

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 SRI I.F. BIDARI
DATED 04th SEPTEMBER 2021

Complaint Nos. CMP/200224/0005524,
CMP/200224/0005522 and CMP/200224/0005521

Complainant in complaint No. CMP/200224/0005524

Mr. Ettiappatte Brijesh Kumar Nair,
Aashirwad, 15, Vazhuthacaud, Thycaud,
Thiruvananthapuram, Kerala – 695014.

Complainant in complaint No. CMP/200224/0005522

Mr. Natarajan Raman,
26/115, 3A Flat,
10 Ramalakshmi Apartment,
Abiramapuram 4th Street, Teynampet,
Teynampet, Tamil Nadu, Chennai - 600018.

Complainant in complaint No. CMP/200224/0005521

Mrs. Mamta Das,
T-1-4 Tulip Block, Paramount Raghavendra
Arisht, Near Bageccha Hotel,
Old Airport Road, Kandanahalli,
Bengaluru Urban – 560016.

(By Sri. Jayadev B.S & Associates Advocates)

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Versus

Common respondent in all the complaints

1. Mantri Technology Constellations Pvt. Ltd.,
Currently known as Buoyant Technology Constellations
Pvt. Ltd., Mantri House, #41, Vittal Mallya Road,
Bengaluru Urban - 560001.

(R1-By. Iyengar & Pai Advocates.)

COMMON - J U D G M E N T

The Complainant Mr. Ettiyappatte Brijesh Kumar Nair in complaint No. CMP/200224/0005524, complainant Mr. Natarajan Raman in complaint No. CMP/200224/0005522 and Complainant Mrs. Mamta Das in complaint No. CMP/200224/0005521, 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 Mantri Technology Constellations Pvt. Ltd., (here-in-after referred as respondent) for the reliefs sought in their respective complaints under the RERA Act. The respondent in all these complaints is one and the same and relief sought in the complaints is also similar, as such, the complaint Nos. CMP/200224/0005521 (here-in-after referred as complaint No. 5521) and CMP/200224/0005522 (here-in-after referred as complaint No. 5522) are clubbed in complaint No. CMP/200224/0005524 (here-in-after referred as complaint No. 5524) for disposal of all these complaints by common judgment, hence these complaints are taken together for disposal by common judgment.

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2. The brief facts of the complaints relating to complaint Nos. 5524, 5522 and 5521 are as under:

The respondent Mantri Technology Constellations Pvt. Ltd., is developing a Real Estate Project Mantri Manyatha Lythos, in converted immovable property, bearing Sy. Nos. 35/1, 35/2, 34,/3, 34/2, 34/1, 33/2, 33/1, 32/1, 32/232/3, 31/5, 30/3, 29/1, 42/2, 43/3, 43/2 and 43/1 situated at Rachenhalli Village, K.R.Puram Hobli, Bengaluru East Taluk measuring 13 acres 34 guntas (excluding the extent left for road) in all measuring 15 acres 31 guntas, described as schedule A property, in the agreements of sale of undivided share of land. The complainant Mr. Ettiyappatte Brijesh Kumar Nair in Complaint No. 5524, complainant Mr. Natarajan Raman in Complaint No. 5522 and complainant Mrs. Mamta Das along with her husband in complaint No. 5521 respectively, have entered into their respective agreements of sale of undivided share of land and agreements of constructions dated: 15.11.2014, 08.12.2015 and 27.03.2014 respectively (here-in-after referred as agreements of sale and construction agreements respectively) with the respondent 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 Mr. Ettiyappatte Brijesh Kumar Nair in complaint No.5524 agreed to get construct flat bearing No. B-302, being constructed in schedule A property, on 3rd floor, in Block/Wing - B in the project, of super built-up area measuring 1440sq.ft., with a parking area, described as Annexure – B1, in construction agreement dated 15.11.2014 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The

