

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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

53

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K.PALAKSHAPPA
Adjudicating Officer
Date 17th March 2020

Complaint No.	CMP/190704/0003469
Complainant	Ananth PS #2A, 2 nd Floor, Janaki East Park Road, Between 16 th & 17 th Cross, Malleshwaram, Bengaluru-560055. Rep.by: Shri Suyog M.S, Advocate.
Respondent	Mantri Developers Pvt. Ltd, #41, Mantri House, Vittal Mallya Road, Bengaluru - 560001 Rep.by:Shri. Sunil P Prasad, Advocate

J U D G E M E N T

1. Ananth PS, the complainant has filed this complaint CMP/190704/0003469 under Section 31 of RERA Act against the project "MANTRI WEBCITY 3B" developed by M/s MANTRI DEVELOPERS PVT. LTD, for the relief of return of amount and delay compensation. The facts of the complaint is as follows:

FACTS OF THE CASE 4.1. The Respondent is a company engaged in the business of construction and sale of residential apartments. The Respondent formulated a scheme for the construction of a residential apartment building complex with common entrance, lobby, paths, staircases, passages, gardens, lifts, etc., together with common amenities and facilities under the name and style of ?MANTRI WEBCITY? 4.2. The Respondent represented to the Complainants that it is a leading developer with extensive experience in the field of constructing residential apartments of the highest quality and speed. Based on the representations of the Respondent and believing them to be true, the Complainants decided to purchase an apartment unit in the Project being developed by the Respondent on the property morefully described in Schedule herein below (?the Project?). 4.3. Accordingly, the Respondent issued the allotment letter dated 24.04.2014 confirming the allotment of the apartment Unit No. N ? 702 in Tower ?N? (?the Apartment?) of the

17/03/2020

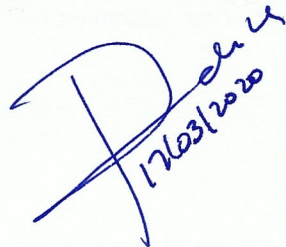
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Project and also annexing a payment schedule thereto. Subsequently on 28.04.2014, the Complainants and the Respondents executed a Construction Agreement for construction of the Apartment and also an Agreement of Sale in respect of corresponding undivided share. Copies of the allotment letter dated 24.04.2014 the Construction Agreement and Agreement of Sale are produced herewith and marked as Annexures ?A? to ?C? respectively. 4.4. It is submitted that as per Clause 6.1 read with Annexure B1 of the Construction Agreement, the Respondent was to construct the Apartment and deliver possession of the same to the Complainants by 31.08.2016. In turn, the Complainants were to make payment of the consideration as per the payment terms set out in Schedule B of the said Agreement. Further, as per Clause 14.5 of the Construction Agreement, in case of any delay on the part of the Respondent in completing construction and delivering possession by 31.08.2016, the Respondent was liable to pay compensation of INR 3/- per sq.ft., of saleable area per month from 31.08.2016 till the date of actual delivery of possession. 4.5. It is further submitted that as per the payment terms in Schedule B of the Construct Agreement, the Complainants dutifully made timely payment of installments till 10.04.2016 as and when they became due and the same has been confirmed by the Respondent in the statement attached by them in an email dated 24.05.2017. However, subsequently, there was no progress in completion of the 9th milestone, i.e., the completion of the last floor roof slab. Hence, the corresponding payment had not become due and payable and the Complainants had not made payment towards the same. Despite failing to meet timelines and not having completed the last floor slab, the Respondent on 10.04.2016 addressed an email to the Complainants making a baseless and untenable demand for a sum of 10,07,049/- (Rupees Ten Lakhs Seven Thousand Forty-Nine Only) which is the amount to be paid upon completion of the last floor slab as per Schedule B of the Construction Agreement.

