

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 5

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated : 18th JANUARY, 2024

COMPLAINT NO: 220905/0009978

COMPLAINANT:

1. MRS. ARTI SHIVHARE
2. Deepak Kumar Shivhare,
L-405, SNN Raj Lake View, 29th Main
Road, BTM Layout, 2nd Stage,
Bangalore-560076.
(In person)

Vs

RESPONDENT:

M/S MANTRI CASTLES PVT. LTD.
Mantri House, # 41,
VittalMallya Road,
Bangalore-560001
(By M/s Vedachala Associates)

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "MANTRI SERENITY3" developed by "MANTRI CASTLES PVT. LTD." for the relief of refund with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/310/PR/171016/000500 valid till 29-12-2020 & extended till 29-09-2022.
3. This project is situated at, Kanakapur Road, 1.7 kms from Metro Cash & Carry, Bangalore South, Bangalore Urban.

Brief facts of the complaint are as under:-

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4. The complainants had booked a flat bearing No. H-2202 in the sale consideration of Rs.80,65,800/-(Rupees Eighty Lakhs Sixty Five Thousand and Eight Hundred only). At the time of entering into an agreement of sale and construction, the complainants had paid sum of Rs. 10,77,294/-(Rupees Ten Lakhs Seventy Seven Thousand and Two Hundred and Ninety Four only) from their own account and also paid loan amount of Rs.60,47,412/-(Rupees Sixty Lakhs Forty Seven Thousand Four Hundred and Twelve only) by India bulls Bank. The respondent was supposed to handover possession of the said flat to the complainants on or before 31-10-2018. The respondent had failed to carry out the construction work and the complainants had tried to contact numerous times to the respondent but there is no response from the respondent. The complainant had booked a flat in buyback scheme and the respondent has paid 3 emi's to the bank. After the 3 emi's the respondent has stopped the payment. Hence this complaint.

5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainants had appeared before the Authority and filed memo of calculation, agreements of sale, construction and tripartite and payment receipts etc. The respondent advocate Mr. Srinivas appeared on 03-08-2023 and he has filed his vakalathnama but he did not file his statement of objection and relevant document before this Authority.

6. In support of their claim, the complainants have produced documents such as copy of agreement of sale and construction and

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tripartite agreement, e-mail conversation of both the parties, payment receipts and memo of calculation dated 02-10-2023, bank statement and details of home loan.

7. This matter is heard on 03-08-2023, 23-11-2023 and 13-12-2023.

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

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

REASONS

10. **My answer to Point No.1:-** From the materials available on record, it is apparent that in spite of entering into an agreement of sale and construction having received a substantial sale consideration from the complainants, the respondent has neither registered the flat and nor refunded the amount with interest till date. The complainants had invested entire sale consideration amount after mutual discussion between the respondent and India bulls Bank team. The respondent had agreed to handover the possession of the said flat by 31-10-2018.

11. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 29-09-2015. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be

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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, the respondent was supposed to handover the possession of said flat to the complainant in October 2018.

12. 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 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 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.

13. Further, 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



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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 letter 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."

14. As per section 18(1) 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.

15. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and



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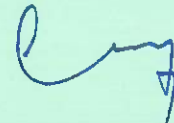
compensation only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

16. From the averments of the complaint and documents of the complainants, it is obvious that they had paid substantial sale consideration to the respondent towards the purchase of said flat. Having accepted the substantial sale consideration and having failed to abide by the terms and condition of agreement of sale to complete the project, certainly entitles the complainants for refund of entire amount with interest.

17. The complainants had filed his memo of calculation as on 02-10-2023 claiming a refund of Rs.1,30,12,893/-(Rupees One Crore Thirty Lakhs Twelve Thousand and Eight Hundred and Ninety Three only) including interest. The respondent has not resisted the said memo of calculation filed by the complainants and he has not submitted his memo of calculation inspite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainants reveals that his claim is genuine.

18. In response to the notice, the respondent had not taken any interest to participate in the proceedings and to resist the claim of complainants. Hence, the claim of complainants remained unchallenged and his claim is corroborated with cogent materials. There is no reason to discard the claim of complainants.

19. Having regard to all these aspects as mentioned above, this Authority concludes that the complainant is entitled for refund along with interest as claimed vides his memo of calculation 02-10-2023.



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20. 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	30-08-2015	200,000	609	30-04-2017	30,032
2	15-09-2015	761,997	593	30-04-2017	111,418
3	24-09-2015	5,831,062	584	30-04-2017	839,672
4	24-09-2015	210,000	584	30-04-2017	30,240
5	27-09-2015	46,897	581	30-04-2017	6,718
6	03-02-2016	68,400	452	30-04-2017	7,623
		7,118,356	584	Total Interest(I1)	1,025,703

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	7,118,356	2345	02-10-2023	8.15	10.15 as on 01-05-2017	4,641,899
2	10-08-2020	49,808	1148	02-10-2023	7.3	9.3 as on 10-08-2020	14,569
3	15-12-2020	129,000	1021	02-10-2023	7.3	9.3 as on 10-12-2020	33,558
4	TOTAL AMOUNT	7,297,164				TOTAL INTEREST (I2)	4,690,026

21. Accordingly the point raised above is answered in the Affirmative.

22. My answer to point No.2:- In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I proceed to pass the following:

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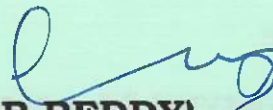
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ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/220905/0009978** is hereby allowed as under.

1. The respondent is directed to pay a sum of **Rs.1,30,12,893/- (Rupees One Crore Thirty Lakhs Twelve Thousand and Eight Hundred and Ninety Three only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 30-08-2015 to 30/04/2017 and at MCLR + 2% from 01/05/2017 till 02/10/2023.
2. The interest due from 03/10/2023 up to the date of final payment will be calculated as per MCLR + 2% and paid to the complainant.
3. The complainant is hereby directed to cooperate with the respondent for cancellation of agreement of sale agreement dated 28-05-2019 on receipt of entire amount as directed to be refunded by the respondent.
4. The complainant is at liberty to initiate action in accordance with law, if the respondent fails to comply with this order.

No order as to the costs.


(G R REDDY)
Member, K-RERA