

PROCEEDINGS OF THE AUTHORITY

Dated 8th November 2022

COMPLAINT NO.: CMP/210512/0007947

COMPLAINANT.....

S G SAMBASIVAN,

4091 Prestige white Meadows,
Whitefield Main Road,
Whitefield,
Bengaluru – 560066.

(Rep. By Sri. S.C. Venkatesh, Adv.,)

V/S

MANTRI GARDENVIEW HOMES PRIVATE LIMITED

V N KUMAR,

Mantri House, 41,
Vittal Mallya Road,
Bengaluru – 560001.

(Rep. By Sri. Sunil P Prasad, Adv.,)

RESPONDENT.....

Rectified vide order
dated 02/04/2023 as
Mantri Gardenview
Homes Private Limited

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 Blossom 1” developed by “Mantri Gardenview Homes Pvt. Ltd.,” registered as PRM/KA/RERA/1251/310/PR/171017/000505 for the relief of refund of amount with interest.

Brief facts of the complaint are as under:-

2. The complainant had booked a flat bearing No.B1202 in the project of respondent wherein the complainant entered into an agreement for sale and construction agreement on 14/03/2018 for a total sale consideration of Rs.3,99,68,400/- (Rupees Three Crore Ninety Nine Lakhs Sixty Eight Thousand Four Hundred only) and paid Rs.79,12,526/- (Rupees Seventy

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Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027.

Nine Lakhs Twelve Thousand Five Hundred and Twenty Six only) to the respondent on various dates. The respondent has assured to handover possession of the apartment within 31/10/2019. But, the developer failed to handover the apartment as agreed. Therefore, complainant is not interested with the project. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent 1, 2 and 3 have appeared before the Authority through its counsel and filed statement of objections.

4. **Objection filed by the respondent is as under:-**

He has denied all the allegations made against him by the complainant as false. It contends that the respondent is constructing a residential apartment building complex with common entrance, lobby, paths, staircases, passages, gardens, lifts, etc., together with common amenities and facilities under the name and style of "Mantri Blossom 1" at Municipal old No's 69, 69/1 and 70 and presently bearing Municipal No. 69, Lalbagh Fort Road, Municipal Ward No. 48 of Sudhamanagar, Bengaluru measuring 1,18,896 sq.ft.

5. It is submitted that, according to the scheme, a person interested in acquiring a residential apartment in the project is required to join the scheme and purchase an undivided right, title and interest schedule A property therein in which the residential apartment is to be built on the aforementioned lands, proportionate to the saleable area of the apartment to be constructed simultaneously by entering into the agreement of construction and in accordance with the plans as sanctioned by the concerned authorities.

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6. The complainant had entered into agreement for sale and construction agreement on 14/03/2018 to construct an apartment unit bearing No.B1202, 12th Floor, 'B' wing / tower, Mantri Blossom 1. The complainant had opted for Pre-EMI scheme at the time of booking the apartment.
7. The respondent was supposed to handover the possession of the apartment on 31/10/2019 plus 12 months grace period i.e., on 31/10/2020 as per clause 6.1 and 6.4 of agreement for sale and construction agreement. Clause 6.4 of the agreement stipulates force majeure conditions, variations on account of delay on the part of the authorities, labour strikes, non-availability of steel, sand, cement and such other vital building materials, rules, notification of the Government and other public or competent authority or any dispute or matter relating to the property pending final determination by the Court. It is pertinent to mention here that, in such event the respondent shall not be held responsible for the delay in completing the project. The respondent has no deliberate intention to delay the project completion. However due to bonafide and unexpected event outside the respondents control. Hence, prayed to dismiss the complaint.
8. In support of his claim, the complainant has produced in all 5 documents such as copies of allotment letter, Agreement of sale, construction agreement, Payment receipts and memo of calculation.
9. Hearings were conducted on 03/08/2022, 27/09/2022 and finally on 12/10/2022.
10. Heard arguments of both the parties.
11. **On the above averments, the following points would arise for our consideration:-**
 1. Whether the complaint is entitled for the relief claimed?
 2. What order?

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12. **Our answer to the above points is as under:-**

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

REASONS

13. **Our answer to point No.1:-** From the materials available on record, it is apparent that in spite of entering into an agreement for sale to handover possession of apartment, the builder has not completed the project as per agreement and has delayed the project and has not handed over the apartment to the complainant till date. Hence, the builder has failed to abide by the terms of agreement for sale dated 14/03/2018. There seems to be no possibility of completing the project or handing over the possession in near future.
14. In the judgement reported in Civil Appeal No. 3581-3590 of 2020 at para No. 23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section

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18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

15. 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.
16. From the averments of the complaint and the copy of agreement between the parties, it is obvious that the complainant has already paid the substantial 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.
17. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest.
18. Accordingly, the point raised above is answered in the Affirmative.
19. **Our answer to point No.3:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we 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/210512/0007947 is hereby allowed.

Ans

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Respondent is directed to pay the amount of Rs.79,12,526/- (Rupees Seventy Nine Lakhs Twelve Thousand Five Hundred and Twenty Six only) with interest at the rate of 9% p.a from 09/06/2015 till 30/04/2017. Further, interest at the rate of SBI MCLR+2% from 01/05/2017 to till the date of entire realisation of the amount by the complainant. The complainants are at liberty to enforce the said order in accordance with law, if the respondent fails to comply with the order.

No order as to costs.

(Neelamani N Raju)

Member-2
K-RERA

(D. Vishnuvardhana Reddy)

Member-1
K-RERA

(H.C. Kishore Chandra)

Chairman
K-RERA