

**KARNATAKA REAL ESTATE REGULATORY AUTHORITY,
BENGALURU**

FIFTH ADDITIONAL BENCH

CORUM

**SHRI.D.VISHNUVARDHANA REDDY
HON'BLE MEMBER-1**

COMPLAINT NO.CMP/201028/0006970

DATED THIS 4TH DAY OF NOVEMBER, 2022

COMPLAINANTS : Mr.Sriram Ananthapadmanabhan &
Ms.Kirti Iyer
E 705, Jacarnade, Brigade Millenium
J.P.Nagar, Bengaluru : 560 078

By Advocate Ms.Ranjana Iyer

RESPONDENT / : M/s.Mantri Castles Pvt Ltd.
PROMOTER Mantri House, # 41, Vittal Mallya Road
Bangalore : 560 001

By Advocate Ms.Jasleen Kaur

PROJECT NAME & : MANTRI SERENITY-5
REGISTRATION NO. PRM/KA/RERA/1251/310/PR/
171019/000504

J U D G E M E N T

This complaint is filed under Sec-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project MANTRI SERENITY-5 praying for a direction to Respondents to register and deliver vacant possession of the apartment and for other reliefs:

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. The complainants have entered into an agreement of sale on 10.06.2013 The project completion date as per

agreement was 31.12.2015. The complainants have paid an amount of Rs.1,03,17,786/- (Rupees One Crores three lakhs seventeen thousand seven hundred eighty six only) to the respondent till date. Since there was delay of more than seven years in handing over the apartment, the complainants have filed the above complaint before the Authority praying for the following reliefs:

- a) Direct the Respondents to Register and deliver the possession of the apartment;
- b) Direct the Respondent to pay the delay period interest.
- c) Direct the respondent to pay Pre EMI interest
- d) Direct the Respondents to pay Rs.50,000/- towards cost of litigation.

2. On a perusal of the sale agreement, it is seen that the completion date is agreed as 31.12.2015. The promoter-respondent was required to complete the project and hand over possession of the apartment by 31.12.2015. In cases where in the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for relief in accordance with Section 18 of the Act.

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 objection. In the statement of objections, the respondent has sought to explain the delay by referring to several issues which are nothing but routine requirements of compliances and construction related issues which are required to be

handled by the Promoter of any project who has undertaken to develop the real estate project. The Complainant has also filed written submissions. None of the reason submitted by the Respondent has any force and legal validity to justify the delay in completion of the project and provide any exception from the application of Section-18 of the Act. Therefore, as per Section 18 of the Act, the promoter is liable pay the delay period interest.

4. The complainant has submitted copies of agreement for sale of undivided share of interest and agreement of construction together with copy of application for allotment and a copy of pre EMI scheme entered into between the purchasers/allottees and the promoter. It is evident from the pre EMI scheme, signed by the allottee and the promoter that the promoter had undertaken to pay the pre EMI till March 2016 with a condition the total amount considered for pre EMI shall not exceed the total property value. In the terms and conditions of the pre-EMI scheme it is also agreed between the allottees and the promoter that the pre EMI will be paid to the client on monthly basis on the following month of the last month when the full value of the apartment is received. It is submitted by the allottee that the promoter has defaulted on the commitment of payment / reimbursement of pre EMI to the complainant. As per the memo of calculation of interest submitted by the complainant an amount of Rs.1,03,17,786 has been paid by the complainant by 31.12.2015. It is evident from the application of allotment

that the basic cost of the apartment and the gross apartment value agreed to between the parties were Rs.83,63,900/ & Rs.86,63.900/-. These facts indicates that the complainants have paid Rs.1,03,17,786/-, as on 31.12.2015 which was more than the gross apartment value and therefore, they have fulfilled the terms and conditions for the reimbursement of the pre-EMI interest by the promoter. In view of the defaults on the part of the promoter and violation of the contractual terms by the promoter pre EMI interest payable to the allottee shall be paid by respondent-promoter within 60 days from the date of receipt of this order.

5. On a perusal of the documents filed and submissions made before the Authority, it is evident that complainant has paid full sale consideration amount along with registration charges and admittedly there is a delay of more than seven years in handing over the apartment as per the agreement. Hence the complainant is entitled to delay period interest u/s 18 of the Act and accordingly a memo of calculation submitted by the Complainant. The Promoter-Respondent has not submitted any memo of calculation.

6. The complainant has sought a relief of Rs.50,000/- to defray the litigation expenses. It is noted that the complainant has booked the apartment on 10.06.2013. It is submitted by the complainant that the entire sale consideration along with registration charges was paid. It is also submitted as per the sale agreement and

construction agreement that the completion date was fixed as 31.12.2015. Further submissions of the complainant include that the respondent failed to pay pre EMI instalment as undertaken by the respondent while entering into sale agreement. These facts brought out in the complaint indicate that the complainant was left with no choice but to file a complaint before the Authority and pursue the same. It is evident that the complainant has engaged an advocate and incurred expenditure for pursuing the litigation which has arisen only on account of the defaults committed by the promoter-respondent. Having regard to all the facts the Authority is of the view that the complainant is entitled for some relief in the form of payment of litigation expenses by the promoter-respondent. Accordingly, it is hereby ordered that respondent-promoter shall pay a sum of Rs.20,000/- to the complainant on account of litigation expenses.

And accordingly the Authority orders the following:

ORDER

1. In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing CMP/UR/201028/0006970 is hereby partly allowed.
2. Respondent is directed to pay interest on delay period at the rate of SBI MCLR + 2 from 31.12.2015 till the date of handing over possession along with occupancy certificate. The working submitted by the complainant is enclosed to this order as Annexure-A. The promoter shall pay the interest for the

delay period as arrived at amounting to Rs.68,80,206/ (Sixty eight lakhs eighty thousand two hundred six only) within 60 days from the date of this order. The delay period interest working submitted by the complainant is for the period commencing from 1.1.2016 to 3.11.2022. The Promoter is also liable to pay delay period interest for every month delay for the subsequent period of delay handing over the apartment and by executing the sale deed in favour of the complainant.

3. Respondent-Promoter is directed to execute the sale deed within two weeks from the date of this order and handover the apartment to the allottees forthwith.

4. The Promoter is directed to pay pre EMI interest to the allottee within 60 days from the date of this order.

5. As regards the cost of litigation expenses to the extent of Rs.50,000/- claimed, the promoter is directed to pay an amount of Rs.20,000/- to the Allottee towards cost of litigation.


(D.VISHNUVARDHANA REDDY)
MEMBER-1
FIFTH ADDITIONAL BENCH
K-RERA