

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority Bangalore

ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027

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BEFORE ADJUDICATING OFFICER

PRESIDED BY SPI J.F. BIDARI

DATED 30th AUGUST 2021

Complaint Nos. CMP/200326/0005800,
CMP/200325/0005802 and CMP/200327/0005809

Complainant in Complaint No. CMP/200326/0005800

Mrs. Anritha J Raj
No. 003, MBR Scapple,
Bannerghatta Road Gottigere,
Bengaluru Urban - 560 083.

Complainant in complaint No. CMP/200325/0005802

Mr. Manvanthara Bekkalee Puttashankar
No. 162, 7th B Main, 3rd Stage, 4th Block,
Near Cental Bank of India,
Basaveshwaranagar
Bengaluru Urban – 560079.

Complainant in complaint No. CMP/200327/0005809

Mr. Ananth Srinivasan
A13-401 Provident Harmony,
Sri Balaji Krupa Layout,
Chokkanahalli Main Road, RK Hegde Nagar
Bengaluru Urban - 560077

(By Sri. M. Mohan Kumar and Associates Advocates)

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Versus

Common respondent in all the complaints

1. Mantri Technology Constellations Pvt. Ltd.,
Presently known as Buoyant Technology Constellations Pvt. Ltd. Mantri House, #41, Vittal Mallya Road, Bengaluru Urban – 560001.
2. Manyata Realty
No.9/1, 1st Floor, Classic Court Richmond Road Bangalore-560 025

(R1-By. Sri. Sunil P. Prasad and Associates Advocates)

(R-2 Absent)

COMMON - J U D G M E N T

The Complainant Mrs. Amritha J Raj in complaint No. CMP/200326/0005800, Complainant Mr. Manvanthara Bekkalee Puttashankar in complaint No. CMP/200325/0005802 and Complainant Mr. Ananth Srinivasan in complaint No. CMP/200327/0005809, respectively have filed their separate complaints under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent No.1 Mantri Developers Pvt. Ltd., (here-in-after referred as respondent) and respondent No. 2 Manyata Realty for the reliefs sought in their respective complaints under the RERA Act. The respondents in all these complaints are same and relief sought in the complaints is also almost similar, as such, the complaint Nos. CMP/200325/0005802 (here-in-after

referred as complaint No. 5802) and CMP/200327/0005809 (here-in-after referred as complaint No. 5809) are clubbed in complaint No. CMP/200326/0005800 (here-in-after referred as complaint No. 5800) for disposal of all these complaints by common judgment, hence these complaints are taken together for disposal by common judgment.

2. The brief facts of the complaints relating to complaint Nos. 5800, 5802 and 5809 are as under:

The respondent No.1 Mantri Technology Constellations Pvt. Ltd., is developing a Real Estate Project Mantri Manyatha Energia, in converted immovable property, bearing Sy. Nos. 2/1, 2/2, 2/3 and 80 situated at Rachenhalli Village, K.R.Puram Hobli, Bengaluru East Taluk in all measuring 11 acres 23.34 guntas reduced by 4613.97sq.mtrs., relinquished, in favour of Bengaluru Development Authority (here-in-after referred as BDA), described as schedule A property, in the agreements of sale of undivided share of land. The complainant Mrs. Amritha J Raj in Complaint No. 5800, complainant Mr. Manvanthara BP along with Mrs. Sushama N Annaiah in Complaint No. 5802 and complainant Mr. Ananth Srinivasan complaint No. 5809 respectively, have entered into their respective agreement of sale of undivided share of land and agreements of constructions dated: 11.10.2018, 18.08.2017 and 05.04.2018 respectively (here-in-after referred as agreement of sale and construction agreements respectively) with the respondents to purchase undivided share described as Annexure -A1, in the agreements of sale out of schedule A property and to get construct apartments (here-in-referred as flats). The complainant Mrs. Amrutha J Raj in complaint No.5800 agreed to get construct flat bearing No. B-

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1606, being constructed in schedule A property, on 16th floor, in Block/Wing - B in the project, of super built-up area measuring 1255sq.ft., with a parking area, described as Annexure – B1, in construction agreement dated 11.10.2018 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant Mr. Manvanthara BP along with Mrs. Sushama N Annaiah in complaint No.5802 agreed to got construct flat bearing No. I-1305, being constructed in schedule A property, on 13th floor, in Block/Wing - I in the project, of super built-up area measuring 1255 sq.ft., with a parking area, described as Annexure – B1, in construction agreement dated 18.08.2017 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant Mr. Ananth Srinivasan in complaint No.5809 agreed to got construct flat bearing No. H-1201, being constructed in schedule A property, on 12th floor, in Block/Wing - H in the project, of super built-up area measuring 1255 sq.ft., with a parking area, described as Annexure – B1, in construction agreement dated 05.04.2018 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