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complainant Mr. Natarajan Raman in complaint No.5522 agreed to get construct flat bearing No. F-803, being constructed in schedule A property, on 8th floor, in Block/Wing - F in the project, of super built-up area measuring 1420sq.ft., with a parking area, described as Annexure – B1, in construction agreement dated 08.12.2015 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant Mrs. Mamta Das along with her husband Mr. Sukant Charandas in complaint No.5521 agreed to get construct flat bearing No. H-402, being constructed in schedule A property, on 4th floor, in Block/Wing - H in the project, of super built-up area measuring 1920 sq.ft., with a parking area, described as Annexure – B1, in construction agreement dated 27.03.2014 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein.

3. The complainants in complaint Nos. 5524, 5522 and 5521 alleged that so far they have paid Rs. 90,05,574/-, Rs.90,00,376/- and Rs.1,06,97,695/- respectively towards consideration of their aforesaid respective booked flats. As per terms of the agreement respondent was to handover possession of the flats to the complainants in complaint Nos. 5524 and 5522 on 31.07.2017 and to the complainant in complainant No.5521 on 31.10.2017 respectively. The complainants further allege that respondent is charging additional amount for club membership and generator which is already included in sale considerations. The each of the complainants is losing rent of Rs. 50,000/- per month due to delay. The registration fee and stamp duty has increased. Complainants are under huge lose and mental agony.



These main grounds, among others, urged in the complaints, prayer of the complainant is to direct the respondent to handover possession of the flats at the earliest and direct to pay them delay compensation.

4. There-after receipt of the complaints from the complainants, notices were issued to the respondent. The respondent has appeared through it's Advocates in all these complaints. The respondent 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, higher tax rate, higher interest rate for home loans, reduction of demand in real estate sector, Covid-19 pandemic, lock down, much less, for reasons beyond the control of the respondent mentioned in the objection statements. The respondent though under such supervening force majeure events, has completed construction of the project including flats in question. The respondent has applied for issuance of Occupancy Certificate (here-in-after referred as OC) with the Bruhat Bengaluru Mahanagara Palike (here-in-referred as BBMP). The BBMP has issued demand notice dated 07.07.2020 demanding for payment of unjustifiable ground rent and respondent has challenged the same before the Hon'ble High Court of Karnataka. Otherwise project is complete and ready to be delivered to the buyers. The complainants for entitlement of compensation ought to prove alleged grounds of complaints with cogent evidence. The complainants have levelled false allegations against the respondent. The complainants are not entitled for the compensation as claimed. The skeletal structure was put up in

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2017 which is evidenced from photograph dated 01.07.2017, same is uploaded by the respondent in the website of authority. The delay in handing over possession of the flats is not deliberate but for reasons beyond the control of the respondent. The respondent in addition to these common grounds contented in the statement of objects further contented in objections filed in the complaint No.5522 that complainant is an investor and not the consumer as he has executed a memo of understanding for assured rental schemes under which respondent was liable to reimburse monthly rentals as agreed for a period of 22 months from date of execution of agreement under said MOU. Therefore provisions of RERA Act and K-RERA rules are not applicable in this case. These main grounds among others contented in the statement objections, prayer to dismiss the complaints.

5. Heard Sri. J.B.S. learned Advocate for the complainants and heard Sri. S.S.P learned Advocate for the respondent, through Skype. The written argument is filed on behalf of complainants and the respondent. Perused the records, materials and the written arguments.

6. The points that would arise for consideration, relating to complaint Nos. 5524, 5522 and 5521 are:

- (1) Whether the complainants in complaint Nos. 5524, 5522 and 5521 are entitled for compensation as sought for? If so, to what extent?
- (2) What order?

