

**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 19<sup>th</sup> OCTOBER 2022**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/201101/0006993**

**COMPLAINANT.....**

**MR.H. ANAND  
72, FLAT NO.407  
DIVYA MSR GATEWAY  
MSR ROAD, GOKULA  
MATHIKERE  
BENGALURU-560054.**

**(By Mr.D. Vijay Raj, Advocate)**

**V/S**

**RESPONDENT.....**

**1.Mantri Technology Constellations  
Private Limited currently known  
as Buoyant Technology Constellation  
Private Limited  
Mantri House,  
No.41, Vittal Mallya Road,  
Bangalore-560001.**

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

**3. Manyata Realty,  
No.9/1, 1<sup>st</sup> 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 5% booking, 20% Home Loan and 75% to be paid at the time of possession and entered into an agreement for sale and construction agreement dated 14/3/2017 and has paid Rs.91,82,140/- to the respondent till date. As per the terms of the scheme and terms & conditions of the agreement, the respondent was supposed to handover the possession of the flat on 31/12/2018 (which was later deferred to 31/12/2019) and to pay pre-EMIs to the Bank. Despite several requests the respondent has failed to handover the possession of the said Unit, paying pre-EMIs to the Bank, clearing the loan account 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, opt to exit from the project, seek refund of entire amount, closure of bank loan, refund all pending pre-EMI interest and has caused immense mental pain and agony. 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:



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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 14/3/2017 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 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 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 her claim for compensation. However, the respondent submits that they are ready to pay the delay compensation as per the terms of the Construction Agreement from 31/12/2019 till the date of possession of the flat. 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 defence, the respondent has produced copy of Certificate of Incorporation pursuant to change of name issued by Ministry of Corporate Affairs, Government of India, Statement of account of the complainant maintained with the respondent and a checklist.

6. In support of her claim, the complainant has produced documents such as copies of Agreement of Sale, Construction Agreement, Payment Statement, Tripartite Agreement, Payment Receipts, Letter from the respondent regarding payment of pre-EMI till the date of possession, revision of possession date letters from the respondent, SBI Statement of Account, ABHFL Statement of Account and memo of calculation for refund with interest as on 02/09/2022.



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7. Heard arguments of both sides.

**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 and construction agreement 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 14/3/2017. 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

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complete or provide possession of an apartment etc., in accordance with sale agreement.

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 2/9/2022 has claimed that the respondent has to refund an amount of Rs.1,34,02,589/- including interest. During the process of the hearing, the complainant and the respondent were directed to reconcile the difference in the principal amount paid and received. Despite several opportunities given, the respondent did not file its memo of calculation but submitted a checklist with statement of accounts of the complainant maintained by them which has been denied by the complainant. A thorough verification of the documentary proof furnished by the complainant reveal that his claims are genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as claimed by him in the memo of calculation as on 2/9/2022.

14. 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.

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

*Mh*



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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	31-01-2017	3,00,000	89	30-04-2017	6,583
2	30-03-2017	1,00,000	31	30-04-2017	764
3	10-04-2017	1,00,000	20	30-04-2017	493
4	11-04-2017	20,36,585	19	30-04-2017	9,541
5	18-04-2017	115	12	30-04-2017	0
6	30-04-2017	9,653	0	30-04-2017	0
7				TOTAL INTEREST ( I1 )	17,381

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	25,46,353	1950	02-09-2022	8.15	10.15 as on 01-05-2017	13,80,786
2	31-05-2017	14,963	1920	02-09-2022	8.15	10.15 as on 01-05-2017	7,989
3	30-06-2017	14,480	1890	02-09-2022	8.15	10.15 as on 01-06-2017	7,610
4	31-07-2017	15,140	1859	02-09-2022	8.15	10.15 as on 01-07-2017	7,826
5	18-08-2017	5,40,927	1841	02-09-2022	8.15	10.15 as on 01-08-2017	2,76,927
6	24-08-2017	30,41,294	1835	02-09-2022	8.15	10.15 as on 01-08-2017	15,51,914
7	24-08-2017	11,87,542	1835	02-09-2022	8.15	10.15 as on 01-08-2017	6,05,979

