

**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**

**Complaint No. CMP/181023/0001484**

**Presided by Sri K. PALAKSHAPPA**

**Adjudicating Officer**

**Date: 04<sup>TH</sup> APRIL 2019**

Complainant : G.S. ANIL KUMAR

Flat No. 304, Seshabanu Residency Block 2,  
4<sup>th</sup> Main, 6<sup>th</sup> Cross, N.S. Palya, BTM II Stage,  
Bengaluru- 560078.

AND

Opponent : MANTRI WEBCITY 2A  
Mantri Developers PVT. LTD,  
No.41 Mantri House, Vittal Mallya Road,  
Bengaluru - 560001.

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**J U D G E M E N T**

1. Mr. G S ANIL KUMAR has filed this complaint under Section 31 of RERA Act against the project "MANTRI WEBCITY 2A" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no. CMP/181023/0001484. The facts of the complaint is as follows:

*" In the year 2014, I have booked a Flat bearing No.607, F Block, 6th Floor, Mantri Webcity, Nageshwara Nagenahalli, Kothanur, Bengaluru 560 077, being developed/constructed by M/s. Mantri Developers Private Limited (Developer). At the time of booking the Subject*

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79

Property, the Developer had offered to us Assured Return Scheme? (Scheme). Under the Scheme, the Developer had offered and undertaken to comply with the below offer:- (i) Assured return of 100% on the own contribution made by us (Our contribution was Rs.15,82,994/-). (ii) 100% loan repayment, along with connected costs and charges if any levied (on the loan raised by the Clients). (iii) Pre-Emi payments to be cleared from Developers end, on the housing loan availed by us from PNB Housing Finance Limited. (iv) ROI. To avail the above scheme offer, I was to inform the Developer in writing about claiming for the benefit, six months in advance. Accordingly I had communicated my intention of cancellation of the Sale Agreement and claimed for the scheme benefit payout and the communication was duly acknowledged and accepted by the Developer (Letter dated 24.09.2016 attached). Upon acceptance of the cancellation from, the Scheme benefit/ payments was guaranteed by the Developer, by 31.03.2017. Though, as promised by the Developer, I was entitled for the Scheme benefits, as specified above latest by 31.03.2017, however, citing market situation, the Developer had requested me for further extension of time (a long time of 01 (one year), and committed to clear the Scheme obligations latest by March, 2018.

Relief Sought from RERA: Payment of Assured Return, along with refund ."

2. In pursuance of the notice issued by the authority, the parties have appeared on 18/12/2018. The complaint is filed for refund of the amount. The complainant has sought for refund of his amount with agreed 2X amount. The complainant has said at the time of argument that he has paid Rs. 17,23,559/- from his pocket and the developer has raised the loan in the name of complainant of Rs. 62,74,000/- for which he has filed this complaint.



3. Advocate representing the developer submits that as per section 18, the allottee to whom the developer has failed to deliver the possession of the flat, plot or building as the case may be as agreed to deliver or failed to complete the project then only the consumer could claim the relief. But in this case the complainant is seeking the double amount by asking the developer to purchase his flat means the complainant becomes the seller and developer becomes the purchaser.
4. In view of the same it is his argument that Section 18 cannot be invoked to seek this kind of relief. He also read the Section 12 & 71 before me and submits that there is no violation of either Section 12 or 14. When that being the case the complainant cannot file this complaint before the Adjudicating Officer. He also submits that the claim made by the complainant is out of jurisdiction of this authority and he requested the Authority to direct the complaint to go to civil court.
5. I would like to say that the submission made by the Advocate for the developer has no force since his own objection statement accepts the relationship.
6. In para No. 13 of his statement which reads as under:

*The complainant had paid through from PNBHFL (Punjab National Bank Housing Finance Limited) and the said bank has disbursed a sum of Rs. 62,74,000/- (Rupees Sixty Two Lakhs Seventy Four Thousand Only). A sum of Rs. 54,743/- (Rupees Fifty Four Thousand Seven Hundred and Forty Three Only) was to be paid as monthly EMI*

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towards the loan amount borrowed by the complainant to Punjab National Bank Housing Finance Limited.

From this para the payment made by the complainant is admitted.

7. Further the developer has also contended in para No.31 which reads as under:

*The Complainant has entered in to Assured return/Buy-back Scheme, and therefore the complainant is clearly an investor and not an end use consumer. Be that as it may, it is pertinent to note here that the Complainant in her complaint has only sought for relief as against the Pre-EMI and buy back scheme. This establishes that the Complainant never intended to be a final consumer always wanted to be an investor and get the benefit as per the scheme. Hence, the complainant being an investor and has no jurisdiction to approach this Hon'ble Authority and seek for any relief/s against the Respondent herein. This clearly establishes the oblique motive of the Complainant to harass the Respondent and get the Respondent to the terms.*

8. I would say that in order to attract the customer, the developer uses number of ways by giving advertisement. In the same way the present case stands by attracting the scheme released by the developer for which the complainant has entered in to agreement with the developer. By reading the clauses of the agreement all the terms and conditions are giving the status of complainant as purchaser and respondent as developer. The document

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76

called as TERMS AND CONDITIONS wherein the parties have agreed for certain conditions.

