

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 6TH APRIL 2023

COMPLAINT NO: CMP/220408/0009331

RECTIFICATION UNDER SECTION 39 RERA ACT

COMPLAINANT.....

**MR. SHAHED HASSAN KHALEEL
ARK, NO.48, 4TH FLOOR
R.V. ROAD
OPP.CENTRAL BANK OF INDIA
BASAVANAGUDI
BANGALORE-560004.**

*(Complainant's name amended vide
order dated 11/07/2023)*

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

V/S

RESPONDENT.....

**MANTRI DEVELOPERS PRIVATE LTD
MANTRI HOUSE
NO.41, VITTAL MALLA 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 situated at No.1, Sampige Road, Malleshwaram, Bengaluru for the relief of Refund with interest and compensation for mental agony.



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2. This project is registered under RERA bearing registration No.PRM/KA/RERA/1251/309/PR/171016/000485 valid till 01/07/2021. The Authority gave Covid extension for 9 months i.e. valid till 01/04/2022.

Brief facts of the complaint are as under:-

3. In May 2016, the complainant was lured into purchase/investment for a flat in the project of the respondent under the buyback scheme for a total sale consideration of Rs.5,72,82,100/- (Rupees Five Crore Seventy Two Lakh Eighty Two Thousand and One Hundred only) and paid initial booking amount of Rs.4,74,565/- (Rupees Four Lakh Seventy Four Thousand Five Hundred and Sixty Five only) and subsequently an amount of Rs.59,39,170/- (Rupees Fifty Nine Lakh Thirty Nine Thousand One Hundred and Seventy only) in all Rs.64,14,275/- to the respondent. On 30/6/2016 the ICICI Bank entered into Tripartite Agreement with the Complainant and Respondent for Housing Loan of Rs.4,65,00,000/- (Rupees Four Crore Sixty Five Lakh only) (out of which Rs.3,75,00,000/- has been disbursed to the respondent) and that the complainant (i.e. investor) has to pay PEMIs and the respondent has undertaken to reimburse the same to the complainant on an agreed time every month which shall be prior to the date the pre-EMI becomes due. The agreement of construction was executed by the respondent on 2/7/2016. According to the agreement for sale, the respondent was supposed to handover the possession of the flat within 36 months from the date of entering into sale agreement i.e. by 30/6/2019. But even after three years the respondent has not handed over the apartment to the complainant. The respondent vide his letter dated 22/6/2017 revised the completion and handover date of the apartment to December 2020. The complainant also submits that a legal notice dated 24/12/2021 for breach of agreement was sent to the respondent. In




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their reply dated 7/1/2022 the respondent informed that they are not liable to pay any delay period interest as the delay was due to Covid pandemic, lockdown and force majeure events which were beyond their control. The respondent has also stated that in case the complainant seek for refund of the payments, the complainant has to undergo the process of cancellation of booking and termination of the agreements. Due to this enormous delay, the complainant has undergone financial burden. Thus, the complainant has approached this Authority and prays to direct the respondent to refund the entire amount with interest. Hence, this complaint.

4. 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 appeared for 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 failed to appear before the Authority and hence, has been placed as **ex-parte**.
5. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, Construction agreement, Tripartite Agreement, Payment receipts, Statement of account issued by ICICI Bank for having disbursed housing loan, Ledger account issued by the respondent company for having reimbursed an amount of Rs.40,53,149/- to the complainant, Application for allotment, Copy of letter dated 22/6/2017 from the respondent, Legal Notice dated 24/12/2021, reply of the respondent dated 7/1/2022, paper publication published in Kannada and English daily newspapers dated 8/12/2022 "UDAYAVANI" and "THE HINDU" and memo of calculation as on 28/2/2023.
6. On the other hand, the respondent has not produced any documents on its behalf.



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7. Heard arguments of the complainant side.
8. **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?
9. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following

REASONS

10. **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 local Kannada and English daily newspapers on 8/12/2022. Hence the builder has failed to abide by the terms of agreement for sale and construction agreement. There seems to be no possibility of completing the project or handing over the possession in near future.
11. 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 respect of that apartment if the allottee wishes to

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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".

12. 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.
13. 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.
14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid full 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 28/2/2023 claiming refund with interest of Rs.9,68,70,473/-. The complainant has admitted that the respondent has refunded an amount of Rs.40,53,149/- on various dates (details

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of which are as furnished by the respondent from their Ledger Account is enclosed).

15. Despite several opportunities given to the respondent and notice was published in the local Kannada and English daily newspapers for their personal appearance, the respondent failed to appear before the Authority. This conduct of the respondent clearly goes to show that they have 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 28/2/2023.

