

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 10th OCTOBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/201011/0006693

COMPLAINANT.....

Mr. HARDIKKUMAR SHAH

2/3729, 1st Floor,
Navsari Bazar Main Road,
Surat,
District: Surat
GUJARAT – 395002.

(By Mr.Mohan Kumar M, Advocate)

V/S

RESPONDENT.....

**1.Mantri Technology Constellations
Private Limited**

Mantri House,
No.41, Vittal Mallya Road,
Bangalore-560001.

**2. Manyata Infrastructure Development
Private Limited,**
No.9/1, 1st Floor, Classic Court,
Richmond Road,
Bengaluru-560025.

3. Manyata Realty,
No.9/1, 1st Floor, Classic Court,
Richmond Road,
Bengaluru-560025.

(By Mr.Sushant Venkatesh Pai,
Advocate)

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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 Manyata Energia" for the relief of refund with interest and compensation for mental agony.

Brief facts of the complaint are as under:-

2. The complainant has booked a flat in the project of respondent wherein the complainant was offered a scheme of 10% booking, 75% Home Loan and 15% Personal Loan and paid Rs.23,58,792/- being 25% of booking amount on 24th December 2017. However, the respondent failed to respond, prepare agreement and issue proper receipts. After thorough follow up the respondent entered into an agreement of sale and construction agreement on 29/5/2018 with an assurance that the possession of the apartment will be handed over by 31.12.2019. Despite several requests the respondent has failed to handover the possession of the said Unit and refund of the amount with interest. The construction activities in the project has come to a standstill. The respondent has simply kept postponing the date of possession and has defaulted on terms and conditions, due to which as a buyer, the complainant has suffered monetary losses. The complainant also submits that the conduct of the respondent has put the complainant into financial hardship and has caused immense mental harassment. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel. and filed statement of objections as under:

4. The Respondent contends that the complainant is not entitled for seeking relief sought in light of Clause 6.4 of the Agreement of Construction dated 29/5/2018 and the project has not been completed within stipulated time due to force majeure events such as, labour strike, non-availability of steel, sand, cement and

Relief

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such other vital building materials, demonetization, implementation of GST or such reasons beyond the control of the respondent, and the respondent cannot be held liable to compensate the complainant under section 18(1) of RERA Act. In addition COVID-19 pandemic and the lockdown have also contributed significantly to the obstacles faced by the respondent. The respondent submits that as per registration at RERA the validity of the project was upto 30/6/2020 which was extended till 30/12/2020 owing to COVID-19 pandemic. The RERA has issued a certificate of registration extending the date of completion of the project upto 28/2/2023. The respondent contends that there is no wilful 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 complainant has not made any ground justifying his claim for compensation. The respondent denies the allegations of the complainant as false, baseless and frivolous and has prayed to dismiss the complaint in the interest of justice and equity.

5. In support of their claim, the complainants have produced in all 4 documents such as copies of Agreement of Sale, Construction Agreement, Payment Statement, email Statement of Account, Customer Statement of Account issued by promoter dated 24/9/2018 and memo of calculation for refund with interest as on 19/7/2022.

6. In support of their defence, the respondent has produced in all 3 documents such as copy of the certificate of incorporation issued by the Registrar of Companies consequent to change of name of the respondent, copy of photograph dated 1/7/2017 uploaded by the respondent on the website, copy of common Khatha obtained for the entire extent of land on which the project is being constructed and a check list.

7. Heard arguments of both sides.

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8. 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?

9. My answer to the above points are as under:-


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

REASONS

10. My answer to point No.1:- From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project, and has not handed over the unit in favour of complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 29/5/2018. There seems to be no possibility of completing the project or handing over the possession in near future.

11. As per section 18(1) of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

12. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.



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13. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid the sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment, certainly entitles the complainant herein for refund with interest. The complainant vide his memo of calculation as on 19/7/2022 has claimed that the respondent has to refund an amount of Rs.34,45,765/- including interest. During the process of the hearing, the respondent and the complainant have agreed for having received and paid the principal amount of Rs.23,58,792/-. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest.

14. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under.

Interest Calculation Till 30/04/2017 (Before RERA)				
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS TILL 30/04/2017	INTEREST @9%
1	30-04-2017	1	0	0
2	30-04-2017	0	0	0
3	30-04-2017	0	0	0
4			TOTAL INTEREST (I1)	0

Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	1902	16-07-2022	8.15	10.15 as on 01-05-2017	0
2	01-05-2017	0	1905	19-07-2022	8.15	10.15 as on 01-05-2017	0
3	01-05-2017	0	1905	19-07-2022	8.15	10.15 as on 01-05-2017	0



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4	30-11-2017	2,00,000	1689	16-07-2022	8.1	10.1 as on 01-11-2017	93,473
5	30-11-2017	2,00,000	1692	19-07-2022	8.1	10.1 as on 01-11-2017	93,639
6	25-12-2017	10,00,000	1667	19-07-2022	8.1	10.1 as on 01-12-2017	4,61,279
7	25-12-2017	10,00,000	1667	19-07-2022	8.1	10.1 as on 01-12-2017	4,61,279
8	25-12-2017	10,00,000	1664	16-07-2022	8.1	10.1 as on 01-12-2017	4,60,449
9	26-12-2017	6,32,826	1666	19-07-2022	8.1	10.1 as on 01-12-2017	2,91,734
10	26-12-2017	3,518	1663	16-07-2022	8.1	10.1 as on 01-12-2017	1,618
11	26-12-2017	6,29,308	1663	16-07-2022	8.1	10.1 as on 01-12-2017	2,89,590
12	26-12-2017	6,32,826	1666	19-07-2022	8.1	10.1 as on 01-12-2017	2,91,734
13	27-12-2017	5,00,000	1662	16-07-2022	8.1	10.1 as on 01-12-2017	2,29,947
14	27-12-2017	5,00,000	1665	19-07-2022	8.1	10.1 as on 01-12-2017	2,30,363
15	27-12-2017	5,00,000	1665	19-07-2022	8.1	10.1 as on 01-12-2017	2,30,363
16	30-12-2017	2,00,000	1662	19-07-2022	8.1	10.1 as on 01-12-2017	91,979
17	11-02-2018	22,554	1619	19-07-2022	8.1	10.1 as on 01-02-2018	10,104
18	11-02-2018	22,554	1619	19-07-2022	8.1	10.1 as on 01-02-2018	10,104

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19	26-02-2018	3,412	1601	16-07-2022	8.1	10.1 as on 01-02-2018	1,511
20	26-02-2018	3,412	1604	19-07-2022	8.1	10.1 as on 01-02-2018	1,514
21	26-02-2018	3,412	1604	19-07-2022	8.1	10.1 as on 01-02-2018	1,514
22	11-10-2018	22,554	1374	16-07-2022	8.7	10.7 as on 01-10-2018	9,084
23	TOTAL AMOUNT	23,58,792				TOTAL INTEREST (I2)	32,61,278

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 19-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
23,58,792	10,86,973	0	34,45,765

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

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

ORDER

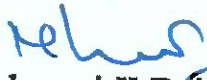
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/201011/0006693** is hereby allowed. Respondent is directed to pay a sum of **Rs.34,45,765/- (Rupees Thirty Four Lakh Forty Five Thousand Seven Hundred and Sixty Five only)** calculated at MCLR + 2% from 30/11/2017 till 19/07/2022 towards refund with interest to the complainant, within 60 days from the date

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of this order. The interest due from 20/07/2022 up to the date of final payment will be calculated likewise and paid to the complainant. 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, K-RERA

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