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BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/181125/0001666

Date: 22nd MARCH 2019

Complainant : RAGHUNATHA R
No. 2557, 22nd Main, 30th Cross,
Banashankari II Stage,
Bengaluru - 560070.

AND

Opponent : MANTRI WEBCITY 3B
Mantri Developers PVT. LTD,
No.41 Mantr House,Vittal Mallya Road,
Bengaluru - 560001.

J U D G E M E N T

1. Mr RAGHUNATHA R has filed this complaint under Section 31 of RERA Act against the project "MANTRI WEBCITY 3B" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no. CMP/181125/0001666. The facts of the complaint is as follows:

"Failure of Mantri Developer to fulfill commitments made to buyers and investors with assured returns and interest charges and penal charges.

Relief Sought from RERA: Immediate settlement as per commitments made."

2. In pursuance of the notice issued by the authority, the parties appeared on 14/12/2018. 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. 30,66,788/- from his pocket and the

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developer has raised the loan in the name of complainant of Rs. 61,31,362/- 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 failed 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. 14 of Objection 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. 61,31,362/- (Rupees Sixty One Lakhs Thirty One Thousand Three Hundred and Sixty Two Only). A sum of Rs. 62,672/- (Rupees Sixty Two Thousand Six Hundred and Seventy Two Only) was to be paid as monthly EMI 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.32 as under:

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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 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 August 2016.*
- b. Mantri developers will assure return of 100% on the own contribution made by the unit purchasers at the end of August 2016.*

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. Further the complainant has submitted the developer has promised to repay the emi till August 2017. In this regard the E-mail dated 21/04/2014 which reads as under:

"Mantri Webcity is a road map where you can discover web in a whole new way. A life with pace, connectivity and happiness never before.

A web theme township inspired by dedication to all web life and all web lovers. Leveraging technology with intelligent amenities like Digital Life, Musical Walls, Water clock etc would change the way you dream about living space.

WE ARE PLEASED TO ANNOUNCE "100% ASSURED RETURN ON YOUR OWN INVESTMENT OFFER EXCLUSIVELY FOR MANTRI WEBCITY"

Following are the terms and conditions for 100% assured return offer.

- 1. Base rate per sq ft is fixed @Rs. 4990/- (Floor rise charges will be applicable).*
- 2. We assure you 100% returns on your own investment on the apartment that you buy @ Mantri Webcity. For Eg. If you buy a unit worth Rs. 61 Lacs. Rs. 12 Lacs will be your own contribution and Rs. 48 Lacs will be paid through bank loan. On your contribution and Rs. 48 Lacs will be paid through bank loan. On your contribution of Rs. 12 Lacs, Mantri Developers will assure 100% return, which is Rs. 24 Lacs by March 2017.*
- 3. We will pay a minimum amount of Rs. 42,152 per month until Mar 2017 (42,152*33 months = 13,91,016/- will be your savings for a 950 sq ft unit) in F G H J and K towers.*
- 4. Payment terms: 20% Down Payment needs to be paid at the time of booking and the balance 80% within 21 days from the date of booking.*
- 5. The monthly amount will vary based on the floor and the size of the unit booked.*
- 6. The pre EMI payable will be paid only on 80% (Calculated @ Recurring rate of interest) of the total cost of the unit. Bank loans to be available from PNB bank only. We also attach the floor plans, PDF Presentation and Price Chart for Mantri Webcity.*

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Request you to let me know a convenient time to ask our executive to call you, so as to explain how the assured returns will benefit you in the days to come with the investment that you are going with Mantri Webcity."

11. 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 has agreed by him. Now the developer has given the revised completion date as 31/03/2019 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 legendary 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.

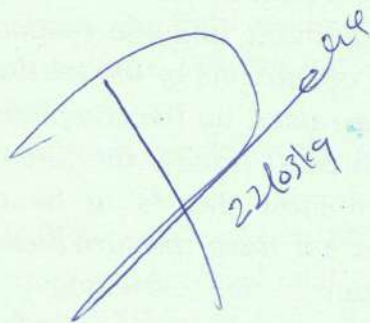
12. The learned Counsel for the developer has submitted in Para No.19 office object statement which reads as under:

I state that the buyback scheme or the pre EMI scheme entered in between 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. Hence, on this ground alone the complaint this is to be dismissed since this Hon'ble Authority does not have the jurisdiction to entertain this 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 by consumer like complaint for the development of this project. He himself has created this scheme came to attract the public at large. Now he cannot take any technical error to defeat the interest of the complainant. The terms as shown in the document are sufficient to destroy the whole case of the developer. The status of development 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 entered 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 25/11/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 14/11/2018. Hence, there is little delay in closing the complaint. With this observation I proceed to pass the order.

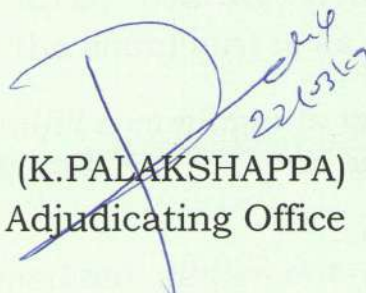
A handwritten signature in blue ink, consisting of a large 'D' with a diagonal line through it, followed by the date '22/03/19' and the initials 'eay'.

ORDER

1. The Complaint No. CMP/181125/0001666 is allowed.

- a) The developer is hereby directed to return the own contribution amount Rs. 30,66,788/- 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 22/03/2019)


(K.PALAKSHAPPA)
Adjudicating Office