

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 SHRI. H.C. KISHORE CHANDRA, CHAIRMAN

DATED 6TH DAY OF JUNE 2023

COMPLAINT No: CMP/ 201112/0007052

COMPLAINANTS....

KAMNA MALHOTRA &
GAUTAM MALHOTRA
NO: 24, MALHOTRA NIVAS
YADAVA COLLEGE ROAD
MADHAVANAGAR
BENGALURU-560001.

(By SRI. SUNDARASWAMY AND
RAMDAS, ADVOCATES)

V/S

RESPONDENT.....

1. M/s MANTRI CASTLES PRIVATE
LIMITED
MANTRI HOUSE, #41, VITTAL
MALLYA ROAD
BENGALURU URBAN-560036

(By Sri. E. Suhail Ahmed, Advocate)

2. PNB HOUSING FINANCE LIMITED
9TH FLOOR, ANTRIKSH BHAVAN
22, KASTURBA GANDHI MARG
NEW DELHI-110001
BRANCH OFFICE AT:
56, SAI ARCADE, 3RD FLOOR
MARATHAHALLI RING ROAD
DEVARABISANAHALLI
BENGALURU-560103.

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA against the project **"MANTRI SERENITY-3** developed by **" M/s MANTRI CASTLES PRIVATE LIMITED "** for the relief of refund with interest.
2. This project is registered in RERA bearing registration No. PRM/KA/RERA/1251/310/PR/171016/000500.
3. The respondent-promoter has developed this project in the limits of Kanakapura Road, 1.7 KMs from Metro Cash & Carry, Bengaluru South, Bengaluru Urban.
4. The gist of the complaint is that the complainants have entered into an agreement for sale and construction agreement both dated 29/09/2015 to buy and get constructed residential apartment bearing no.G-1104 on the 11th Floor of Wing "G" in the project "MANTRI SERENITY BLOCK-3" of the respondent, under the "assured return and pre-EMI Scheme. As per the agreement of sale of undivided share of land, the total land cost is Rs.39,05,200/- and cost of construction is Rs.27,96,000/- altogether the total basic cost is Rs.67,01,200/- excluding other charges, statutory deposits, stamp duty and registration fees. As per the memo of calculation furnished by the complainants on 17.1.2023, an amount of Rs.33,11,772/- has been paid to the respondent on various dates which has been duly acknowledged by the respondent. The respondent was required to hand over the possession of the apartment to the complainants within 31/10/2018. However, the respondent intimated to the complainant vide letter dated

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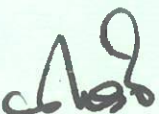
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22/6/2017 that they have extended the date of delivery till end of June 2020 against earlier committed date of 31/8/2018. As per the said scheme, complainants may exit from the project within 3 years from the date of agreement i.e. 29.9.2018 with 6 months prior notice. The complainants vide letter dated 18/12/2017 informed their intention to surrender the apartment and to avail benefits of the scheme. The complainants have availed a loan from proposed respondent no.2, as it was the empaneled lenders for the project. The sanctioned amount was Rs.63,40,000/- out of which Rs.48,66,857/- (Rs. Forty Six lakhs forty thousand eight hundred and fifty seven only) was disbursed to respondent no.1 towards the construction. Respondent no.1 was responsible to pay the pre-EMI interest for a period of 36 months. Complainants have paid pre-EMI interest towards loan to PNB Housing Finance Limited. Even though complainants opted to surrender the apartment as per the scheme, respondent has not honoured its commitment and have failed to buy back the apartment and pay complainants the assured benefits as per the scheme. Hence, this complaint.

5. As per the agreement submitted by the complainants, it is seen that the completion date is agreed as 31.10.2018. The promoter-respondent was required to complete the project and hand over possession of the apartment by 31.10.2018. Since the respondent-promoter has failed to complete or unable to hand over the possession of the apartment to the allottees, even after K-RERA Act and Rules came into existence, this complaint is admissible for relief in accordance with Section 18 of the Act.

6. After registration of the complaint, in pursuance of the notice, the respondent has appeared before this Authority through his counsel and filed statement of objections as under:

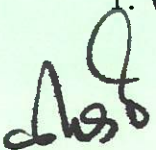


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7. The respondent has denied all the allegations made by the complainants as false. As per Clause 6.1 of the construction agreement, the respondent had promised to hand over possession of the apartment bearing no. G-1104 to the complainants on 31.10.2018. This is subject to receiving the occupancy certificate from competent authorities and subject to receipt of payments and the limitations as set out in Clause 6.4 of the said agreement. The respondent has sought to explain the delay by referring to several issues such as continuous rainfall and flooding in the project site during monsoon season, legal issues, licenses issues, due to demonetization, shortage of construction materials and skilled work force, due to COVID-19 pandemic and consequent lockdown led to inevitable delay and hurdles in the progression and completion of the project.
8. In support of his claim, the complainants have produced documents such as (1) copy of agreement for construction and sale dated 29.9.2015 (2) copy of legal notice dated 8.9.2020 (3) copy of letter dated 22.6.2017 issued by Mantri Castles Private Limited (4) copy of letter dated 5.10.2016 by PNB Housing Finance Limited (5) copy of email communications (6) copy of letter dated 18.12.2017 to Mantri Castles Private Limited.
9. On the other hand, the respondent has not produced any documents except statement of objections dated 11.7.2021.
10. Heard arguments of both the sides. This matter was heard on 1/7/2022, 11/7/2022, 15/7/2022, 25/11/2022, 16/12/2022, 18/1/2023.
11. On the above averments, the following points would arise for my consideration:-
1. Whether the complainants are entitled for the relief claimed?



