

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 6

DATED 7TH OCTOBER 2022

PRESIDED BY HON'BLE MEMBER SMT. NEELMANI N RAJU

COMPLAINT NO: CMP/UR/210303/0007737

COMPLAINANT

**MR. ARVIND MEHRA
A 302, MANTRI SAROVAR
HSR LAYOUT
BANGALORE-560102**

**(BY MR.G. LAKSHMISH, ADVOCATE
L G ASSOCIATES)**

V/S

RESPONDENT

**MANTRI DWELLINGS PVT LTD
(NOW SHORE DWELLINGS PVT LTD)
MANTRI HOUSE
41, VITTAL MALLA ROAD
BENGALURU-560001.**

**(BY MR. SUNIL P PRASAD,
MR.R. SRINIVAS, ADVOCATES
TAPASYA LAW CHAMBERS)**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "MANTRI DSK PINNACLE" for the relief of interest on delay in handing over the apartment.

Brief facts of the complaint are as under:

2. The complainant had booked an apartment in the project of the respondent by entering into an agreement of sale and agreement of construction on 31/12/2010 and had paid an amount of Rs.1,32,03,418/- (Rupees One Crore Thirty Two Lakh Three Thousand Four Hundred and Eighteen only).

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As per agreement the respondent was under obligation to handover possession before 31/3/2014. Even though, the builder did not handover the possession of the flat, the complainant went ahead with the registration of Sale Deed on 3/12/2019. Despite several requests seeking the status of the development in the project and about NOCs from various authorities and Occupancy Certificate, the respondent gave evasive replies and subsequently stopped answering the emails sent by the complainant. Though more than 4 years have been lapsed, the respondent has failed to complete the project as agreed. Owing to the delay caused by the respondent, the complainant was burdened to pay his bank loan EMI as well as rent and put him into lot of financial hardship, mental harassment and agony. Hence, the respondent is liable to pay interest on delay period from 31/3/2014 till 3/12/2019 the date on which the complainant got his sale deed registered.

3. After registration of the complaint, in pursuance of the notice, the respondent appeared before the Authority through its counsel and have contested the matter by filing statement of objections on its behalf. The respondent denies the entire allegations made against it by the complainant as false. It contends that the complainant has no locus standi to file this complaint since he got his sale deed registered on 3/12/2019 without any claim or reservation against the Respondent. Further, contends that the complainant is not entitled for seeking relief sought in light of Clause 6.4 of the Agreement of Construction dated 31/12/2010 and the project is not completed due to force majeure events such as, labour strikes, non-availability of steel, sand, cement and such other vital building materials, or such reasons beyond the control of the respondent and the respondent cannot be held liable to compensate the complainant. Moreover during 2013 and 2014 due to heavy and continuous rain and flooding, the

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construction work in the project site could not be carried out for 3 to 4 months.

4. Further the Commissioner BBMP issued a Circular dated 22/8/2014 calling upon the respondent to reserve 10% of the sital area for Park and open space, relinquishment of certain portion of the land for the purpose of roads to the BBMP, delay in getting modified plan. The respondent also submits that the project is exempted from registration as per Rule 4(iv) of the Real Estate (Regulation and Development) Rules, 2017.
5. The project was completed in December 2015 and minor work was pending. Hence, it was not an "ongoing project" as on the date of the Act came into force. The application to issue occupancy certificate was filed on 6/6/2017, but there was delay in obtaining the same. The respondent contends that as per clause 5.6.1(a) of BBMP (Building Bylaws) 2003, the occupancy certificate is deemed to have been given, notwithstanding the fact that the O.C. was issued on 11/3/2019. Therefore the provisions of Chapter III of the Act does not apply and the project is exempted from registration.
6. The respondent further submits that there is no willful delay or default by the respondent in handing over the possession of the apartment to the complainant and continues to remain committed to delivering the possession to its customers. The complaint is liable to be dismissed in the interest of justice and equity.
7. In support of their claim, the complainant has produced in all 8 documents such as copies of Application for allotment of apartment, Agreement for Sale, Construction Agreement, Statement of Account as on 9/6/2017 issued by Mantri Dwellings Private Limited, email communications with the



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respondent, Occupancy Certificate dated 11/3/2019 from BBMP, Registered Sale Deed dated 3/12/2019 and memo of calculation as on 4/8/2022.