Relief Sought from RERA :Refund of INR 77,99,692/- with interest at 10.70%

2. In pursuance of the notice issued by the authority, the parties have put in appearance through their respective advocates. The complainant has filed this complaint for refund of the amount with interest and compensation. The same was strongly opposed by the other side.
3. Heard Arguments on both sides.
4. The point that arise for my consideration is
 - a) Whether the complainant is entitled for Refund Under the scheme as prayed in the compliant?
5. My answer to the same is affirmatively for the following


17/03/2020

(51)

ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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REASONS

6. The parties have entered into agreement on 28/04/2014 with respect to apartment No.N-702, Block N, 7th floor. According to complainant he has entered into agreement with the developer the flat will be delivered to the complainant on or before 31/08/2016. The grand total for the flat allotted to the complainant is amounting to Rs.1,06,69,281.54. The complainant has paid Rs.32,10,615/- as self contribution and Rs. 45,89,077/- was sanctioned from the bank.
7. The developer has appeared and filed his objection by giving his explanation as against the case of the complainant:

- Thus, even as per his own averments before the Hon'ble Authority, the complainant is seeking recovery of money in terms of "Pre-EMI/Buy back Scheme/ assured return scheme" and the same establishes that complainant is not as much the end user or the consumer, or an allottee, as much as he is an investor and therefore, the understanding between the respondent and complainant herein was only a commercial contract for investment, not coming within the purview of the Act. The complainant has admitted that he has opted for the buy back and as established herein above, he has sought for return of her investment on 17.09.2016. Thus, the intention of the complainant is very clear and unambiguous that he has declared herself to be an investor but not an allottee.
- Admittedly, complainant always intended to sell the apartment herein for a valuable consideration with double the benefit on own contribution, and the same takes the complainant out of the purview of the RERA Act. To put it in the right perspective, it is submitted that the contract between the parties being a buy back

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Real Estate Regulatory Authority Bangalore

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contract with assured returns upon return of the apartment, the complainant could neither be termed as a "consumer" or an "allottee" in as much as, it would be a preposterous interpretation to give to the term "consumer" and "Allottee", when the investment, runs in lakhs of rupees, which cannot be held to be for the livelihood of complainant, in view of the definition of consumer, under the provisions of the consumer protection Act, 1986 and allottee under the provisions of the Real Estate (Regulation & Development) Act, 2016. In the above circumstances, it is submitted that the complainant is not an allottee and cannot invoke the provisions of the Act, and on this ground alone, the instant complaint deserves to be dismissed.

- It is further submitted that complainant cannot take shelter under the definition "Allottee" under section 2(d) of the Act, in as much as no right, much less any title, has been transferred by the respondent herein to complainant, or was intended to be transferred to complainant, in as much as, it was never the intension of complainant to become the owner of the Apartment and hence, Complainant cannot at all be considered to be "Allottee" under the provisions of the Act, and under the circumstances the complaint is not sustainable at law.*

8. From the above averments it is clear that the developer also admitting the scheme launched by him. But at the time of arguments the developer has submitted that the complainant is not entitled for the relief under this Act because complainant is not a consumer but he is an investor. Further it is his submission that he is not an allottee and therefore provisions of Section 18 are not applicable to him. He

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17/03/2020

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40

also says that in order to have the benefit of scheme he had to issue 6 months prior notice to the developer.

9. However, the counsel for the developer submitted that the Real Estate Appellate Tribunal in Appeal no.70/2018 has opined that as per the observation made by the Appellate Tribunal the present complaint is liable for dismissal. Copy of the said judgment is also produced by the developer and sought to dismiss the complaint on the ground that the complainant is not an allottee.
10. The learned counsel for the developer submitted his argument by stating that the observation made by the Appellate Tribunal in Appeal No.70/2018 is to be adopted and the present case may be dismissed holding that the complainant is not an allottee and the claim made by the complainant will not cover either under S. 12 or 14 or 18 and 19 of the Act. The learned counsel for the complainant has strongly opposed the same. I would say that the argument canvassed on behalf of the developer holds no water for 2 reasons.
11. The finding given by the Appellate Tribunal in Appeal no.70/2018 as against the case CMP/180403/0000640 and dismissed the said complaint on the ground that the complainant is not allottee, but he is an investor. In this regard the counsel for the complainant has said that every complaint shall be heard by the authority case by case based on the documents produced and submission made by the complainant. It means he wanted to say that the present case may not be dismissed holding that the present complainant is not a consumer based upon the finding given by the appellate tribunal in Appeal no. 70/2018. I would say that the submission made on behalf of the complainant be accepted.