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8	24-08-2017	3,21,772	1835	02-09-2022	8.15	10.15 as on 01-08-2017	1,64,194
9	24-08-2017	15,155	1835	02-09-2022	8.15	10.15 as on 01-08-2017	7,733
10	31-08-2017	15,073	1828	02-09-2022	8.15	10.15 as on 01-08-2017	7,662
11	10-01-2020	13,346	966	02-09-2022	8.2	10.2 as on 10-01-2020	3,602
12	11-02-2020	50,340	935	02-09-2022	8.15	10.15 as on 10-02-2020	13,088
13	11-03-2020	46,973	905	02-09-2022	8.05	10.05 as on 10-03-2020	11,704
14	13-04-2020	50,212	872	02-09-2022	7.7	9.7 as on 10-04-2020	11,635
15	12-05-2020	48,592	843	02-09-2022	7.55	9.55 as on 10-05-2020	10,717
16	10-06-2020	50,212	814	02-09-2022	7.3	9.3 as on 10-06-2020	10,414
17	10-07-2020	48,592	784	02-09-2022	7.3	9.3 as on 10-07-2020	9,706
18	12-08-2020	50,212	751	02-09-2022	7.3	9.3 as on 10-08-2020	9,608
19	10-09-2020	50,212	722	02-09-2022	7.3	9.3 as on 10-09-2020	9,237
20	13-10-2020	48,592	689	02-09-2022	7.3	9.3 as on 10-10-2020	8,530
21	28-02-2021	47,000	551	02-09-2022	7.3	9.3 as on 10-02-2021	6,598
22	10-03-2021	45,477	541	02-09-2022	7.3	9.3 as on 10-03-2021	6,268

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23	12-03-2021	1,49,199	539	02-09-2022	7.3	9.3 as on 10-03-2021	20,490
24	19-03-2021	9,887	532	02-09-2022	7.3	9.3 as on 10-03-2021	1,340
25	13-04-2021	45,715	507	02-09-2022	7.3	9.3 as on 10-04-2021	5,905
26	11-05-2021	38,794	479	02-09-2022	7.3	9.3 as on 10-04-2021	4,734
27	10-06-2021	40,088	449	02-09-2022	7.3	9.3 as on 15-05-2021	4,586
28	15-06-2021	40,088	444	02-09-2022	7.3	9.3 as on 15-06-2021	4,535
29	13-07-2021	38,794	414	02-09-2022	7.3	9.3 as on 15-07-2021	4,092
30	10-08-2021	40,088	388	02-09-2022	7.3	9.3 as on 15-07-2021	3,963
31	11-09-2021	40,088	356	02-09-2022	7.3	9.3 as on 15-08-2021	3,636
32	10-10-2021	38,794	327	02-09-2022	7.3	9.3 as on 15-09-2021	3,232
33	10-11-2021	40,088	296	02-09-2022	7.3	9.3 as on 15-10-2021	3,023
34	11-12-2021	38,794	265	02-09-2022	7.3	9.3 as on 15-11-2021	2,619
35	11-01-2022	40,088	234	02-09-2022	7.3	9.3 as on 15-12-2021	2,390
36	10-02-2022	40,088	204	02-09-2022	7.3	9.3 as on 15-01-2022	2,083
37	10-03-2022	36,208	176	02-09-2022	7.3	9.3 as on 15-02-2022	1,623

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38	10-04-2022	40,088	145	02-09-2022	7.3	9.3 as on 15-03-2022	1,481
39	10-05-2022	50,698	115	02-09-2022	7.4	9.4 as on 15-04-2022	1,501
40	11-06-2022	50,698	83	02-09-2022	7.5	9.5 as on 15-05-2022	1,095
41	11-07-2022	50,698	53	02-09-2022	7.7	9.7 as on 15-06-2022	714
42	11-08-2022	50,698	22	02-09-2022	7.8	9.8 as on 15-07-2022	299
43	<b>TOTAL AMOUNT</b>	<b>91,82,140</b>				<b>TOTAL INTEREST ( I2 )</b>	<b>42,03,068</b>

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 02-09-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
91,82,140	42,20,449	0	1,34,02,589

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

17. **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/201101/0006993** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,34,02,589/- (Rupees One Crore Thirty Four Lakh Two Thousand Five Hundred and Eighty Nine only)** towards refund with interest

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to the complainant within 60 days from the date of this order, calculated at 9% from 31/1/2017 to 30/4/2017 and MCLR + 2% from 01/05/2017 till 02/09/2022 to the complainant within 60 days from the date of this order. The interest due from 03/09/2022 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, KRERA

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