

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

**Presided by Sri K. Palakshappa**

**Complaint No. CMP/190117/0001901**

**Date: 13<sup>th</sup> June 2019**

Complainant:

Epari Sujit Kumar Patro

A9-702, Megapolis Splendour, Hinjewadi  
Phase 3, Pune- 411057

Represented by Advocate Sri K.J.  
Bhojanna.

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. Epari Sujit Kumar Patro, 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/190117/0001901. The facts of the complaint is as follows:

*"In April 2014 M/s Mantri Developers Private Limited (hereinafter MDPL) had Exhibited in United States of America (USA) at New Jersey state with help of reality marketing company Risa reality regarding the offer of Buy Back. Further, I got engaged with Mr. Wilson Dsouza, Mr. Sanjeev Birari and Mr. Javed Ansari of MDPL. I was offered for sale a 2 bed room apartment being built by MDPL at their project known as Mantri*

*D. S. Patro*  
13/06/19

Webcity at Nagareshwara Nagenahalli, Kothanur Village, K.R. Puram Hobli, Bangalore South Taluk, Bangalore. To avail the offer I had to pay a token amount of Cheque of Rs. 2 lakhs in favour of MDPL and book a particular unit. I agreed to purchase the Apartment H1206. I paid the total self contribution Amount of Rs.12,62,594 , The Area of the Apartment being 950 Sft; Rate per Sft. being Rs. 5210/-; and total cost of the Apartment being Rs. 63,71,690.57. At the MDPL instance I entered into the aforesaid ?Scheme? and executed a loan Agreement with PNBHFL, vide Loan account No. 00196660004633. From the date of disbursement of loan of Rs. 48,51,000, as per MDPL scheme, I have paid EMI punctually till date. However MDPL has not paid the EMI's as per the buyback MOU and also the 2x return assured is not been given as on date.

Relief Sought from RERA : Refund Rs. 97,56,550/-“

2. In pursuance of the notice issued by this authority, on 14/02/2019, Shri Bhojcegowda Advocate filed vakalath on behalf of the complainant. The developer also appeared through counsel. The relief sought by the complainant is for refund of Rs. 97,56,550/-. According to complainant he is entitled for the relief as under :

1. Date of Possession/Buy back: March 2017
2. Delay till March 2019 from April 2017- 25 months.
3. Date as to calculation of compensation : April 2019
4. SBI Marginal Lending Rate as of 8.75%
5. Compensation rate as per Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017: 2% + 8.75% = 10.75%
6. Total amount already paid by the complainant to the bank as EMI, Rs. (Calculation is Rs. 42,344 per month for 17 months) = Rs. 7,19,848/-

*[Handwritten signature]*  
13/06/19

7. Interest on delay – (Calculation is 2X amount 25,25,188 Rs. @10.75% for 25 months from 2017 March to 2019 April) = Rs. 5,65,536/-
8. Interest on EMI – Calculation(pending EMI 7,19,848/- \* 10.75% for 25 months) = Rs. 1,61,215/-
9. Interest due to delay in paying EMI by the respondent =Rs. 4000/-.
10. Compensation claimed: Rs. 39,75,787/- .

3. The developer had denied the case of complainant and said in his objection statement as:

- a. When the respondent promoted the Buy Back Scheme, people like complainant approached the respondent persuaded and studied the development scheme and other related documents, sanction plan, approvals and other related documents of MANTRI WEBCITY project and mooted an idea and came forward to invest in flats in the said project with a sole intention to make lucrative project and part ways leaving the respondent into a loss making venture. Accordingly, the complainant entered into an agreement for sale of undivided interest and also Agreement of Construction and executed by the complainant and it was also agreed by the complainant that he would invest the amount in a scheme launched by the respondent called Pre- EMI Scheme ("SCHEME") in respect of unit/apartment bearing No. H-1206(herein referred to as 'flat'), wing H in the project "MANTRI WEBCITY" for a total sale consideration of Rs. 52,49,500/-, excluding other charges, statutory deposits, tax/es, stamp duty and registration fees and as per the


*Devi*  
13/06/19

Agreement it was agreed upon that the Flat H1206 will be delivered as per the agreed timeline. Copies of said Agreement of Sale of undivided Interest and Agreement for construction and Buy-Back Scheme letter and herewith produced.

- b. The complainant had paid through loan from PNBHFL and the said bank has disbursed a sum of Rs. 48,51,000. A sum of Rs. 42,343/- was to be paid as monthly EMI towards the loan amount borrowed by the complainant to Punjab National Bank Housing Finance Limited.
- c. As per the said Pre-EMI Scheme, the complainant has opined to exit the project and receive the returns on his investment; thereby making him an investor and the Act would thus not apply to him. It is submitted that the liability to pay the Pre-EMI and the Buy Back is purely a contractual matter and would not fall under the purview of this Hon'ble Authority.

4. But I would like to say that the stand taken by the developer has no force because the relationship between the complainant and developer has been established as buyer and developer.

5. 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. In view of the same it is his argument that Section 18 cannot be invoked to seek this kind of relief. He also

A handwritten signature in blue ink, followed by the date '13/06/19' written vertically.

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.

6. I would like to say that the submission made by the Advocate for the developer has no force since there is a letter called Pre-EMI wherein it is written as terms and conditions.
7. 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 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.*

8. 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.





9. 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. However there was no proper calculation and as such the counsel for the complainant has filed a fresh memo on 27/05/2019 giving details of due amount from the developer which reads as under:

1. Date of Buy back : March 2017
2. Date as to calculation of compensation : April 2019
3. SBI Marginal Lending rate as of 8.75%
4. Compensation rate as per Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017:  
 $2\% + 8.75\% = 10.75\%$
5. Total amount already paid by the Complainant to the bank as EMI, Rs. (Calculation is Rs.42,344/- per month for 17 months) = Rs. 7,19,848/-
6. 2X amount = 25,25,188/- @ 10.75% ( for 25 months from 2017 March to 2019 April ) = Rs.5,65,536/-  
(25,25,188 + 5,65,536)
7. Interest on EMI – Calculation (Pending EMI 7,19,848 Rs X 10.75% for 25 months) = Rs. 1,61,215/-
8. Interest due to delay in paying EMI by the Respondent = Rs. 4000/-
9. Compensation claimed : Rs. 39,75,787/-

10. But I would say that the calculation as a whole is not correct since there is no provision to pay interest on interest part. Hence, I have to consider the same by awarding interest as per rule 16 and also to grant 2X amount as per agreement.

11. 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 17/01/2019. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 14/02/2019. Hence, there is some delay in closing the complaint. With this observation I proceed to pass the order.

### **ORDER**

The Complainant filed in complaint no CMP/190117/0001901 is allowed.

1. The developer is directed to return an amount of Rs. 12,62,594/- with interest at the rate of 10.75% P.A. from today till the payment.
2. The developer is hereby directed to pay Rs. 12,62,594/- to the complainant as 2X amount.
3. The developer shall discharge the entire loan amount along with its interest, EMI and any other incidental charges.
4. The complainant shall execute the cancellation of sale deed after the realization of entire amount
5. Further the developer shall pay Rs. 5000/- as cost. Intimate the parties regarding this order.

(Typed as per dictation, corrected and pronounced on 13/06/2019)

  
(K. Palakshappa)  
Adjudicating Officer