7. My findings on the above points in complaint Nos. 5524, 5522 and 5521 are as under:



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

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

REASONS

8. Point No. 1 in all complaint Nos. 5524, 5522 and 5521: The fact of complainants in complaint Nos. 5524, 5522 and 5521, entering into agreements, to purchase undivided share of lands and flats bearing Nos. B-302, F-803 and H-402 agreements of sale and construction agreements dated 15.11.2014, 08.12.2015 and 27.03.2014 respectively with the respondent for consideration amount as discussed above, in the body of the judgment is not in dispute. Sri. S.S.P learned counsel for the respondent submits that reliefs sought in the complaint are not covered under Sec.72 of RERA Act. The learned counsel further submits that the rate of interest claimed on delay compensation is exorbitant and complainants are not entitle for the reliefs claimed and the delay is due to force majeure reasons and not due to fault of the respondent. The learned counsel further submits that in-fact the Occupancy Certificate dated 27.10.2020 has been obtained and flats are ready for handing over to the possession of the homebuyers including complainants in these cases. The copy of the OC dated 27.10.2020 issued by the BBMP has been annexed with the written arguments filed for the respondent. These facts are mentioned in detail in written argument. Per contra Sri. J.B.S. learned counsel for the complainants submits that the relief sought by the complainants covered U/Sec. 71 and 72 of RERA Act. The learned counsel submits that the Adjudicating Officer (here-in-after referred as AO) of this authority by order dated 02.04.2019 in complaint No.

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CMP/181126/0001668 and in connected cases order therein has granted the delay compensation, allowing the complaints and these cases are also similar cases covered under the said order, hence prayed to grant the delay compensation. The copy of said order is annexed with the written argument filed on behalf of the complainants. The learned counsel further submits that there is an abnormal delay in delivery of flats as a result complainants, already having paid, substantial sale consideration amounts are suffering financially as also mentally, hence prayed to grant the relief as prayed for. These facts are stated in-detail in the written argument filed for the complainants. The respondent has produced photo copies of the project building with the statement of objections, exhibiting the photo of the project building as on 01.07.2017. Though the respondent has produced copy of the OC dated 27.10.2020 but till this day flats are not handed over to the possession of the complainants. Therefore admitted fact is that till this day flats have not been handed over to the possession of the complainants with OC. The learned counsel for the respondent submits that delay in handing over of possession of flats are due to force majeure reasons and not deliberate, so the complainants are not entitle for even for delay compensation as per clause 6.4 and clause 6.1 of the construction agreement. The respondent in support of this contention of force majeure is stating that demonetization, introduction of GST, higher Tax rates, higher interest rates for home loans, market, volatility in the real estate, reduction of demand in real estate sector and overall global slowdown and COVID – 19 pandemic but except lockdown period during COVID -19 pandemic remaining these reasons are not the force majeure reasons for delay in handing over possession

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of the flats. The respondent has produced the copy of circular dated 19.05.2020 issued by the RERA Authority Karnataka extending completion dates mentioned in the registration certificates mentioned there-in up to 15.09.2020 because of COVID -19 pandemic invoking force majeure clause. This circular will also not help the respondent, to hold that because of COVID-19 pandemic the delay has been caused in handing over possession of the flats, as the date of delivery of the possession of the flats was on or before due dates i.e. on 31.07.2017 to the complainants in complaint Nos.5524, 5521 and to the complainant in Complaint No. 5522 on 31.10.2017, which is much prior to the COVID -19 pandemic, as the said pandemic has started only in the year 2020 onwards. The complainant N. Raman in complaint No.5522 has executed the MOU dated 07.11.2015 and agreement of sale and construction agreement both dated 08.12.2015 in respect of flat No.803 copies of which are produced and perusal of the same makes it clear that said MOU would not take away his character as homebuyer or allottee of the said flat. Therefore there is no substance in the contention of the respondent that said complainant is an investor and not the allottee much less as contended in the objection statement filed in complaint No.5522. Sri. S.S.P learned counsel for the respondent submits that the parties have entered in to agreements accordingly the provisions of the agreements are binding on the parties, including force majeure clause and this authority cannot re-write or interpret the terms of the agreements in different ways. Per contra Sri. J.B.S. learned counsel for the complainants submits that the agreements entered between parties are one sided agreements much favourable to the respondent than complainants and