3. The complainant Mrs. Amritha J Raj in complaint No. 5800 alleged in the complaint that she has booked aforesaid flat for total consideration amount of Rs. 97,06,686/-, out of which they have paid Rs.78,67,786/- (Rs.50,00,000/- obtaining HDFC bank loan and Rs. 28,67,786/- from personal end). As per terms of the agreement respondent was to handover possession of the flat on December 2019. The complainant Mr. Manvanthara BP, in complaint No.5802 alleged in the complaint that he has booked

aforesaid flat for total consideration amount of Rs.1,03,21,068/-, out of which they have paid Rs.25,83,143/-. As per terms of the agreement respondent was to handover possession of the flat by 31.12.2019. The complainant Mr.Ananth Srinivasan, in complaint No.5809 alleged in the complaint that he has booked aforesaid flat for total consideration amount of Rs. 1,06,00,894/-, out of which they have paid Rs.81,44,000/-. As per terms of the agreement respondent was to handover possession of the flat on 31.12.2019.

4. The complainants allege that all agreements executed on dotted line format, unilaterally drafted by the respondent giving no scope for alteration etc., the complainants were prompt in making payment on time. The complainants further allege that the respondent has failed to complete the project and to deliver possession of the flats in time. The complainant in complaint No. 5809 alleges that the respondent failed to pay the Pre-EMI instalments from January 2020 as agreed. The complainants are entitled interest at 12% per annum for delayed period on all their money paid to the respondent. The respondent caused mental pain and agony. The respondent has indulged in unfair trade practise. The savings and earnings on their savings completely wiped off. The respondent is liable to make good for the said losses. These main grounds among others urged in the complaints, prayer of the complainants is to grant the reliefs, to direct the respondents to complete the construction at the earliest and handover the flat along with Occupancy Certificate, direct the respondents to pay the delayed compensation, interest at the rate of 12% per annum on their Sale Consideration paid amounts, till handing over of the flats along with Occupancy

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Certificate. The complainant in complaint No. 5809 prays to direct the respondents to pay the PRE-EMI for future instalments. The complainants prays for compensation for the mental agony and pain and damages to an extent of Rs.5,00,000/- compensation for unfair trade practice to an extent of Rs.5 00,000/- and cost of litigation and expense to an extent of Rs.50,000/-.

5. Thereafter receipt of the complaints from the complainants, notices were issued to the respondents. The respondent No.1 has appeared through it's Advocates in all these complaints. The respondent No.2 remained absent. The respondent No.1 has filed separate statement objections in all the complaints admitting the fact that complainants have entered into an agreements. The construction of flats in the project, including the flats in these cases delayed because of demonetization, introduction of GST, heavy rain fall in Bengaluru city, hard rock encountered during excavating the land, shortage of sand supply, Covid-19 pandemic, lock down, etc., much less, for reasons beyond the control of the respondent mentioned in the objection statements. The date of handing over possession of the flats in all the cases was 31.12.20219 with a grace period of 12 months. Therefore the complaints are premature as the respondent was to handover possession of the flat to the complainant on 30.12.2020 including 12 months grace period as per the terms of the agreements. The complainants have levelled false allegations against the respondent. The complainants are not entitled for the compensation as claimed. The complaint No. 5802 is bad for non-joinder of parties as co-purchaser with the said complainant has not joined as party. The delay in handing over possession of

the flats is due to force majeure reasons and not deliberate but for reasons beyond the control of the respondent. These main grounds among others contended in the statement objections, prayer to dismiss the complaints.

6. Heard Sri. M.M.K learned Advocate for the complainants and heard Sri. S.P.P learned Advocate for the respondent-1, through Skype. The written argument is filed on behalf of complainants. Perused the records, materials and the written argument.

7. The points that would arise for consideration, relating to complaint Nos. 5800, 5802 and 5809 are:

- (1) Whether the complainants in complaint Nos. 5800, 5802 and 5809 are entitled for compensation as sought for? If so, to what extent?
- (2) What order?

8. My findings on the above points in complaint Nos. 5800, 5802 and 5809 are as under:

Point No.1: Yes, to the extent as shown in the final order.

