

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

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

DATED 9th JANUARY 2023

COMPLAINT NO: CMP/220408/0009332

COMPLAINANT.....

**MR. BHASKAR BAKTHAVATSALU
33/1, 4th FLOOR
VITTAL MALLYA ROAD
BANGALORE-560001.**

**(MR.M. UMASHANKAR, ADVOCATE
& OTHERS, DHANANJAY JOSHI
ASSOCIATES)**

V/S

RESPONDENT.....

**MANTRI DEVELOPERS PRIVATE LTD
MANTRI HOUSE
NO.41, VITTAL MALLYA ROAD
BANGALORE - 560001.**

(Ex-Parte)

*** * * * ***

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 Centrium**" developed by M/s Mantri Developers Private Limited for the relief of Refund with interest and compensation for mental agony.

Brief facts of the complaint are as under:-

2. The complainant has purchased an apartment in the project of respondent by entering into an agreement for sale and construction agreement on 24/08/2016 and has paid an amount of Rs.1,08,47,226/- (Rupees One



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Crore Eight Lakh Forty Seven Thousand Two Hundred and Twenty Six only to the respondent on various dates towards sale consideration. As per the agreement respondent was supposed to handover the apartment by 19/08/2019 with a grace period of 12 months i.e. latest by 19/08/2020. Again through their letter dated 22/6/2017, the respondent had promised the complainant to handover the apartment by the end of December 2020. But even after two years the respondent has not handed over the apartment to the complainant. Due to this enormous delay, the complainant has undergone financial burden and mental agony. The complainant has also sent Legal Notice to the respondent for refund of the amount with interest. Thus, the complainant has approached this Authority and prays to direct the respondent to refund the entire amount with interest, compensation for mental agony and cost of the proceedings. Hence, this complaint.

3. After registration of the complaint, several notices were sent to the respondent on his given mail address for appearance before the Authority. The respondent failed to appear before the Authority and never attended the hearings. Finally paper publication was issued in local Kannada and English daily newspapers "UDAYAVANI" and "THE HINDU" on 8/12/2022 for the appearance of the respondent. In spite of paper publication, the respondent did not appear before the Authority and hence, has been placed as **ex-parte**.
4. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, Construction agreement, Payment receipts, Copy of letter dated 22/6/2017 from the respondent, copy of Legal Notice dated 24/12/2021, 29/12/2021, paper publication published in Kannada and English daily newspapers dated 8/12/2022 "UDAYAVANI" and "THE HINDU".
5. On the other hand, the respondent has not produced any documents on its behalf.

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6. Heard arguments.

7. On the above averments, the following points would arise for my consideration:-

1. Whether the complainant is entitled to the relief claimed?
2. What order?

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

1. In the Affirmative.
2. 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 in spite of entering into an agreement for sale and construction to hand over possession of the flat, the builder has not completed the project as per agreement and has delayed the project and has failed to handover the apartment to the complainant till date. The builder has also failed to appear before the Authority for hearings despite notices sent to them and paper publication done in Kannada and English daily newspapers on 8/12/2022. Hence the builder has failed to abide by the terms of agreement for sale. There seems to be no possibility of completing the project or handing over the possession in near future.

10. At this juncture, our attention is drawn towards the judgement of Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

"23. 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

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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 18(1). The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment".

11. 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, flat, 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 if the promoter fails to 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 the complainant has paid a substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to hand over possession of the apartment certainly entitles the complainant herein for refund with interest. The complainant has submitted his memo of calculation as on 01/09/2022 claiming refund with interest for Rs.1,75,36,597/-. Despite several opportunities given to the respondent and notice was published in

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the local Kannada and English daily newspaper for his personal appearance, the respondent failed to appear before the Authority. This conduct of the respondent clearly goes to show that he has taken the complainant for a ride and deprived him of owning his own flat. The Authority upholds the refund amount claimed by the complainant vide his memo of calculation as on 01/09/2022.

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:

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	30-05-2016	25,00,000	335	30-04-2017	2,06,506
2	30-06-2016	39,63,753	304	30-04-2017	2,97,118
3	01-07-2016	18,00,000	303	30-04-2017	1,34,482
4	21-07-2016	83,473	283	30-04-2017	5,824
5	03-08-2016	25,00,000	270	30-04-2017	1,66,438
6				TOTAL INTEREST (I1)	8,10,368

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	1,08,47,226	1949	01-09-2022	8.15	10.15 as on 01-05-2017	58,79,003
2	TOTAL AMOUNT	1,08,47,226				TOTAL INTEREST (I2)	58,79,003

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 01-09-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,08,47,226	66,89,371	0	1,75,36,597


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

17. **Our findings on Point No.2:** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following order:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/220408/0009332** is hereby allowed. Respondent is directed to pay a sum of Rs.1,75,36,597/- (Rupees One Crore Seventy Five Lakh Thirty Six Thousand Five Hundred and Ninety Seven only) towards refund with interest calculated at 9% from 30/05/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 to 01/09/2022 to the complainant within 60 days from the date of this order. The interest accruing from 02/09/2022 till the date of final payment will be calculated and paid likewise. Failing which, the complainant is at liberty to enforce this order in accordance with law.

No order as to costs.


(Neelmani N Raju)
Member, KRERA