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terms of the said agreements cannot take away the statutory right of the complainants accrued under the RERA Act. The perusal of contents of agreements discloses that terms of the said agreements are more favourable to the respondent than the complainants and appears to be one sided. Therefore the terms of said agreements shall not take away the statutory right accrued to the complainants under the provisions of RERA Act, particularly under Section 18(1) of RERA Act. The materials on record proves that the respondent has contravened the provisions of Sec.18(1) of RERA Act, in as much as causing delay in handing over possession of the flats on or before respective due dates for delivery of possession i.e. on 31.07.2017 to the complainants in complaint Nos.5524, 5521 and to the complainant in Complaint No.5522 on 31.10.2017. Under the circumstances it is held that the complainants in complaint Nos. 5524 and 5521 are entitle for delay compensation by way of interest @ 2% per annum above the MCLR of SBI from 01.08.2017, on respective amounts from the dates of receipt of respective amounts till handing over of the possession of the flats, with Occupancy Certificates. The complainant in complaint No. 5522 is entitle for delay compensation by way of interest @ 2% per annum above the MCLR of SBI from 01.11.2017, on respective amounts from the dates of receipt of respective amounts till handing over of the possession of the flat, with Occupancy Certificates.

9. 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 rental income due to delay in handing over of possession of the flats etc., much less,

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as claimed by the complainants. Thus I hold point No.1 accordingly for consideration in complaint Nos. 5524, 5522 and 5521.

10. 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 24.02.2020, 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.

11. Point No.2, in all complaints CMP/200224/0005524, CMP/200224/0005522 and CMP/200224/0005521: 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/200224/0005524, CMP/200224/0005522 and CMP/200224/0005521 are partly allowed against the respondent.
- (ii) The respondent is hereby directed to pay delay compensation to the complainants in complainant bearing Nos.: CMP/200224/0005524 and CMP/200224/0005522 by way of interest @ 2% per annum above the MCLR of SBI, from 01.08.2017, on respective amounts from the dates of receipt of respective amounts till handing over of the possession of the flats, with Occupancy Certificate.
- (iii) The respondent is hereby directed to pay delay compensation to the complainant in complainant bearing No.: CMP/200224/0005521 by way of interest @ 2% per annum above the MCLR of SBI, from 01.11.2017, on respective amounts from the dates of receipt of respective amounts till the handing over of the possession of the flat to the complainant with Occupancy Certificate.
- (iv) The respondent is directed to pay Rs. 5,000/- to each of the complainants in these complaints as cost of these petitions.
- (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/200224/0005524 and copies of this common judgment be kept in, CMP/200224/0005522 and CMP/200224/0005521.
- (vii) Intimate the parties regarding this order.
(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 04.09.2021)

I.F. BIDARI

Adjudicating Officer-1



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ಕಡತ ಸಂಖ್ಯೆ Cmp. No : 5522

ಪುಟ ಸಂಖ್ಯೆ 10

ವಿಷಯ Natarajan Raman

Manbi Manyata Lethose

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP/200224/0005522

24.06.2022

As per the request of the Authorised signatory for the respondent, execution proceedings, in connection with above case is taken-up for settlement, through Skype in the National Lok Adalat to be held on 25.06.2022.

The Authorised signatory for the respondent and Smt. Shashi Ravi Kumar are present, in the pre-Lok-Adalat sitting through Skype held on 24.06.2022, the matter is settled in terms of memo reporting settlement dated: 05.04.2022 already filed in the case. The claim of the complainant in this complaint has fully satisfied in terms of said settlement memo and complainant has no further claim in this case against the respondent whatsoever. The settlement entered between the parties is voluntary and legal one. The settlement is accepted and consequently the execution proceedings in the above case have been closed as settled between the parties in terms of above settlement memo. The RRC issued against the respondent in this case is hereby recalled and office is hereby directed to intimate about the recall of RRC in this case to the concerned DC. For consideration of settlement memo and award, matter is referred to Lok-Adalat to be held on 25.06.2022.

