

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 J.F. BIDARI**  
**DATED 14<sup>th</sup> SEPTEMBER 2021**

<b>Complaint No.</b>	<b>CMP/UR/200111/0005164</b>
<b>Complainant:</b>	Mr. Ayanabh Debgupta, Flat -H1, Block G, Shrewood Estate, 159 N.S.C Bose road, Kolkota, Rajpur Sonarpur(M), West Bengal -700103. (By. Sri. Sandeep Lahari Advocate, Lahari Law Chambers)
<b>Respondent:</b>	Mantri Developers Pvt. Ltd., #41, Vittal Mallya Road, Mantri House, Bengaluru Urban - 560001. (By. Iyengar & Pai Advocates )

**J U D G M E N T**

Mr. Ayanabh Debgupta (here-in-after referred as complainant) has filed this complaint bearing No. CMP/UR/200111/0005164, under Section 31 of The Real Estate (Regulation and Development) Act 2016 (here-in-after referred as Rera Act) against the respondent Mantri Developers Pvt. Ltd., (here-in-after referred as respondent), for refund of Rs.1,07,35,559/-.

2. The brief facts of the case are as under:

The respondent Mantri Developers Pvt. Ltd., is developing a Real Estate Project Mantri Webcity, in converted immovable property, bearing Sy. Nos. 1, 2, 3, 4, 5, 6, 15/4, 19/1, 19/1, 19/4, 19/5,

19/6, 19/7, 19/8, 19/9, 19/10, 19/11, 19/12, 19/13, 19/14, 19/16, 20/2, 18/1, 43/1, 45/1, 45/2, 48/4B, 58, 54 and 55 and Khata Nos. 666 etc., situated at Nagareshwara Nagenahalli (measuring 18 acres 8 guntas) and Kotanuru Village, Bengaluru South Taluk (measuring 26 acres 16.5 guntas, in all measuring 44 acres and 24.5 guntas), including an extent of 5 acres 22 guntas, relinquished, in favour of Bengaluru Development Authority (here-in-after referred as BDA), described as schedule A property, in the agreement of sale dated 25.06.2014. The complainant Mr. Ayanabh Debgupta along with his wife Mrs. Richa Singh Debgupta, has entered into an agreement of sale of undivided share of land and agreement of construction both the dated: 25.06.2014 (here-in-after referred as agreement of sale and construction agreement respectively) with the respondent to purchase undivided share, described in Annexure -A1, in the agreement of sale out of schedule A property and to get construct an apartment (here-in-referred as flat) bearing No. P-302, being constructed in schedule A property, on 3<sup>rd</sup> floor, in Block/Tower - P in the project, of super built-up area measuring 1740sq.ft., with a parking area, described in Annexure - B1, in construction agreement dated 25.06.2014 for consideration amounts mentioned in the agreements also subject to the terms and conditions enumerated therein. The complainant alleged in the complaint that the parties among others agreed the following:

- 1). *The respondent shall bear the pre-EMI (Under pre-EMI scheme) till the time respondent provide returns to the complainants in-accordance to below mentioned point 2(i):*
- 2). *That, if the complainant decide not to retain the flat and informed the same by 1<sup>st</sup> March 2016, the respondent shall:*



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(i). Provide a return of 100% on the own contribution of the complainant (2X scheme) to the complainant and

(ii). Close down loan of the complainant with PNBHFL either by paying to the complainant the balance amount or by transferring the loan to the other party who is purchasing the unit.

3). That in case of any delay or default in payment of the assured return the developer shall additionally pay to the complainant prevailing interest rate of PNBHFL.

The complainant further alleges that respondent has not paid pre EMI regularly and stopped after January 2018. He has informed the respondent on 22.09.2015 that he did not want to retain the flat but respondent failed to take action. These main grounds among others urged in the complaint, prayer to grant the relief as prayed for.

