

BEFORE ADJUDICATING OFFICER RERA

BENGALURU, KARNATAKA

Complaint No. CMP/181002/0001340

Presided by:- Sri K.PALAKSHAPPA

Adjudicating Officer.

Date: 27th DECEMBER 2018

Complainant : AKHILESH KARANTH
H NO 5-76, Akshaya Kidiyooru,
Udupi - 576103.

AND

Opponent : Silpa M
Mantri Devvelopers Pvt Ita.
Mantri Serenity
Doddakallasandra, Kanakapura Road
Bengaluru - 560062.

J U D G E M E N T

1. This Complaint has been filed by the consumer against the developer under section 31 of RERA Act claiming the payment of full amount with interest. His complaint reads as:

According to this Buyback Scheme, If we are not interested in purchasing the Flat, we can opt for Buyback option with in the first 3 Years. We were asked by the builder to inform 6 month prior the completion of 3 years to initiate the buy back scheme .During this time Mantri informed regarding the Delay of handover of this project, Along with this I found lack of transparency from Mantri Developers

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during the communication and pre emi payments. So We informed builder in Dec 2017 that we are not interested in this property as July 2018 is the last date for pre EMI which also we paid as per agreement .As mentioned in the agreement For this 3 year(from July 2015 to July 2018) Builder has to pay Pre Emi every month to my account and I need to pay pre emi to the bank till July 2018. Also it was the builder responsibility to settle all the Dues with Axis bank before July 2018 i.e Rs 56,93,410 so that pre emi will not be converted to EMI. But till now I am only getting response that they are communicated to the bank for loan closure but its not processed and now pre emi converted to EMI(All mail communication attached fyi). Now i have begun paying the EMI to the bank. Observed irregularities in payment of Pre emi. There is lack of communication since the last one year when ever i ask about the pre emi settlement and also the Closure of Home loan with bank. From last 1 year we get excuses bcz of Rera our pre emi payment is slow. So till date As per Agreement builders due unto me is Total Out standing Pre EMI amount which is pending from Builder : 3,73,904 Emi & late Payment : $59407+58411+58411=1,76,229$ (Including october) Downpayment(10%) : 2,48,902 Buyback Scheme : 18,97,803 (As per agreement) Total Dues : Pre Emi+Emi+Agreed Amount 24,48,036 (Twenty Four Lakh fourty eight thousand thirty six). Pending Home loan Payment for the Axis bank : 57,28,986 (Fifty seven lakh twenty eight thousand nine eighty six).

2. In pursuance of the notice issued by this authority, the parties are present on 23/10/2018. The developer filed his objection contending that the complaint is not maintainable. Heard the arguments.
3. The complainant is seeking the relief of return of the amount. At the time of argument the complainant submits that the developer who has sent a mail on 07/05/2018 admitting the claim of the complainant. The mail reads as under,

1. As per the scheme the customers, who want exit from scheme has to confirm their exit option 6 months prior to scheme end date.
2. We have received the surrender intimation form to exit from the Assured Return & Per EMI Scheme from your end.
3. As per the exit procedure, we have pre-close your housing loan and retrieve the documents submitted to your housing loan banker for the loan disbursement within the 6 months from the date of surrender form.
4. Post receivable of the documents of the property from the your HFI, we have to refund the amount payable to you i.e 2 times of 10% payment paid as own contribution towards unit as per terms and condition of the above said scheme.
5. The Pre EMI which is pending will be processed on priority basis and will be completed.

The scheme buy-back was confirmed by the developer as per mail dated 14/08/2018,

Do understand the concern and anguish...

Confirming you that we are in the process of closing the buy-back.

We will soon intimate you on the same.

Your pre-emi has been initiated and will be released by 25th of this month.

4. The developer has also given his scheme where in he has given the details which reads under,

Mentri Serenity has trendsetting enhancements with all other amenities

For (Block3, Block4) & (Block 5) we currently have the **Pre EMI Scheme** as follows:-

- Base rate per Sq.Ft is fixed@ **Rs 5990/-** (Floor rise charge will be applicable- Rs 15/- per floor)

- *Payment Terms: 10% Down Payment needs to be paid (own contribution)@ the time of booking and the balance 60% (Book Loan) in three instalments:*

1. 10% (own contribution)-Immediate

2. 60% (of Loan)- (within 21 days from the date of Booking)

3. 30% - On Possession

- *The monthly amount will vary based on the floor and size of the unit at which the unit is booked.*
- *The Pre EMI payout will be paid only on max 75% of the total cost of the unit/ the total amount disbursed by the bank- as per the funds released by the bank- schedule as mentioned above (Calculated @floating R.O.I at 9.95%for 20 year tenure)*
- ***Mantri developed will bear the Pre EMI for 36 months or possession whichever is earlier.***
- *The first month payout will be on a pro-rata basis.*
- *The Pre- EMI will be paid to the client on monthly basis on the following month of the last month when full payment of the apartment is received.*
- *Bank loan to be availed from Punjab National Bank only.*

5. With the help of the mail sent by the developer, the developer submits that the complainant is not entitled for the relief as sought in the complaint.