16. 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	4,74,565	335	30-04-2017	39200
2	01-06-2016	59,39,710	333	30-04-2017	487707
3	05-07-2016	49,740	299	30-04-2017	3667
4	31-07-2016	4,24,143	273	30-04-2017	28551
5	04-08-2016	3,75,00,000	269	30-04-2017	2487328
6	05-08-2016	2,98,438	268	30-04-2017	19721
7	05-09-2016	6,969	237	30-04-2017	407
8	05-10-2016	9,078	207	30-04-2017	463
9	05-11-2016	2,98,438	176	30-04-2017	12951
10	05-12-2016	9,078	146	30-04-2017	326
11	05-01-2017	9,078	115	30-04-2017	257
12	05-02-2017	9,078	84	30-04-2017	188
13	05-03-2017	9,078	56	30-04-2017	125
14	05-04-2017	9,078	25	30-04-2017	55
		4,50,46,471		TOTAL INTEREST (I1)	30,80,946

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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	4,50,46,471	2129	28-02-2023	8.15	10.15 as on 01-05-2017	26669176
2	05-05-2017	9,078	2125	28-02-2023	8.15	10.15 as on 01-05-2017	5364
3	05-06-2017	5,120	2094	28-02-2023	8.15	10.15 as on 01-06-2017	2981
4	05-12-2017	1,65,700	1911	28-02-2023	8.1	10.1 as on 01-12-2017	87621
5	05-01-2018	2,68,750	1880	28-02-2023	8.1	10.1 as on 01-01-2018	139808
6	05-02-2018	2,68,750	1849	28-02-2023	8.1	10.1 as on 01-02-2018	137503
7	05-03-2018	2,68,750	1821	28-02-2023	8.35	10.35 as on 01-03-2018	138773
8	05-04-2018	2,68,750	1790	28-02-2023	8.35	10.35 as on 01-04-2018	136410
9	05-05-2018	2,68,750	1760	28-02-2023	8.35	10.35 as on 01-05-2018	134124
10	05-06-2018	2,69,584	1729	28-02-2023	8.45	10.45 as on 01-06-2018	133448
11	05-07-2018	2,75,000	1699	28-02-2023	8.45	10.45 as on 01-07-2018	133767
12	05-08-2018	2,75,000	1668	28-02-2023	8.45	10.45 as on 01-08-2018	131326
13	05-09-2018	2,75,000	1637	28-02-2023	8.65	10.65 as on 01-09-2018	131352
14	05-10-2018	2,75,000	1607	28-02-2023	8.7	10.7 as on 01-10-2018	129550
15	05-11-2018	2,75,000	1576	28-02-2023	8.7	10.7 as on 01-11-2018	127051
16	05-12-2018	2,75,000	1546	28-02-2023	8.7	10.7 as on 01-11-2018	124633
17	05-01-2019	2,75,000	1515	28-02-2023	8.75	10.75 as on 10-12-2018	122704
18	05-02-2019	2,75,000	1484	28-02-2023	8.75	10.75 as on 10-01-2019	120193
19	05-03-2019	2,75,000	1456	28-02-2023	8.75	10.75 as on 10-02-2019	117926
20	05-04-2019	2,75,000	1425	28-02-2023	8.75	10.75 as on 10-03-2019	115415
21	05-05-2019	2,75,000	1395	28-02-2023	8.7	10.7 as on 10-04-2019	112459

