

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/200913/0006571

COMPLAINANT.....

Mr. PRAKASH MALL

TF-3, Greenary Apartment,
16, Plain Street,
Near HDFC Bank,
Shivajinagar,
Bengaluru-560002.

(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 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 had booked a flat in the project of respondent wherein the complainant entered into an agreement for sale and agreement for construction with the respondent under 25:75 Scheme on 4/10/2016 and paid Rs.20,07,886/- (Rupees Twenty Lakh Seven Thousand Eight Hundred and Eighty Six only) to the respondent. The respondent has assured to hand over possession of the apartment by end of December 2018 with a grace period of 12 months. However, the respondent failed to implement the project as per the agreement and did not complete the project in time. The complainant also submits that all the agreements were executed on dotted line format and unilaterally drafted by the Respondent. The respondent has simply kept postponing the date of possession and has defaulted on terms and conditions, due to which the complainant has suffered monetary losses and subjected to mental agony and pain and as such, the complainant wants to exit from project and request for refund with interest. 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:

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 4/10/2016 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 such other vital building materials, demonetization, implementation of GST or



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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.

4. In support of his claim, the complainant has produced in all 4 documents such as copies of Agreement of Sale, Construction Agreement, Communication from Mantri Energia regarding delivery date of the flat, Payment receipts, Payment statement of YES Bank, Revised cost sheet from Mantri Energia and memo of calculation for refund with interest as on 2/8/2022.

5. 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.

6. Heard arguments of both sides.

14/11/22

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7. 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?

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

- a. In the Affirmative.
- b. As per final order for the following

REASONS

9. 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 4/10/2016. There seems to be no possibility of completing the project or handing over the possession in near future.

10. 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.

11. 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.

12. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has paid the sale consideration amount to

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the respondent. 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 2/8/2022 has claimed that the respondent has to refund an amount of Rs.32,78,419/- including interest. Despite opportunities given, the respondent has not filed their memo of calculation. During the process of the hearing, the respondent has agreed for having received the principle amount of Rs.20,07,886/- from the complainant. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest.

13. 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	NO OF DAYS TILL	INTEREST @9%
1	03-11-2015	2,18,604	544	30-04-2017	29,322
2	01-02-2016	4,27,695	454	30-04-2017	47,878
3	28-04-2016	11,48,308	367	30-04-2017	1,03,914
4	24-05-2016	2,13,279	341	30-04-2017	17,932
5				TOTAL INTEREST (I1)	1,99,046

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	20,07,886	1919	02-08-2022	8.15	10.15 as on 01-05-2017	10,71,487
2	TOTAL AMOUNT	20,07,886				TOTAL INTEREST (I2)	10,71,487

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 02-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
20,07,886	12,70,533	0	32,78,419

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

15. 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/200913/0006571** is hereby allowed. Respondent is directed to pay a sum of **Rs.32,78,419/- (Rupees Thirty Two Lakh Seventy Eight Thousand Four Hundred and Nineteen only)** calculated at 9% from 03/11/2015 to 30/4/2017 and at MCLR + 2% from 01/05/2017 till 02/08/2022 towards refund with interest to the complainant, within 60 days from the date of this order. The interest due from 03/08/2022 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