Point No.2: As per final order, for following:-.

REASONS

9. Point No. 1 in all complaint Nos. 5800, 5802 and 5809: The fact of complainants in complaint Nos. 5800, 5802 and 5809, entering into agreements, to purchase undivided share of lands and flats bearing Nos. B-1606, I-1305 and H-1201 agreements of sale and construction agreements dated 11.10.2018, 18.08.2017 and 05.04.2018 respectively with the respondent for



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consideration amount as discussed above, in the body of the judgment is not in dispute. Sri. S.P.P learned counsel for the respondent submits that these complaints are premature as in all the construction agreements the due date for delivery of possession of flats is 31.12.2019 with grace period of 12 months, if that be so the respondent were required to handover possession of flats on or before 31.12.2020 to the complainants but complaints are filed prior to that date, hence complaints are not maintainable. The learned counsel further submits that the terms of the agreements are binding on the parties and this authority cannot construe the agreements otherwise than the terms of the agreements. The learned counsel submits that complainants are not entitled for the reliefs claimed, hence prayed to dismiss the complaints. Sri. S.P.P Learned counsel also submits that delay if any is due to force majeure reasons, beyond the control of respondent and delay is not due to the fault of the respondent. Per contra Sri. M.M.K learned counsel for the complainants submits that agreements are one sided, unfair, unreasonable and unilaterally drafted by the respondent without giving scope for alterations, same are not binding on the complainants. The learned counsel further submits that no force majeure reasons for delay and the complainants who have paid huge amounts even taking loan from bank and financial institutions are suffering for want of delivery of flats, hence prayed to grant the reliefs as prayed in the complaints. The learned counsel in support of the argument placed reliance on the judgments passed by the Hon'ble Supreme Court of India (1) in Civil Appeal No. 12283 of 2018 in the case Pioneer Urban Land & Infrastructure Ltd. vs Govinda Ragavan with Civil Appeal No. 1677 of 2019 in the case Pioneer Urban Land &

Infrastructure Ltd. vs Geetu Gidwani Verma and Anr. (2) in Civil Appeal No. 5785 of 2019 in the case of Ireo Grace Real Tech Pvt. Ltd. Vs Abhishek Khanna & Others with Civil Appeal No. 7615 if 2019, Civil Appeal No. 7975 if 2019, Civil Appeal No. 8454 if 2019, Civil Appeal No. 8480 if 2019, Civil Appeal No. 8482 if 2019, Civil Appeal No. 8735-94 if 2019, Civil Appeal No. 9139 if 2019, Civil Appeal No. 9216 if 2019, Civil Appeal No. 9638 if 2019, Civil Appeal No. 3064 if 2020, also placed reliance on the order passed by the Hon'ble National Consumer Dispute Redressal Commission New Delhi in the case of Ritu Hasija & Anr. Vs Ireo Grace Real Tech Pvt. Ltd. The registration certificate bearing No. PRM/KA/RERA/1251/309/PR/171014/000439 of the project issued by the Hon'ble Real Estate Regulatory Authority Karnataka (herein-after-referred as RERA Authority), U/Sec 5 of RERA Act, in the name of the respondent discloses that registration was valid from 31.07.2017 to 30.06.2020. This fact evidences that the complainants in the complaint Nos. 5800, 5802 and 5809, when had entered into agreements with the respondents on 11.10.2018, 18.08.2017 and 05.04.2018 respectively, the validity period of registration was only up-to 30.06.2020 and not up-to 31.12.2020, as such, respondent when entered into agreements with the complainants on the aforesaid dates at the best would have been incorporated the grace period up-to 6 months from 31.12.2019 and not more than said period or 12 months from 31.12.2019. The Hon'ble K-RERA authority through registration certificate PRM/KA/RERA/1251/309/PR/171014/000439 U/Sec.6 of the RERA Act has extended project completion date by period of 6 months i.e., 30.12.2020. Therefore incorporating of 12 months