3. There-after receipt of the complaint from the complainant, notice was issued to the respondent. The respondent has appeared through it's Advocates. The respondent has filed the statement objections admitting the fact that complainant along with his wife has entered into an agreements. The complainant and his wife have booked the flat under 20:80 pre-EMI with assured returned scheme, as per which complainant was to pay 20% of the amount at the time of booking of the flat and 80% was to be paid by obtaining loan from the bank towards the cost of the flat. The respondent has paid the pre-EMI beyond agreed period. The complainant is an investor and not a consumer. Thus the provisions of RERA Act and K-RERA rules will not attract in the present case. The complainant would seek relief in appropriate

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forum as alleged dispute in the complaint transactions comes within the realm of breach of contract. The complainant ought to have intimated to the respondent his intention, about not to continue with the project on or before end of February 2016 but complainant has issued notice invoking his said right in November 2019. Though it is presumed that on 22.09.2015 complainant invoked his said right then also the alleged right of the complainant for the relief sought is time bared. The construction of flat in the project, including the flat in this case 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 statement. The respondent though under such supervening force majeure events, has constructed the project work up to 95% and only remaining 5% minor finishing work is balance. The complainant has levelled false allegations against the respondent. The complainant is not entitled for the compensation as claimed. The wife of the complainant has not joined as a party in this complaint. The skeletal structure was put up in 2017 which is evidenced from photograph dated 01.07.2017, same is uploaded by the respondent in the website of authority. The complaint is not maintainable. The complainant is not entitled for relief sought. This authority has no jurisdiction to try the dispute involved in the complaint. These main grounds among others contended in the statement objections, prayer to dismiss the complaint.

4. The complainant has filed rejoinder to the statement objection of the respondent mainly contending that the statement of

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objections of respondent are not tenable either in law or on facts. It is contended that the respondent has admitted the case of the complainant. The respondent through their email dated 22.07.2019 issued the calculation of amounts to be paid to the complainant and through email dated 14.05.2018 assured the complainant that flat is for resale on priority and they shall pay to the complainant and close the matter. Thus the claim of the complainant is within limitation. The complainant and his wife booked the flat as the scheme of the respondent is in furtherance of their business as builder in selling the flats in the project. The complainant and his wife being allottees of the flat are consumers and not the investors. There is no conflict of interest between the complainant and his wife with regard their right in the flat. The complainant denied most of the statement objections, contentions. These main grounds among others urged in the rejoinder, prayer to grant the relief as prayed.

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

6. The points that would arise for consideration are:

(1) Whether the complainant is entitle for the relief sought?

(2) What order?

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7. My findings on the above points are as under:

Point No.1: Partly in the affirmative.

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

**REASONS**

8. Point No.1: The records disclose that complainant Mr. Ayanabh Debgupta along with his wife Mrs. Richa Singh Debgupta, has entered into construction agreement dated:25.06.2014 and Agreement of sale dated:25.06.2014 respectively with the respondent to purchase undivided share in the "Schedule A" immovable property described in the agreement of sale of undivided share at Annexure-A1, and to get construct the aforesaid flat bearing No. P-302 in the project, under the buy-back scheme, on 3<sup>rd</sup> floor, in Building/Tower-P for consideration amounts mentioned therein, subject to terms and conditions of the agreements. The fact of parties entering into these agreements is admitted one. Under the buy-back pre EMI scheme parties have agreed that if the complainant decide not to retain the flat and informed the sale deed by March 2016 the respondent shall (i). Provide a return of 100% on the own contribution of the complainant (2X scheme) to the complainant and (ii). Close down loan of the complainant with PNBHFL either by paying to the complainant the balance amount or by transferring the loan to the other party who is purchasing the unit and further agreed that in case of any delay or default in payment of the assured return the developer shall additionally pay to the complainant prevailing interest rate of PNBHFL. As per the terms of the construction agreement the flat was to be handed over to the purchasers on or before 31.08.2016.



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Admittedly the agreements are executed on 25.06.2014, much prior to coming in to force of the RERA Act. Therefore it is just to consider, as to whether the provisions of RERA Act 2016 and K-RERA Rules 2017, are applicable in the present case or not. Admittedly project has been registered with Karnataka RERA as the project in question in this case as an ongoing project as per the provisions of RERA Act and K-RERA Rules. The Hon'ble Haryana Real Estate Appellate Tribunal in appeal Nos. 52 & 64 of 2018 decided on 03.11.2020, in appeal No 52/2018, in the case of Emaar MGF Land Limited Vs. Ms. Simmi Sikka and another and in appeal No. 64/2018 in the case of Ms. Simmi Sikka Vs. M/s. Emaar MGF land Limited, among others observed that provisions of the Act shall become applicable even to an unregistered project or projects which do not require registration with respect of the fulfilment of the obligations as per the provisions of the Act, Rules & Regulations framed thereunder. Therefore, it is made clear that in the instant case the project in question is ongoing project so, required to be registered, accordingly same is registered with K-RERA, as such, the provisions of the RERA Act and K-RERA Rules are made applicable to the present case though the agreements were entered between the parties on 25.06.2014, before coming to the force of RERA Act.

