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BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K. PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/190211/0002109

Date: 24th MAY 2019

Complainant : ANUPAMA ARUN
Represented by GPA holder, G.Rekha
No. 2558, 7th Main, RPC Layout,
Vijayanagar 2nd Stage, Bangalore-560040
AND

Respondent : Mantri Webcity 2A
Mantri Developers Pvt. Ltd.,
41, Vittal Mallya Road,
Bengaluru - 560001
Represented by Anup Shah Law Firm

J U D G E M E N T

1. Smt. Anupama Arun, Represented by GPA holder Smt. G. Rekha being the Complainant has filed this complaint under Section 31 of RERA Act against the project "Mantri Webcity 2A" developed by Mantri Developers Pvt. Ltd., bearing no. CMP/190211/0002109. The facts of the complaint is as follows:

"I, Anupama Arun, a US based NRI (represented by my GPA holding sister ? Ms. Rekha.G (Annexure-I), applied for 3 BHK Flat No.F-1407 in Aug 2014 in upcoming ?Mantri Webcity-2A? at Hennur Main Road, paying Rs.16,85,557/- (20%) (Annexure-II) of the cost of Rs.86,73,362/- including registration charges. As per scheme (Annexure-III) Mantri arranged housing loan for 80% - Rs.69,87,805/- from PNBHFL in my name and took release of Rs.68,87,805/- (Annexure-IV). A Tripartite Agreement (Annexure-V) was executed among myself, Mantri and PNBHFL. Scheme provided buyback option to be exercised in Aug 2016 under which 100% return was assured on 20% contribution (Conditions-15 and 16 of Annexure-III). If buyback option was not exercised possession of flat was assured in March

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2017. The applicant was to pay interest EMIs to PNBHFL to be reimbursed by Mantri in the following month till March 2017. I paid 24 EMIs. EMIs were never reimbursed in full and on time. Reimbursements used to happen after vigorous follow up. When Mantri failed to reimburse EMIs of October and November 2016, I stopped paying EMIs. The aggregate shortfall in reimbursements is Rs.1,69,374/- (Annexure-VI). On 9.8.2016 I intimated my option for buyback (Annexure-VII). Even after 2 years Mantri has not returned my contribution with 100% return despite vigorous follow up.

Relief Sought from RERA : Refund, closure of home loan & as detailed in facts"

2. In pursuance of the notice issued by this authority, on 6/3/2019 Rekha, being the Power of Attorney holder of complainant has appeared. Smt. Apeksha representing the developer was present on behalf of the developer and filed objection.
3. I heard the arguments.
4. The point that arises for my consideration is
 - a. Whether the complainant is eligible for refund of the amount paid by her towards purchase of flat No. 1407.
 - b. If so, what is the order?
5. My answer is affirmative for the following

REASONS.

6. As per the complaint made as above, the relationship between the buyer and developer was commenced in the year 2014, tripartite agreement was also executed. It is said that if buy back option is not exercised, the developer has agreed to complete the project on or before March 2017 but till today it is not realized. Therefore, the complainant has filed this complaint claiming refund and closure of bank loan. The reason for this prayer is as under.

"On 9.8.2016 I intimated my option for buyback (Annexure-VII). Even after 2 years Mantri has not returned my contribution with 100% return despite vigorous follow up. Consequent to mess created by Mantri in scheme deliverables resulting in default to PNBHFL, the Bank has been sending legal notices to me for EMI defaults, filed a criminal case against me in ACMM Court, Dwarka Courts, New Delhi, against one such default. Based in US, I am undergoing tremendous mental trauma shouldering this huge liability of loan raised from PNBHFL (which the Mantri has taken

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through me along with my 20% contribution without honouring any of its commitments) and criminal proceedings initiated against me by PNBHFL. Mantri is not responding to calls, mails and personal visits and I am unable to follow up from abroad on daily basis and I am kept clueless on the fate of my investment and assured return resulting in tremendous mental agony”