8. In support of their defence, the respondent has produced in all 11 documents such as Fee payment receipt issued by BBMP for issuing Sanction Plan dtd 11/3/2010, copy of the commencement certificate, NOC from the O/o the DGP, CG, HGs and Civil Defence, NOC from Dy.Chief Electrical Inspector for installation of lifts, Copy of Fire clearance obtained, Copy of the Completion Certificate, Copy of the Structural Stability Certificate, Copy of sanction letter for supply of electricity, Copy of the O.C. issued by BBMP dtd 11/3/2019, Photographs of the project, copy of the order passed by A.O. accepting the explanation for non-registration of the project before RERA.

9. Heard arguments of both sides.

10. On the above averments, the following points would arise for my consideration:

1. Whether the complainant is entitled for the relief claimed?
2. What order?

11. My answer to the above points are as under:

1. In the Affirmative.
2. As per final order for the following –

REASONS

12. **My answer to point No.1:-** It is undisputed that the respondent has failed to handover possession of the apartment to the complainant herein within agreed time. As per the terms of agreement of sale between the parties, the possession of the apartment had to be handed over before



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31/3/2014. When the respondent has failed to handover possession as agreed by them, the complainant approached this forum for interest on delay from 31/3/2014 till 3/12/2019 the date on which the complainant got his sale deed registered.

13. During the process of the hearing, the Authority observed that vide RERA Authority order dated 13/7/2020 the respondent was directed to register the project. However, the respondent citing an order dated 13/12/2017 issued by Adjudicating Officer of the Authority stated that they were exempted from the registration. The complainant requested that the respondent should be directed to file an affidavit to this effect. The Authority issued directions to the respondent to file an affidavit regarding his written submission if it is true.
14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid an amount of Rs.1,32,03,418/- to the respondent. Having accepted the said amount and failure to keep up promise to handover possession of apartment even after several years, certainly entitles the complainant herein for delay period interest. The respondent has not filed their memo of calculation despite several opportunities given to them. Having regard to all these aspects, this Authority concludes that the complainant is entitled for delay period interest as claimed in his memo of calculation as on 4/8/2022.
15. Further, the complainant has sought compensation for mental agony which does not come under the jurisdiction of this Authority and hence, same cannot be considered.
16. Therefore, it is incumbent upon the respondent to pay interest for the principal amount for the delay period which is determined as under:-

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Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	1,32,03,418	31-03-2014

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 13,203,418						
1	31-03-2014	30-04-2014	30		9	97,669
2	30-04-2014	30-05-2014	30		9	97,669
3	30-05-2014	30-06-2014	31		9	1,00,924
4	30-06-2014	30-07-2014	30		9	97,669
5	30-07-2014	30-08-2014	31		9	1,00,924
6	30-08-2014	30-09-2014	31		9	1,00,924
7	30-09-2014	30-10-2014	30		9	97,669
8	30-10-2014	30-11-2014	31		9	1,00,924
9	30-11-2014	30-12-2014	30		9	97,669
10	30-12-2014	30-01-2015	31		9	1,00,924
11	30-01-2015	28-02-2015	29		9	94,413
12	28-02-2015	28-03-2015	28		9	91,157
13	28-03-2015	28-04-2015	31		9	1,00,924
14	28-04-2015	28-05-2015	30		9	97,669
15	28-05-2015	28-06-2015	31		9	1,00,924
16	28-06-2015	28-07-2015	30		9	97,669
17	28-07-2015	28-08-2015	31		9	1,00,924
18	28-08-2015	28-09-2015	31		9	1,00,924
19	28-09-2015	28-10-2015	30		9	97,669
20	28-10-2015	28-11-2015	31		9	1,00,924
21	28-11-2015	28-12-2015	30		9	97,669
22	28-12-2015	28-01-2016	31		9	1,00,924