9. Sri. S.S.P learned counsel for the respondent submits that complainant is an investor as he has invested amount in respect of the flat in question in the project under buy-back pre EMI scheme i.e., 20:80 to make profit and not for his own use. The learned counsel further submits that under the buy-back scheme purchasers to invest 20% of their own contribution

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towards cost of the flat and 80% by borrowing loan which he has availed from PNBHFL. Therefore the complainant cannot seek relief under the provisions of REPA Act and K-RERA provisions. The learned counsel in support of his argument placed reliance on the judgment dated 19.08.2019 in RERA Appeal No. 70/2018(CH-1) in the case of M/s mantra Developer Pvt. Ltd., vs The Karnataka Real Estate Regulatory Authority and another passed by the Hon'ble Karnataka Appellate Tribunal at Bengaluru. Sri S.S.P. learned counsel for respondent submits that the Adjudicating Officer is not competent to adjudicate the matters pertaining to refund. In this context placed reliance on the judgment dated: 01.01.2021 in appeal No. AT005000000031805 in complaint No. CC005000000022410 in the case of Mantri Dwellings Pvt. Ltd., vs Mr. Subhasis Roy and another, passed by the Hon'ble Maharashtra Real Estate Appellate Tribunal Mumbai. Per contra Sri. S.L. learned counsel for the complainant submits that the relief under the RERA Act, is available to the parties in addition to the relief available in any other Acts and the Adjudicating officer has jurisdiction to grant the relief to the complainant as sought in th complaint. The learned counsel in support of the argument placed reliance on the judgment dated 02.11.2020 passed by the Hon'ble Supreme Court of India (ruling reported in 2020 SCC online SC 894) in the case of Imperia Structures Limited vs Anil Patni and Another. The learned counsel submits that the learned Adjudicating Officer (here-in-after referred as AO) of this authority in similar cases against the present respondent has granted the relief of refund of amount etc. The learned counsel, has produced the copies of the judgments (1) Judgment dated 20.03.2019 in complaint No.CMP/181114/0001632, (2)

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Judgment dated 22.03.2019 in complaint No.CMP/181128/0001683, (3) Judgment dated 13.16.2019 in complaint No.CMP/190117/0001901, (4) Judgment dated 25.06.2019 in complaint No.CMP/190123/0001933. The learned counsel referring to the documents produced by the parties submits that the through email dated 22.09.2015 the complainant has informed to the respondent of his intention not to retain or continue with the flat which is well within the prescribed time mentioned in the terms and conditions of pre EMI buy-back scheme but respondent has not taken action, hence prayed to grant the relief as prayed for. The fact that complainant with his wife has entered into an agreement of sale and construction agreement with respondent to purchase a flat in question in the project under the pre-EMI buy-back scheme is admitted. The complainant in support of his case has filed an affidavit dated 09.09.2020 and stated about the documents produced on his behalf, among them, copy of letter issued by the respondent with regard to terms and conditions of pre-EMI buy-back scheme is produced at Annexure-A. The terms and condition Nos.9, 15 and 16 of Annexure A, are as under:

*"No.9 : Mantri Developers will bear the pre-EMI till August 2016.*

*No.15: Mantri Developer will assure return of 100% on the own contribution made by the unit purchaser at the end of August 2016.*

*No.16: The unit owner should give a 6-months prior notice to Mantri Developer in case he/she want to retain or sell the unit otherwise it will be treated as a willingly retain units by the purchaser. Once the purchaser agreed to retain the unit, the scheme will not be applicable and the developer will not be liable for assured returns."*



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10. The perusal of copies of the email exchanged between the parties, produced by the complainant with rejoinder discloses that in the email dated 22.09.2015 the complainant has mentioned only about pre-EMI, TDS etc., and not mentioned about his intention not to retain the flat in question or intent to re-sell the flat as per the buy-back scheme. In the email dated 08.03.2016 the complainant has stated his intention not to continue to own the flat but the complainant ought to have been made his intention not to continue or retain the flat 6 months prior to August 2016 i.e., complainant ought to have given 6 months prior notice on or before end of February 2016. Under the circumstances the complainant is not entitled for the benefit under the pre-EMI buy-back scheme, as such, complainant continue with the flat in question as an allottee or consumer and no more, he has remained as an investor. The complainant in the written argument as well in the rejoinder repeatedly stated that respondent has admitted the email dated 22.09.2015 but respondent in statement objection also in written argument is contending that even it is presumed that complainant informed his intention through email dated 22.09.2015 then also this case is barred by limitation. This fact makes it clear that respondent is not admitting said fact much less as contended by the complainant. Therefore it is considered that since booking of the flat till this day the complainant along with his wife continue as an allottee of the flat in question.