24/6/22

24/6/22
Judicial Conciliator.

24/6/22
Advocate Conciliator.

KARNATAKA STATE LEGAL SERVICES AUTHORITY

BEFORE THE LOK ADALAT

**IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU**

DATED: 25TH DAY OF JUNE 2022

: CONCILIATORS PRESENT:

Sri: I. F. Bidari Judicial Conciliator

AND

Sri/Smt.: Preethi N Advocate conciliator

COMPLAINT NO: CMP/200224/0005522

Between

1) Mr. Natarajan Raman Complainant/s

(In Person)

AND

1). M/s. Mantri Technology constellations Pvt. Ltd.,Respondent/s

(By: Authorized Person of the Respondent)

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, in terms of joint memo dated: 05.04.2022 filed during the pre Lok Adalat sitting on dated: 24.06.2022, same is accepted. The settlement entered between the parties is voluntary and legal one.

The complaint stands disposed off in terms of the joint memo and joint memo is ordered to be treated as part and partial of the award.


Judicial conciliator


Advocate conciliator

CMP/200224/0005522

25.06.2022

Before the Lok-Adalath

The case taken up before the Lok-Adalat. The settlement memo dated: 05.04.2022 filed in the case is hereby accepted and the said joint memo shall be part and partial of the award. Hence, the matter settled before the Lok-Adalat as per joint memo.

The execution proceedings in the above case stands disposed off as closed accordingly.


Judicial Conciliator.


Advocate Conciliator.

CMP/200224/0005522

BETWEEN:

Mr. Natarajan Raman

COMPLAINANT

AND:

**Mantri Technology Constellations Pvt. Ltd.
(Currently known as Buoyant Technology
Constellations Pvt. Ltd.)**

RESPONDENT

MEMO REPORTING SETTLEMENT

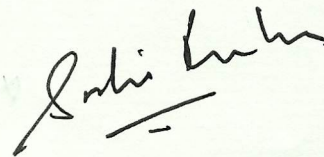
- 1) It is submitted that I have filed the above complaint against the Respondent seeking for seeking for possession and delay compensation
- 2) It is submitted that on 04-09-2021 the orders were passed in the above complaint by your Hon'ble Adjudicating Officer.
- 3) The Respondent Developer has already completed the construction of the project and has obtained the Occupancy Certificate on 27-10-2020.
- 1) The apartment booked by me is ready for possession as of 27-10-2020 itself and therefore I have mutually discussed with the Respondent developer and after having detailed mutual discussions, have amicably arrived at an out of court settlement and therefore all my disputes and claims whatsoever against the Respondent developer does not survive for consideration and the order passed by your Hon'ble authority in CMP/200224/0005522 does not survive for enforcement/recovery.
- 2) It is submitted that the Respondent Developer has also executed and registered the Sale Deed in my favour vide Sale Deed dated 06-04-2022 and I have also taken possession of the same.
- 3) In view of the amicable out of court settlement arrived with the Respondent developer, I have no claims whatsoever against the Respondent developer and my claims does not survive for consideration and I have no claims whatsoever

*See
24/10/22*

against the Respondent developer and the order dated 04-09-2021 passed by Your Hon'ble authority in CMP/200224/0005522 is fully satisfied and there is nothing left to enforce the recovery proceedings in terms of the order dated 04-09-2021.

WHEREFORE, it is most respectfully prayed that this Hon'ble Authority may be pleased to take the memo on record and dismiss the subject complaint as amicably settled fully with the Respondent in the interest of Justice and Equity.

Place: Bengaluru
Dated: 03-04-2022



Complainant/s

No objection to settle in Lok Adalat
as per this Memo of Settlement.

Authorised Signatory

Respondent (Ravishankar.B.S)

24/06/2022