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23	28-01-2016	28-02-2016	31		9	1,00,924
24	28-02-2016	28-03-2016	29		9	94,413
25	28-03-2016	28-04-2016	31		9	1,00,924
26	28-04-2016	28-05-2016	30		9	97,669
27	28-05-2016	28-06-2016	31		9	1,00,924
28	28-06-2016	28-07-2016	30		9	97,669
29	28-07-2016	28-08-2016	31		9	1,00,924
30	28-08-2016	28-09-2016	31		9	1,00,924
31	28-09-2016	28-10-2016	30		9	97,669
32	28-10-2016	28-11-2016	31		9	1,00,924
33	28-11-2016	28-12-2016	30		9	97,669
34	28-12-2016	28-01-2017	31		9	1,00,924
35	28-01-2017	28-02-2017	31		9	1,00,924
36	28-02-2017	28-03-2017	28		9	91,157
37	28-03-2017	28-04-2017	31		9	1,00,924
38	28-04-2017	28-05-2017	30		9	97,669
39	28-05-2017	28-06-2017	31	8.15	10.15 as on 01-05-2017	1,13,820
40	28-06-2017	28-07-2017	30	8.15	10.15 as on 01-06-2017	1,10,149
41	28-07-2017	28-08-2017	31	8.15	10.15 as on 01-07-2017	1,13,820
42	28-08-2017	28-09-2017	31	8.15	10.15 as on 01-08-2017	1,13,820
43	28-09-2017	28-10-2017	30	8.15	10.15 as on 01-09-2017	1,10,149
44	28-10-2017	28-11-2017	31	8.15	10.15 as on 01-10-2017	1,13,820
45	28-11-2017	28-12-2017	30	8.1	10.1 as on 01-11-2017	1,09,606
46	28-12-2017	28-01-2018	31	8.1	10.1 as on 01-12-2017	1,13,260
47	28-01-2018	28-02-2018	31	8.1	10.1 as on 01-01-2018	1,13,260
48	28-02-2018	28-03-2018	28	8.1	10.1 as on 01-02-2018	1,02,299
49	28-03-2018	28-04-2018	31	8.35	10.35 as on	1,16,063

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					01-03-2018	
50	28-04-2018	28-05-2018	30	8.35	10.35 as on 01-04-2018	1,12,319
51	28-05-2018	28-06-2018	31	8.35	10.35 as on 01-05-2018	1,16,063
52	28-06-2018	28-07-2018	30	8.45	10.45 as on 01-06-2018	1,13,404
53	28-07-2018	28-08-2018	31	8.45	10.45 as on 01-07-2018	1,17,184
54	28-08-2018	28-09-2018	31	8.45	10.45 as on 01-08-2018	1,17,184
55	28-09-2018	28-10-2018	30	8.65	10.65 as on 01-09-2018	1,15,575
56	28-10-2018	28-11-2018	31	8.7	10.7 as on 01-10-2018	1,19,988
57	28-11-2018	28-12-2018	30	8.7	10.7 as on 01-11-2018	1,16,117
58	28-12-2018	28-01-2019	31	8.75	10.75 as on 10-12-2018	1,20,549
59	28-01-2019	28-02-2019	31	8.75	10.75 as on 10-01-2019	1,20,549
60	28-02-2019	28-03-2019	28	8.75	10.75 as on 10-02-2019	1,08,882
61	28-03-2019	28-04-2019	31	8.75	10.75 as on 10-03-2019	1,20,549
62	28-04-2019	28-05-2019	30	8.7	10.7 as on 10-04-2019	1,16,117
63	28-05-2019	28-06-2019	31	8.65	10.65 as on 10-05-2019	1,19,427
64	28-06-2019	28-07-2019	30	8.65	10.65 as on 10-06-2019	1,15,575
65	28-07-2019	28-08-2019	31	8.6	10.6 as on 10-07-2019	1,18,866
66	28-08-2019	28-09-2019	31	8.45	10.45 as on 10-08-2019	1,17,184
67	28-09-2019	28-10-2019	30	8.35	10.35 as on 10-09-2019	1,12,319
68	28-10-2019	28-11-2019	31	8.25	10.25 as on 10-10-2019	1,14,942

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69	28-11-2019	03-12-2019	05	8.2	10.2 as on 10-11-2019	18,448
					TOTAL DELAYED INTEREST as on 03/12/2019	72,18,293

17. Accordingly point raised above is answered in the Affirmative.

18. **My answer to point No.2:** In view of the above discussion, I proceed to pass the following order:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.CMP/UR/210303/0007737 is hereby allowed. Respondent is directed to pay the amount of Rs.72,18,293/- (Rupees Seventy Two Lakh Eighteen Thousand Two Hundred and Ninety Three only) calculated at 9% from 31/03/2014 to 28/05/2017 and MCLR + 2% from 28/05/2017 till 03/12/2019 to the complainant within 60 days from the date of this order. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.


(Neelmani N Raju)
Member-2, KRERA

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