11. As per the provisions contemplated U/Sec.31 of the RERA Act, complainant who is an allottee of flat in question being aggrieved by the act of the respondent for not responding to his request to adhere to the terms of the buy-back scheme of flat has filed

instant complaint for refund of amount same is not bad for non joinder of his wife in the complaint as a complainant. Therefore there is no substance in the contention of the respondent that present complaint is bad for non inclusion of complainant's wife as a party in the complainant much less, as contended by the respondent.

12. At the cost of repetition it be stated that the materials on record proves that complainant along with his wife is continuing as an allottee of the flat in question. The complainant is not entitled for the benefit under the buy-back scheme. The complainant prayed for refund of the amounts paid to the respondent with interest as per the terms of the pre EMI buy-back scheme but for aforesaid reasons he is not entitled for the same. The respondent is contending that 95% of the project work has been completed and only 5% finishing work is remaining. Under the circumstances if the entire paid amounts order to be refunded to the complainant then possibility of causing disturbance to the other allottees of the flats in the project and causing hindrance in early completion of the project cannot be overruled. The Hon'ble Real Estate Regulatory Authority Haryana in the order dated 22.12.2018, in complaint No. 63/2018, in the case of Pramodkumar Agarwal v/s S.S Group Pvt. Ltd, among others, observed as under:

*"24.However, keeping in view keeping in view the present status of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint at this stage of the project, it will adversely affect the rights of other allottees who wish to continue with the project.*

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*However, the complainant will be entitled to prescribed rate of interest till the date of handing over of possession”.*

13. The learned counsel during the oral argument as also in the written argument of the complainant, prayed to grant the relief to the complainant as deem fit to the authority in the facts and circumstances of the case, as such, it is just and proper to grant the relief of compensation to the complainant for delay in handing over possession of the flat as per the provisions of RERA Act and K-RERA rules. As per the terms of the construction agreement the possession of the flat was to be handed over to the complainant on or before 31.08.2016 but till this day flat has not been handed over to the complainant. The respondent in support of his contention that completion of project is delayed because of force majeure reasons like demonetization, introduction of GST, higher Tax rates, higher interest rates for home loans, market, volatility in the real estate and COVID – 19 pandemic but except lockdown period during COVID -19 pandemic remaining these reasons are not the force majeure reasons for delay incompletion of the project and handing over possession of the flat. 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 flat on or before 31.08.2016, as such, complainant is entitled for delay compensation by way of interest at 9% per annum on respective amounts from the dates of receipt of respective amounts from 01.09.2016 till 30.04.2017 and from 01.05.2017 @ 2% above the MCLR of SBI till the handing over of the possession of the flat with Occupancy Certificate. The ratio and



the principles laid down by their lordships in the ruling cited supra reported in 2020 SCC online SC 894 are undisputed but same will be of no help to the complainant in this case as facts of the said ruling and the facts of the case on hand are different. The judgments cited supra relied upon by both learned counsel for the respondent and the complainant are also not much help to the parties as facts of the said judgments and the facts of the case on hand are quite different. Thus I hold point No.1 partly in the affirmative in consideration.

14. As per the provisions contemplated U/sec. 71(2) RERA Act the complaint shall have to be disposed off within 60 days from the date of receipt the complaint. The instant complaint has been filed on 11.01.2020, 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 case, as such, the judgment is being passed on merits, with some delay.
15. Point No.2: In view of my findings on point No. 1, I proceed to pass the following:-

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**ORDER**

- (i) The complaint filed by the complainant bearing No.: CMP/UR/200111/C005164 is partly allowed against the respondent.
- (ii) The respondent is hereby directed to pay delay compensation to the complainant from 01.09.2016 by way of interest @ 9% per annum on respective amounts from the dates of receipt of respective amounts till 30.04.2017 and from 01.05.2017 @ 2% above the MCLR of SBI till the handing over of the possession of the flat with Occupancy Certificate.
- (iii) The respondent is directed to pay Rs. 5,000/- as cost of this petition to the complainant.
- (iv) The complainant may file memo of calculation as per this order after 60 days in case respondent failed to comply with this order to enforce the order.
- (v) Intimate the parties regarding this order.  
(Typed to my dictation directly on the computer by the DEO, corrected, verified and pronounced on 14.09.2021)

  
**I.F. BIDARI**  
Adjudicating Officer-1