[Handwritten signature]
12/03/2018

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12. The counsel for the complainant submits that he is not an investor but he is an allottee. In this regard the learned counsel submits that as per rules framed, the Adjudicating Officer may hear the complaint case by case. It means the observation made by the Appellate Tribunal cannot be adopted Mutatis Mutandis. I find some force in his submission. Further the complainant has submitted that he has made his mind to buy a flat based upon the advertisement given by the developer. It means the nature of this buyback scheme also launched by the developer to attract more number of allottees. The present complainant has given the amount to buy a flat as per the advertisement given by the developer. Now the developer cannot take U turn and submits that the complainant is not an allottee but an investor.

13. Further I would like to say that below explanation about the term investor makes it clear to accept the claim of the complainant:

It is further and more specifically submits that 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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Real Estate Regulatory Authority Bangalore

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47

14. I would say that the present complainant is not covered with the above characteristics and therefore I would say that the argument canvassed on behalf of the developer that the complaint shall be dismissed holds no water.
15. Further I would say that the developer himself has admitted the scheme and his only contention is that in order to have the benefit of this scheme the complainant ought to have issued a notice 6 months prior to the date. It means the scheme and its benefits is also admitted by the developer.
16. From the above pleadings made by the developer it is clear that there was scheme launched by the developer himself where there is a provision to sell the apartment to avail the benefit. When it is an admitted fact that the scheme itself was launched by the developer and the agreement was executed in that behalf. But now the developer has taken different view by calling the complainant as investor. The only point remained for my consideration is that as to issuance of 6 months prior notice to avail the benefit. In this case the complainant has not placed any such notice and as such the complainant cannot take the benefit of 2x amount but however since the developer has not completed the project as admitted in his agreement of sale. He ought to have completed the project on or before 31/10/2018 including grace period. But till today it is not his case that he has received the occupancy certificate. When the developer is not able to complete the project then he is either liable to pay delay compensation or refund of the amount along with applicable interest. Hence, I have no any hesitation to allow this complaint.

Done
12/03/2018

ರಿಯಲ್‌ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Real Estate Regulatory Authority Bangalore

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17. 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 is filed on 04/07/2019. In this case the complainant and the developer were present on 28/08/2019. After hearing the parties the case was reserved for judgment. But the developer has filed a memo along with judgment copy of the Appellate Tribunal passed in Appeal No.70/2018 with a request to follow the same principle in the present case. As such I have heard the parties afresh on this point and now it is for disposal and hence, the complaint is being disposed of with some delay. With this observation, I proceed to pass the following.

ORDER

- a. The complaint No. CMP/190704/0003469 is allowed in part.
- b. The developer is hereby directed to pay Rs.32,10,615/-.
- c. The developer is hereby directed to pay interest 9% per annum on the respective amount paid on the respective date till 30/04/2017 and simple interest @ 2% above the MCLR of SBI commencing as on today from 01/05/2017 till the realisation of entire amount.
- d. The developer is hereby directed to discharge the home loan raised by the complainant towards the purchase of flat no. N.702 in Mantri Webcity 3B in this case along with EMI, EMI if paid by the complainant on behalf of the developer and interest and any incidental charges, if any.
- e. The developer is also directed to pay Rs. 5000/- as cost.
- f. The complainant is hereby directed to execute the cancellation of agreement of sale after the realisation of entire amount.

Intimate the parties regarding the Order.

(Typed as per Dictates, Verified, Corrected and
17th March 2020

(K.PALAKSHAPPA)
Adjudicating Officer