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grace period in aforesaid respective construction agreements of the complainants from 31.12.2019 is unjust as the registration of the project of the respondent was not valid up-to 31.12.2020 when the respective construction agreements executed. It is not the case of the respondent that the validity of registration was got extended up-to 31.12.2020 as on respective dates of construction agreements entered by the respondent with the complainants. The perusal of contents of agreements discloses that terms of agreements are more favourable to respondent than complainants and appears to be one sided. Under the circumstances in view of the ratio and principles laid down by their lordships in the aforesaid judgments, the terms of said agreements shall not take away the statutory rights accrued to the complainants under the provisions of RERA Act, particularly U/Sec. 18(1) of RERA Act. The materials on record proves that the respondents have contravened the provisions of Section 18(1) of the RERA Act, in as much as causing delay in hand over the possession of the flats to the complainants on or before 31.12.2019. Therefore it is presumed and considered that no grace period either 12 months or any period was incorporated in the construction agreements and due date to handover possession of the flats in all the complaints taken as 31.12.2019 only. Under the circumstances it is held that the complainants are entitle for delay compensation by way of interest at 2% per annum above the MCLR of SBI from 01.01.2020, on respective amounts from the dates of receipt of respective amounts till handing over of the possession of the flats, with Occupancy Certificates.



10. No cogent and corroborative materials are produced to prove the entitlement of the complainants for the compensation with regard to mental pain and agony, loss of income due to delay in handing over of possession of the flats etc., much less, as claimed by the complainants. The materials on record are not enough to award compensation to the complainants in that regard. As per the provisions contemplated U/Sec. 71 of RERA Act, the Adjudicating Officer has jurisdiction to adjudicate compensation only U/Secs. 12, 14, 18 and 19 of the RERA Act, taking into consideration the factors covered U/Secs. 72 of RERA Act, as such, the one of the relief claimed by the complainant to direct the respondent to complete the construction at the earliest and handover the flat along with OC, much less, as sought by the complainants is not coming within the jurisdiction of the Adjudicating Officer as the same is not partaking the character of compensation U/Sec. 12, 14, 18 and 19 of the RERA Act. At the best the Hon'ble K-RERA Authority has jurisdiction to decide about the said relief. Therefore the said relief of the respondent is not liable to be considered in this case, before the Adjudicating Officer.
11. As per the provisions contemplated U/Sec.31 of the RERA Act, complainants who are an allottees of flats in question being aggrieved by the act of the respondent for delay in handing over of the possession of the flats has filed these complaints. The co-purchaser in complaint No. 5802 not joined with the complainant itself would not be considered said complaint as bad for non inclusion of necessary party. The due date to hand over possession of the flats in these complaints is held as

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31.12.2019, hence complaints are not premature. Therefore there is no substance in the contentions of the respondent in this regard, much less, as contended by the respondent. Thus I hold point No.1 accordingly for consideration.

12. As per the provisions contemplated U/sec. 71(2) RERA Act the complaints shall have to be disposed off within 60 days from the date of receipt respective complaints. The present complaints have been filed on 26.03.2020, 25.03.2020 and 27.03.2020 respectively, thereafter notices issued directing the parties to appear through Skype for hearing as because of COVID-19 pandemic the personal hearing before the Adjudicating Officer not yet commenced. The parties given the reasonable opportunities to contest the cases, as such, the judgment in these cases is being passed on merits, with some delay.

13. Point No.2, in all complaints CMP/200326/0005800, CMP/200325/0005802 and CMP/200327/0005809: In view of my findings on point Nos. 1, I proceed to pass the following:-

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ORDER

- (i) The complaints filed by the complainants bearing Nos.: CMP/200326/0005800, CMP/200325/0005802 and CMP/200327/0005809 are partly allowed against the respondents.
- (ii) The respondents are hereby directed to pay delay compensations to the complainants in complainant bearing No.: CMP/200326/0005800, CMP/200325/0005802 and CMP/200327/0005809 by way of interest @ 2% per annum above the MCLR of SBI from 01.01.2020, on respective amounts from the dates of receipt of respective amounts till the handing over of the possession of the flats to the complainants with Occupancy Certificates.
- (iii) The complainants are at liberty to approach the Hon'ble K-RERA Authority for the relief seeking direction to the respondents to complete the construction at the earliest and handover the flats along with OC, much less, as claimed in relief No.1.
- (iv) The respondents are directed to pay Rs. 5,000/- to each of the complainants in these complaints as cost of these petitions to the complainants.
- (v) The complainants may file memo of calculations as per this orders after 60 days in case respondents failed to comply with this order to enforce the order.
- (vi) The office is directed to retain this original common judgment in complaint No CMP/200326/0005800 and copies of this common judgment be kept in, CMP/200325/0005802 and CMP/200327/0005809.
- (vii) Intimate the parties regarding this order.
(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 30.08.2021)


I.F. BIDARI

Adjudicating Officer-1

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