7. The developer who has appeared and filed objections by denying the case of the complainant. At the time of argument Smt. Rekha on behalf of the complainant submits that no progress is shown by the developer. Against this argument, Sri Veeresh Budihal representing the developer submits that the complainant is not consumer and the word consumer is not defined in the Act. Now the complainant is seeking the resale of her unit to the developer means, she becomes the developer. The counsel reads the definition clause mentioned as Sec. 2(z)(k) with regard to definition of promoter and submits that the person who causes to be constructed is also developer and therefore he cannot maintain the complaint.
8. He also submits that she has invested the money with an intention to get the benefit of 2X amount and therefore she is not eligible for relief. I would like to say that the argument canvassed on behalf of developer has no force since he himself has said in his written statement which reads as under:

“the respondent has also agreed to pay the Pre- EMI's to the complainant on monthly basis on the following month of the last month till August 2016. Additional payments are made to the complainant is without prejudice or claim from the complainant.

I state that the buy back scheme or the pre-EMI scheme entered between the complainant and the respondent is a contract in itself, where the rights and obligation of the parties are involved. Such being the case, the issue raised by the complainant has to be looked into by competent civil court having the jurisdiction. Hence, on this ground alone the complaint deserves to be dismissed since this Hon'ble Authority does not have jurisdiction to entertain this complaint. The complainant is seeking specific performance of an understanding/contract where under complainant is the seller and respondent is buyer, under these circumstances the complainant cannot invoke the provisions of RERA and hence RERA has no jurisdiction. The

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- "The Term "Investor" is not defined either in Agreement or nowhere defined under RERA. Any purchasers of the apartment is an allottee as per Sec.2(d) of RERA Act. Thus the connection of respondent that complainant is an Investor will not holds good to the facts of the case and it is neither sustainable on facts or in the Eyes of the Law. The concept of Investor is applicable under Consumer Protection Act and Not under RERA Act. Under RERA Act any buyer is an allottee. Since the project is registered under RERA, only the provision of the RERA act will be applicable, the provision of other laws will be applicable in coordination and not is derogation to defend the main object of the Act. Thus the concept of the Investor is not applicable under RERA and as such more specifically to the complainant.

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11. In view of the above characteristics the present complainant cannot be treated as investor. The developer has invited the customer to enter into a particular scheme. As per Sec. 18 the consumer is having right of choice either to continue with the project or to go out because the developer has not completed the project within time. When that being the case now he cannot urge against the complainant that the complainant is an investor, not a consumer and hence complaint is not maintainable. The relationship between the complainant and the respondent has been proved as consumer and developer in view of the term and condition as per Document No. 3 wherein condition say :

- a. Mantri Developers will bear the Pre-EMI till March 2017.
- b. The Pre- EMI will be paid to the client on monthly basis on the following month of the last month.
- c. Mantri Developers will assure return of 100% on the own contribution made by the unit purchaser at the end of March 2017.

12. The above condition proves the relationship. Contrary to this relationship, the developer cannot take any other stand which will defeat the scheme of the developer as well as purpose of the Act. Therefore, I would say that the stand taken by the developer will not stand for acceptance.

13. Hence the complainant who sought for the relief is entitled for the same.

14. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint was filed on 11/02/2019. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the parties were present on 06/03/2019. Hence there is a little delay in closing the complaint.

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ORDER

The Complaint No. CMP/190211/0002109 is allowed.

- a) The developer is hereby directed to return the own contribution amount of Rs.16,85,557/- to the complainant with interest @ 10.75% from today.
- b) The developer is hereby directed to return the 2X amount of Rs.16,85,557/- to the complainant
- c) The developer is hereby directed to discharge the loan raised in the name of the complainant with all its permissible 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 is also directed to pay Rs.5,000/- as cost of this petition

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 24/05/2019)

K.PALAKSHAPPA
Adjudicating Officer