*I have taken two important conditions which are as under:*

- a. *Mantri developers will bear the Pre- Emi till March 2017.*
- b. *Mantri developers will assure return of 100% on the own contribution made by the unit purchasers at the end of March 2017.*

9. The above two conditions clearly proves the relationship of Developer and Customer and indirectly proves the case of the complainant. In view of the same I have no any hesitation to say that the argument of the developer has no force. The developer cannot blow hot and cold at the same time. In view of the above discussion his objection losses its importance.
10. I find no good reasons to dismiss the complaint holding that this authority has no jurisdiction. The parties are bound by the agreement and its clauses shall be respected.
11. Further the complainant has submitted that he has paid of Rs. 17,23,559/- as his personal contribution which is 20% of the total consideration amount. The bank has released a sum of Rs. 62,74,485/- in the form of home loan which is 80% of the sale consideration. By this way it is the case of the complainant that he has paid a sum of Rs.79,98,044/- towards purchase of flat bearing number F-607. This is admitted fact also.



12. Admittedly it is a buy back scheme. As per the terms of Pre EMI the developer has agreed to return 100% of the amount paid by the complainant. Further in this scheme the developer has agreed to pay 2 x amounts.

Originally developers agreed to return the PMI till March 2017, but he failed to deliver the flat as agreed by him. Now the developer has given the revised completion date as 28/02/2020. In view of the same the developer is bound to pay the pre EMI either till the delivery of possession or till date a complainant go out of the project. The developer I totally delete the case of the component on the ground that such kind of issue cannot be decided by this authority. But I hold that argument can answer on behalf of the developer has no meaning because the complainant has agreed to purchase a flat on this scheme. It was launched by the developer to attract the customer consumer like the complainant. Now you cannot submit regarding the jurisdiction of the authority just because the complainant has demanded to return the 2x amount. Best report this is scheme the parties have entered into the agreement.

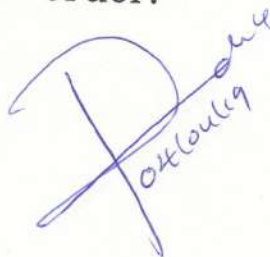
The learned Counsel for the developer has submitted in Para no.19 office object statement which reads as under:  
I state that the buyback scheme or the pre EMI scheme entered between the Complainant and the respondent contract in itself where the rights and obligations of the parties are involved. Such being the case, the issue raised by the complaint has to be looked into by the competent civil court having the jurisdiction. And on this ground alone the complaint needs to be dismissed since this Hon'ble Authority does not have the jurisdiction to entertain this

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complaint. The complaint is seeking specific performance of understanding/contract where under complaint is a seller and respondent is the buyer. Under the circumstances the complainant cannot invoke the presence of RERA and hence RERA has no jurisdiction. The RERA act does not contemplate the adjudication of obligations when the builder is a buyer, which is the circumstance in this case.

13. This condition taken by the developer has no meaning because it is against to his agreement. He has invited the consumer like complainant for the development of this project. He himself has created this scheme to attract the public at large. Now he cannot take any technical error to defeat the interest of the complainant. That terms as shown in the document is sufficient to destroy the whole case of the developer. The status of development and complainant cannot be interchanged just because the complainant has demanded to pay the 2x amount which was agreed to pay by the developer. And I have no any hesitation to say that the complaint is certainly entitled for the relief as claimed by him in his complaint. With this observation I say that the complaint has to be allowed.
14. AS per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the Complaint was presented on 23/10/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 18/12/2018. Hence, there is little delay in closing the complaint. With this observation I proceed to pass the order.

A handwritten signature in blue ink, appearing to be 'D. S. S. S.', with a large 'X' mark over it.

ORDER

1. The Complaint No. CMP/181023/0001484 is allowed.

- a) The developer is hereby directed to return the own contribution amount Rs. 17,23,559/- to the complainant with interest @ 10.75% p.a from today.
- b) The developer is hereby directed to return the 2X amount to the complainant.
- c) The developer is hereby directed to discharge the loan raised in the name of the complainant with all its EMI and interest if any.
- d) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
- e) The developer shall pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 04/04/2019)

(K.PALAKSHAPPA)  
Adjudicating Officer