondents, Payment receipts, recent photographs of the project, RPAD acknowledgements for having served documents on the respondents and memo of calculation as on 08/09/2023.
8. On the other hand, the respondent has not produced any documents on their behalf.
9. This case was heard on 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:-**

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1. Whether the complainants are entitled to the relief claimed?
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 either through their counsel nor their representative to participate in the proceedings by filing statement of objections and producing documents on their behalf.
13. The respondents have not at all disputed the claim of the complainants in any manner. Therefore, the claim of the complainants remain 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 complainants have paid substantial sale consideration amount to the respondents. Having accepted the said amount and failure to keep up promise to hand over



possession of the flat certainly entitles the complainants herein for refund with interest.

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 free from any ambiguity and vagueness. Here in this case, the respondents have not given possession of the said flat to the complainants as agreed and has not complied with the terms of the said agreement of sale and construction agreement. This conduct of the respondents clearly goes to show that they have taken the complainants for a ride and deprived them of 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 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

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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 complainants have submitted their memo of calculation as on 8/9/2023 claiming refund with interest of Rs.2,88,98,391/- (Rupees Two Crore Eighty Eight Lakh Ninety Eight Thousand Three Hundred and Ninety One only).
21. Having regards to the above aspects, the Hon'ble Authority upholds the refund amount claimed by the complainants vide their memo of calculation as on 8/9/2023.
22. The complainants have sought for compensation for damages which does not come under the jurisdiction of this Authority. Hence, the same is not considered.

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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	21-01-2017	5,05,000	99	30-04-2017	12,327
2	15-03-2017	45,45,000	46	30-04-2017	51,551
3	25-04-2017	7,00,000	5	30-04-2017	863
4		57,50,000		TOTAL INTEREST (I1)	64,741

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	57,50,000	2321	08-09-2023	8.15	10.15 as on 01-05-2017	37,11,215
2	27-05-2017	7,50,000	2295	08-09-2023	8.15	10.15 as on 01-05-2017	4,78,648
3	30-06-2017	5,58,000	2261	08-09-2023	8.15	10.15 as on 01-06-2017	3,50,839
4	29-07-2017	5,58,000	2232	08-09-2023	8.15	10.15 as on 01-07-2017	3,46,339
5	05-09-2017	5,58,000	2194	08-09-2023	8.15	10.15 as on 01-09-2017	3,40,442
6	28-09-2017	5,58,000	2171	08-09-2023	8.15	10.15 as on 01-09-2017	3,36,873
7	30-10-2017	5,58,000	2139	08-09-2023	8.15	10.15 as on 01-10-2017	3,31,908
8	30-12-2017	5,58,000	2078	08-09-2023	8.1	10.1 as on 01-12-2017	3,20,854
9	09-01-2018	5,58,000	2068	08-09-2023	8.1	10.1 as on 01-01-2018	3,19,310
10	06-02-2018	5,58,000	2040	08-09-2023	8.1	10.1 as on 01-02-2018	3,14,987

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11	28-02-2018	5,58,000	2018	08-09-2023	8.1	10.1 as on 01-02-2018	3,11,590
12	31-03-2018	5,58,000	1987	08-09-2023	8.35	10.35 as on 01-03-2018	3,14,397
13	28-04-2018	5,58,000	1959	08-09-2023	8.35	10.35 as on 01-04-2018	3,09,967
14	05-07-2018	5,58,000	1891	08-09-2023	8.45	10.45 as on 01-07-2018	3,02,098
15	09-08-2018	5,58,000	1856	08-09-2023	8.45	10.45 as on 01-08-2018	2,96,507
16	13-09-2018	5,58,000	1821	08-09-2023	8.65	10.65 as on 01-09-2018	2,96,483
17	31-10-2018	5,58,000	1773	08-09-2023	8.7	10.7 as on 01-10-2018	2,90,023
18	29-11-2018	5,58,000	1744	08-09-2023	8.7	10.7 as on 01-11-2018	2,85,280
19	29-12-2018	5,58,000	1714	08-09-2023	8.75	10.75 as on 10-12-2018	2,81,682
20	29-01-2019	5,58,000	1683	08-09-2023	8.75	10.75 as on 10-01-2019	2,76,588
21	28-02-2019	5,58,000	1653	08-09-2023	8.75	10.75 as on 10-02-2019	2,71,658
22	29-03-2019	5,58,000	1624	08-09-2023	8.75	10.75 as on 10-03-2019	2,66,892
23	26-04-2019	5,58,000	1596	08-09-2023	8.7	10.7 as on 10-04-2019	2,61,070
24	TOTAL AMOUNT	1,82,18,000				TOTAL INTEREST (12)	1,06,15,650

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 08-09-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,82,18,000	1,06,80,391	0	2,88,98,391

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. **00823/2023** is hereby allowed.

The Respondents are directed to pay a sum of Rs.2,88,98,391/- (Rupees Two Crore Eighty Eight Lakh Ninety Eight Thousand Three Hundred and Ninety One only) towards refund with interest calculated at 9% from 21/01/2017 to 30/04/2017 and MCLR + 2% from 01/05/2017 to 08/09/2023 to the complainants within 60 days from the date of this order.

The interest accruing from 09/09/2023 till the date of final payment will be calculated and paid likewise to the complainants, failing which, the complainants are at liberty to enforce this order in accordance with law.

No order as to the costs.


(Neelmani N Raju)
Member, KRERA

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[Signature]
(Name) N. N.
Member, N.E.R.A.