

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-4

PRESIDED BY MR. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

DATED 8TH March 2023

COMPLAINT NO. CMP/200116/0005240

COMPLAINANT:

MANISH KUMAR

No: 223, Mahaveer Seasons
24th Main, Behind KEB Power
Grid, Somsunderpalya
Sector-2
Bengaluru-560102.

(By. Mr. Manjunath R &
Shankar HS, Advocates).

V/s

RESPONDENTS...

**M/s Manar Developers
Private Limited**

1090/1, 18th Cross Road
HSR Layout, Sector-3
Opp: to Mc Donald Service
Road

Bengaluru-560 102

(ex-parte)

PROJECT NAME &

MANAR PURE EARTH

REGISTRATION NO.

**PRM/KA/RERA/1251/308
PR/171215/001584**

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

JUDGEMENT

1. This complaint has been filed under section 31 of the RERA Act against the project "**Manar Pure Earth**" developed by "**M/s Manar Developers Private Limited**" for the relief of refund of amount along with interest.
2. **Brief facts of the complaint are as under:** M/s Manar Developers Private Limited are developing the immovable property being land measuring 13 acres 28.5 guntas forming part of Sy.nos.5,6,7/1,8, 102/1, 106, 107, 12/1 of Sarjapura Village, Sarjapura Hobli, Anekal Taluk, Bengaluru Urban District into residential plots and villas under the name and style of "**CASA GREENS**" project erstwhile known as "**Manar Pure Earth**". As per the agreement for sale, in all there are 30 landowners and M/s Manar Developers Private Limited is one among them and parties at Sl.No. 1 to 29 are represented by their GPA holder M/s Manar Developers Private Limited, a registered company incorporated under the provisions of Indian Companies Act 1956. M/s Citrus Ventures Private Limited, a registered company incorporated under the provisions of Indian companies Act, 1956, hereinafter referred to as the "Confirming Party". The developer M/s Manar Developers Private Limited had requested M/s Citrus Ventures Private Limited to act as the development manager of the developer in view of its established expertise and vast experience in design, executing marketing and selling projects similar to the development.
3. The complainant has booked a residential plot bearing No.105 in the project "**Manar Pure Earth**" of the respondent by entering into an agreement of sale and simultaneously construction agreement both dated 20.5.2016 for construction of residential independent villa no.105 at a consolidated cost(both plot and villa to be constructed) of

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

Rs.82,79,483/- (Rs. Eighty two lakhs seventy nine thousand four hundred eighty three only). Out of which the complainant has paid the amount of Rs.40,10,650/- (Rs. Forty lakhs ten thousand six hundred fifty only) to the respondent. The respondent is obligated to hand over the possession on or before 18 months with 6 months grace period from the date this construction agreement. Despite substantial sale consideration has been paid, the respondent has failed to hand over the possession of the said villa within the stipulated timeline and thus failed to abide by the terms and conditions of the sale and construction agreement. Having lost confidence with the respondent-builder, the complainant decided to exit from the project and sought for the relief of refund of entire amount paid to the respondent along with interest due to enormous delay caused by the respondent. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent has neither appeared before the Authority during the hearings held on 5.8.2022, 19.8.2022, 16.9.2022, 10.10.2022 nor contested the matter by filing objections and producing documents on its behalf but continuously remained absent and hence he was placed as ex-parte.
5. In support of his claim, the complainant has produced documents such as (1) copy of agreement of sale and construction both dated 20.5.2016 (2) copy of receipts and bank statements (3) copy of photographs (4) copy of statement of accounts from HDFC Limited (5) Detailed statement of ICICI Bank (6) statement of total amount outstanding (7) memo of calculation



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

6. Heard the complainant.

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

8. 1) Whether the complainant is entitled for the relief claimed?
2) What order?

11. **My answer to the above points is as under:**

- 1) In the Affirmative
2) As per final order for the following:

FINDINGS

12. **My findings on point no.1:** From the materials placed on record, it is apparent that in spite of entering into an sale and construction agreement to hand over the possession of villa, the respondent-promoter has not completed the project as per agreement and has delayed the project. Hence, the builder has failed to abide by the terms of the sale agreement dated 20.5.2016. There seems to be no possibility of completing the project or handing over possession in near future.

12. It is pertinent to note that though the initial sale consideration amount has gone through M/s Citrus Ventures Private Limited on the capacity of development manager but the same has been credited to the respondent. Thus, M/s Citrus Ventures Private Limited is not liable for HDFC loan with accumulated interest and refund amounts to the complainant in the said project since M/s Citrus Ventures Private Limited has been hired by the respondent only as a development manager for the purpose of designing, marketing and planning. But they are neither land owners nor a developers. Further, they have entered into an unregistered agreement dated 7th

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

January 2016 with M/s Citrus Ventures Private Limited. Due to certain access related issues at site this was cancelled by Manar Pure Earth and informed them accordingly. The complainant has entered into agreement of sale and constructions dated 20.5.2016 with the respondent and that the entire sale consideration and cost of construction amount has been paid by the complainant directly to the Manar Developers Private Limited bank account and M/s Citrus Ventures Private Limited had merely marketed the project. Thus, M/s Citrus Ventures Private Limited were not liable for bank loan with accumulated interest and refund amounts to the complainant as M/s Citrus Ventures Private Limited in the said project is a development manager for the purpose of designing, marketing and planning for the project.

13. As per the agreement of sale produced by the complainant, the respondent-promoter M/s Manar Developers Private Limited is a developer by rank and M/s Citrus Ventures Private Limited is a confirming party by rank. In the said agreement of sale, it is clearly stated that the developer was desirous of effecting further improvements to the plans and drawings and the overall scheme of the development and with a view to render the exploitation of the development more efficient. M/s Citrus Ventures Private Limited hereinafter referred to as confirming party and requested to act as the development manager of the developer in view of its established expertise and vast experience in design, executing marketing and selling projects similar to the development. As a proof of the same the M/s Citrus Ventures in their reply dated 3.8.2022 clearly stated that its role is limited and restricted to designing, marketing and planning to the project and marketing agreement dated 7th January 2016 got cancelled subsequently.

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

14. The judgement of the 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 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.

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 made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant. The promoter-respondent has not submitted any memo of calculation in spite of sufficient opportunity given to him.

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

17. Despite several notices and summons sent to the given address, the respondent failed to appear before the Authority and continuously remained absent from the hearings. In the absence of any resistance by the respondent and considering the claim of the complainant which is corroborated with documentary evidence, there is no option left to this Authority except to accept the claim of the complainant which is cogent with documentary evidence. Considering all these facts, I conclude that the complainant is entitled for the relief claimed.
18. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Memo of Calculation submitted by the complainant as on 16.1.2023

| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2 + I3) AS ON 16.1.2023 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
|---------------------------|--|-------------------------------|---------------------------------------|
| 40,10,650 | 24,86,644 | 0 | 64,97,294 |

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

19. **My findings on point no.2:** In view of the above discussion, the 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/200116/0005240** is hereby allowed.

1. The respondent is hereby directed to pay a sum of Rs.**64,97,294/-** (Rs. Sixty four lakhs ninety seven thousand two hundred ninety

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

four only) towards refund along with interest to the complainant **within 60 days** from the date of this order calculated at the rate of 9% from 27.4.2016 to 30.4.2017. Further, at the rate of **SBI MCLR +2 per cent** from 1.5.2017 till 16.1.2023.

2. Further, the interest due from **17.1.2023** up to the date of final payment will be calculated likewise and paid to the complainant.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.

No order as to costs.



(H.C. Kishore Chandra)

Chairman
K-RERA