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22	05-06-2019	2,76,459	1364	28-02-2023	8.65	10.65 as on 10-05-2019	110027
23	05-07-2019	2,85,938	1334	28-02-2023	8.65	10.65 as on 10-06-2019	111297
24	05-08-2019	2,85,938	1303	28-02-2023	8.6	10.6 as on 10-07-2019	108200
25	05-09-2019	2,85,938	1272	28-02-2023	8.45	10.45 as on 10-08-2019	104131
26	05-10-2019	2,85,938	1242	28-02-2023	8.35	10.35 as on 10-09-2019	100702
27	05-11-2019	2,85,938	1211	28-02-2023	8.25	10.25 as on 10-10-2019	97240
28	05-12-2019	2,85,938	1181	28-02-2023	8.2	10.2 as on 10-11-2019	94368
29	05-01-2020	2,85,938	1150	28-02-2023	8.2	10.2 as on 10-12-2019	91891
30	05-02-2020	2,85,938	1119	28-02-2023	8.2	10.2 as on 10-01-2020	89414
31	05-03-2020	2,85,938	1090	28-02-2023	8.15	10.15 as on 10-02-2020	86670
32	05-04-2020	2,85,938	1059	28-02-2023	8.05	10.05 as on 10-03-2020	83375
33	05-05-2020	2,85,938	1029	28-02-2023	7.7	9.7 as on 10-04-2020	78192
34	05-06-2020	2,81,563	998	28-02-2023	7.55	9.55 as on 10-05-2020	73521
35	05-07-2020	2,53,125	968	28-02-2023	7.3	9.3 as on 10-06-2020	62431
36	05-08-2020	2,53,125	937	28-02-2023	7.3	9.3 as on 10-07-2020	60431
37	05-09-2020	2,53,125	906	28-02-2023	7.3	9.3 as on 10-08-2020	58432
38	05-10-2020	2,53,125	876	28-02-2023	7.3	9.3 as on 10-09-2020	56497
39	05-11-2020	2,53,125	845	28-02-2023	7.3	9.3 as on 10-10-2020	54498
40	05-12-2020	2,53,125	815	28-02-2023	7.3	9.3 as on 10-11-2020	52563
41	05-01-2021	2,53,125	784	28-02-2023	7.3	9.3 as on 10-12-2020	50563
42	05-02-2021	2,53,125	753	28-02-2023	7.3	9.3 as on 10-01-2021	48564
43	05-03-2021	2,53,125	725	28-02-2023	7.3	9.3 as on 10-02-2021	46758
44	05-04-2021	2,53,125	694	28-02-2023	7.3	9.3 as on 10-03-2021	44759

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45	05-05-2021	2,53,125	664	28-02-2023	7.3	9.3 as on 10-04-2021	42824
46	05-06-2021	2,51,459	633	28-02-2023	7.3	9.3 as on 15-05-2021	40556
47	05-07-2021	2,40,625	603	28-02-2023	7.3	9.3 as on 15-06-2021	36969
48	05-08-2021	2,40,625	572	28-02-2023	7.3	9.3 as on 15-07-2021	35069
49	05-09-2021	2,40,625	541	28-02-2023	7.3	9.3 as on 15-08-2021	33168
50	05-10-2021	2,40,625	511	28-02-2023	7.3	9.3 as on 15-09-2021	31329
51	05-11-2021	2,40,625	480	28-02-2023	7.3	9.3 as on 15-10-2021	29428
52	05-12-2021	2,40,625	450	28-02-2023	7.3	9.3 as on 15-11-2021	27589
53	05-01-2022	2,40,625	419	28-02-2023	7.3	9.3 as on 15-12-2021	25688
54	05-02-2022	2,40,625	388	28-02-2023	7.3	9.3 as on 15-01-2022	23788
55	05-03-2022	3,51,906	360	28-02-2023	7.3	9.3 as on 15-02-2022	32278
56	05-04-2022	3,32,996	329	28-02-2023	7.3	9.3 as on 15-03-2022	27914
57	05-05-2022	3,32,996	299	28-02-2023	7.4	9.4 as on 15-04-2022	25641
58	05-06-2022	3,32,996	268	28-02-2023	7.5	9.5 as on 15-05-2022	23227
59	05-07-2022	3,32,996	238	28-02-2023	7.7	9.7 as on 15-06-2022	21061
60	05-08-2022	3,32,996	207	28-02-2023	7.8	9.8 as on 15-07-2022	18507
61	05-09-2022	3,32,996	176	28-02-2023	8	10.0 as on 15-08-2022	16056
62	05-10-2022	3,32,996	146	28-02-2023	8	10.0 as on 15-08-2022	13319
63	05-11-2022	3,32,996	115	28-02-2023	8	10.0 as on 15-08-2022	10491
64	05-12-2022	3,32,996	85	28-02-2023	8	10.0 as on 15-08-2022	7754
65	05-01-2023	3,32,996	54	28-02-2023	8	10.0 as on 15-08-2022	4926
66	05-02-2023	3,32,996	23	28-02-2023	8	10.0 as on 15-08-2022	2098
67		6,25,43,739				TOTAL INTEREST (12)	3,12,45,788

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Memo Calculation as on 28/02/2023			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 28-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
6,25,43,739	3,43,26,734	0	9,68,70,473

17. Accordingly, the point raised above is answered in the Affirmative.
18. **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/220408/0009331** is hereby allowed. Respondent is directed to pay a sum of **Rs.9,68,70,473/- (Rupees Nine Crore Sixty Eight Lakh Seventy Thousand Four Hundred and Seventy Three only)** towards refund with interest calculated at 9% from 30/05/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 to 28/02/2023 to the complainant within 60 days from the date of this order. The interest accruing from 01/03/2023 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 the costs.


(Neelmani N Raju)
Member, KRERA