

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5

Dated 6th MARCH 2023

PRESIDED BY HON'BLE MEMBER SRI. G.R. REDDY, IRS.

COMPLAINT NO: CMP/220905/0009977

COMPLAINANTS ...

**1. KRISHNAKUMAR M
2. SHUBHASHINI KRISHNAKUMAR
BOTH RESIDING AT
A-201, SALAPURIA SANCTITY,
SAJAPUR ROAD, BANGALORE-560035
STATE: KARNATAKA**

(BY SRI. AKASH R BANTIA, ADVOCATE)

Vs

RESPONDENT ...

**MANTRI DEVELOPERS PRIVATE LTD.
MANTRI HOUSE, #41, VITTAL MALLYA
ROAD, BANGALORE-560001.**

**(BY TAPASHYA LAW CHAMBERS,
ADVOCATE)**

JUDGMENT

1. This complaint is filed under section 31 of the RERA Act against the project "MANTRI WEBCITY2A" developed by M/s Mantri Developers Private Limited for the relief of refund with interest.
2. The project has been registered under RERA vide Registration No. PRM/KA/RERA/1251/310/PR/171015/000608.
3. This project is situated at Mantri Webcity2A, Hennur Main Road, Near Southern Asian Bible College, Bengaluru South, Bengaluru urban

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Brief facts of the complaint are as under:-

2. The complainants have purchased an apartment bearing No. H-1004 in the project of the respondent namely "Mantri Webcity2A " and entered into an agreement of sale on 17th June, 2014 for a sale consideration of Rs. 79,26,779/- (Rupees Seventy Nine lakhs Twenty Six thousand Seven hundred Seventy nine only). At the time of entering into said AOS, the complainants have paid total sum of Rs. 83,82,170/- (Rupees Eighty three lakhs Eighty two thousand One hundred seventy only and also are paying regular EMI's for a sum of Rs.63,00,000/- (Rupees Sixty three lakhs only) advanced by Punjab Housing Finance Limited. The respondent was supposed to handover possession of the said flat to the complainants on or before March, 2017 with a grace period six months. Further, the respondent had assured them that, getting double of the initial deposit i.e. Rs.32,53,558 (Rupees Thirty two lakhs Fifty three thousand Five hundred fifty eight only). The builder has stopped paying PreEMI and neither he had paid complainants deposited amount nor buy back amount. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through an advocate, but the respondent has not filed its written submission in spite of sufficient time being granted.

4. In support of their claim, the complainants have produced documents such as copies of receipts, statement of account of Punjab Housing Finance Limited, and memo of calculation as on 06/02/2023.

5. Heard arguments



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

1. Whether the complainants are entitled for the relief claimed?
2. What order?

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

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

REASONS

8. My answer to Point No.1:- From the materials placed on record, it is apparent that inspite of entering into an agreement of sale on 17th June, 2014 to handover the possession of the apartment to the complainants within March, 2017 of obtaining the commencement certificate with a grace period of six months, the builder has not completed the project as per agreement and has delayed the project, and failed to handover the unit in favour of the complainants till date. Hence, the builder has failed to abide by the terms of the agreement for sale dated 17th June, 2014.

9. Due to this enormous delay the complainants are facing financial burden. The promoter has failed to hand over the possession of the flat No. H 1004 as per agreement of sale entered with the complainants. 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 allottees wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the entire amount received by him in respect of that

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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 from the complainants 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 the complainants have already paid substantial sale consideration amount. Having accepted the said sale consideration amount and failure to keep up promise to handover possession of the apartment certainly entitles the complainants herein for refund with interest. The complainants have filed their memo of calculation as on 06/02/2023 claiming an amount of Rs.1,51,66,341/- (Rupees One Crore Fifty one lakhs Sixty Six thousand Three hundred forty one only) as refund with interest. Despite opportunities were given the respondent has not filed its memo of calculation.

13. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refunds with interest as submitted vide their memo of calculation as on 06/02/2023.

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

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MEMO OF CALCULATION

SL. NO.	DATE	AMOUNT PAID BY CUSTOMER	NO. OF DAYS	NO. OF DAYS TILL	INTEREST
1	31-05-14	100,000	1065	30-04-17	26,260
2	14-07-14	1,526,779	1021	30-04-17	384,371
3	29-07-14	6,239,481	1006	30-04-17	1,547,733
4	09-08-14	75,650	995	30-04-17	18,560
5				TOTAL INTEREST (1)	1,976,924

Interest Calculation From 01/05/2017 (After RERA)							
SL. 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	01-05-17	7,941,910	2107	06-02-23	8.15	10.15 as on 01-05-2017	4,653,317
2	10-06-19	55,609	1337	06-02-23	8.65	10.65 as on 10-06-2019	21,693
3	10-07-19	55,609	1307	06-02-23	8.6	10.6 as on 10-07-2019	21,107
4	13-08-19	55,609	1273	06-02-23	8.45	10.45 as on 10-08-2019	20,267
5	10-09-19	55,609	1245	06-02-23	8.35	10.35 as on 10-09-2019	19,631
6	10-10-19	54,456	1215	06-02-23	8.25	10.25 as on 10-10-2019	18,580

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7	11-11-19	54,456	1183	06-02-23	8.2	10.2 as on 10-11-2019	18,002
8	10-12-19	54,456	1154	06-02-23	8.2	10.2 as on 10-12-2019	17,561
9	10-01-20	54,456	1123	06-02-23	8.2	10.2 as on 10-01-2020	17,089
10	TOTAL AMOUNT	8,382,170				TOTAL INTEREST (I2)	4,807,247

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 06-02-2023	REFUND FROM PROMOTE R (C)	TOTAL BALANCE AMOUNT (A + B - C)
83,82,170	67,84,171	0	1,51,66,341

Accordingly the point raised above is answered in the Affirmative.

15. My answer to point No.2:- In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, 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/220905/0009977 is hereby allowed. Respondent is directed to pay a sum of Rs.1,51,66,341/- (Rupees One Crore Fifty one lakhs Sixty six thousand Three hundred forty one only) as on 06/02/2023 towards refund with interest to the complainants within 60 days from the date of this order.

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The interest due from 07/02/2023 is to be calculated as per MCLR + 2 up to the date of final payment and paid to the complainants. The complainants are 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.

No order as to costs.


(G R REDDY, IRS)
Member, K-RERA

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