6. Learned counsel for the developer has vehemently submitted that the complainant cannot file his complaint and cannot seek any kind of relief here. The counsel for the developer has read the Section 18 and 71 of the Act and submits that the complainant is not an allottee in the eye of law and as such he cannot seek the relief of compensation or refund of the amount. The gist of the argument of the developer is that the complainant is seeking double the amount for which he has invested on the flat.

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7. Sri. G. V. Chandrashekar 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 read the Section 12 & 14 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 this 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.

8. I would like to say that the submission made by the Advocate for the developer has no force since I have already referred the mails sent by the developer to the complainant wherein he has admitted the relationship with the complainant. 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 complaint has entered in to agreement with the developer. By reading the clauses mentioned in the agreement it has been described the consumer as purchaser.

9. 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 number 3 dated 23/07/2015 is MEMORANDUM OF AGREEMENT between parties. This document is prior to agreement of sale and construction agreement. It further means this MOU merges with AOS and as such the argument canvassed on this MOU cannot be accepted. The status of the complaint is specifically mentioned. The developer cannot blow hot and cold at the same time. In view of the above discussion his objection loses its importance. 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.

10. AS per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the parties were present on 23/10/2018. As per the SOP the 60 days be computed from the date of appearance of parties. After filing objections and hearing the parties, the case is reserved for orders. Hence, there is only 4 days delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

- a) The Complaint No. CMP/181002/0001340 is allowed.
- b) The developer is hereby directed to return the voluntary contribution amount to the complainant within 30 days from today. If not it will carry interest @ 10.25% from 31st day.
- c) The developer is hereby directed to return the 2X amount to the complainant.
- d) The developer is hereby directed to discharge the loan raised in the name of the complainant with all its EMI and interest if any.
- e) The developer is hereby directed to hand over the necessary documents to the complainant in case he has paid GST to the Government to enable the complainant to take back that amount.
- f) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realised.
- g) Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 27/12/2018)

(K.PALAKSHAPPA)

Adjudicating Officer



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ಕಡತದ ಸಂಖ್ಯೆ CMP-NO. 1340

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ವಿಷಯ Akhilesh Kananth

..... Mantri Developers

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CMP-1340

08.11.2022

As per the request of the respondent, this complaint is taken-up for amicable settlement before the National Pre Lok Adalat held on 08.11.2022.

The complainant and the respondent have filed the joint memo stating that matter has been settled between the parties. The settlement entered between the parties is voluntary and legal one. Hence, settlement is accepted.

8/11/22
Judicial Conciliator

S. H. H. 8/11/2022
Advocate conciliator

**BEFORE LOK-ADALAT IN THE KARNATAKA REAL ESTATE
REGULATORY AUTHORITY, AT BENGALURU**

COMPLAINT NO: CMP/181002/0001340

Complainants : Akhilesh Karanth

-Vs-

Respondent : Mantri Castles Pvt Ltd

JOINT MEMO

1. The complainants and the respondent in the above complaint jointly submit as under:

2. During the pendency of the above complaint, the complainant/allottee and the respondent/promoter after due deliberation have got their dispute pertaining to the subject matter of the complaint settled amicably before the Pre Lok Adalat.

3. In view of the same, they jointly request this Lok Adalat to dispose of the complaint as amicably settled before the Pre Lok Adalat.

4. The claim of the complainant in this complaint is being fully satisfied and complainant has no further claim against respondent in this complaint. Both parties to the proceedings have no claim whatsoever against each other in respect of the subject matter of the above complaint. If there is any claim by either of the parties to this complaint against the other before any forum or Court relating to the subject matter of the above complaint, they have agreed that the same be disposed off as settled by either party filling an appropriate memo in such cases.

5. Parties further request that this settlement be recorded in the National Pre Lok Adalat held on 08.11.2022.

Bengaluru

Date: 08/11/2022

x *Akhilesh K*
Complainant/Allottee

[Signature]
Authorized Signatory of Respondent/Promoter

KARNATAKA STATE LEGAL SERVICES AUTHORITY

BEFORE THE LOK ADALAT

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

DATED: 8th NOVEMBER 2022

: CONCILIATORS PRESENT:

Smt. Maheshwari S Hiremath

..... Judicial Conciliator

AND

Smt. Sujatha H H

..... Advocate conciliator

COMPLAINT NO : CMP/181002/0001340

Between

Sri. Akhilesh Karanth

.....Complainant

AND

Mantri Castles Pvt Ltd

.....Respondent/s

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, as per the joint memo dated: 08.11.2022 filed during the pre Lok Adalat sitting on dated: 08.11.2022, same is accepted. The settlement entered between the parties is voluntary and legal one.

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


Judicial conciliator


Advocate conciliator