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2. What order?

12. Findings to the above points are as under:-

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

FINDINGS

13. Findings to point No.1:- The grievance of the complainants is that the complainants have entered into an agreement for sale and construction agreement both dated 29/09/2015 to buy and get constructed residential apartment bearing no.G-1104 on the 11th Floor of Wing "G" in the project "MANTRI SERENITY BLOCK-3" of the respondent, under the "assured return and pre-EMI Scheme. As per Clause 6.1 of the construction agreement, the respondent had promised to hand over possession of the apartment bearing no. G-1104 to the complainants on 31.10.2018. As per the said scheme, complainants may exit from the project within 3 years from the date of agreement i.e. 29/9/2018 with 6 months prior notice. The complainants vide letter dated 18/12/2017 informed their intention to surrender the apartment and to avail benefits of the scheme. Even though complainants opted to surrender the apartment as per the scheme, respondent has not honoured its commitment and has failed to buy back the apartment and pay the assured benefits as per the scheme. Complainants have paid pre-EMI interest towards loan to PNB Housing Finance Limited.

14. The same is resisted by the respondent on the ground that the complainants are seeking recovery of amount in terms of "Pre-EMI/Buy Back Scheme/assured return scheme" and the same establishes that the complainants are not as much the end user or the consumer of an allottee. As much as he is an investor and therefore, the understanding between the respondent and the complainants herein was only a commercial contract for investment. Hence, this is not coming under the purview of



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the Act. The complainants have admitted that they have opted for the buy back and as established herein above, they sought for return of their investment on 17.9.2016. Thus, the intention of the complainants are very clear that they have declared themselves to be an investor but not an allottee. The complainants have not claimed any right under the terms of any other contract viz., agreement for sale of undivided interest or agreement for construction. But have only maintained their claim under the Pre-EMI/Buy-back scheme. Thus, the pre-EMI/Buy-back scheme being an absolute contract between the parties. Under the Pre-EMI/Buy back scheme, the remaining amount of the sale consideration towards the apartment unit would be paid through loan approved by PNBHFL. For which, the EMIs was to be reimbursed to the complainants by the respondent. The remaining amount of sale consideration towards the apartment would be paid through loans approved by the PNBHFL for which the EMIs was to be reimbursed to the complainants by the respondent itself. This responsibility has fulfilled by the respondent towards reimbursement of EMI upto the month January 2021 and accordingly, he has already paid a total sum of Rs.15,53,083/- to the complainants. This makes it very clear that the complainant in no way became an allottee as they have not even agreed to make complete payments towards the purchase of the said apartment.

15. During the proceedings held on 18/1/2023, the advocate for complainant has filed a memo of calculation seeking for the relief of refund with interest. A copy of the same was served on respondent's advocate.

16. On perusal of the entire documents filed and oral submissions made before the Authority, it is evident that the complainant had paid substantial sale consideration and admittedly there is considerable delay in handing over the apartment as per the agreement. In the statement of objections, the respondent has sought for to explain the delay by referring to several issues which are nothing but routine requirements of compliances and construction related issues which are required to be handled by the promoter of any project



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who has undertaken to develop the real estate project. None of the reasons submitted by the respondent has any force and legal validity to justify the delay in completion of the project and provide any exception from the application of Section 18 of the Act.

17. Though the respondent has taken contention that the complainants are not allottees as they have paid money under buy-back scheme, the respondent has executed agreement of sale and construction agreement both dated 29/9/2015 in favour of the complainants to purchase the said apartment in his project. Therefore, the complainants have become allottees who had paid advance amounts for purchase of the said apartment.

18. At this juncture, my attention is drawn towards the decision of 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.*

AG

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19. 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 /plot in accordance with sale agreement.

20. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021 (arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, it is held as under:

"Section-18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund or the amount with interest at such rate as may be prescribed in this behalf"

21. As regards monetary compensation of Rs.10,00,000/- claimed by the allottees towards mental agony, strain and stress because of the respondent's breach, unfair trade practice, deficiency in services, such relief are not coming under the purview of this Authority. For this, complainants are at liberty to file a fresh complaint before the Adjudicating Officer who is empowered to adjudge the compensation of rent under the provisions of the Act.

22. From the averments made in the complaint, it is obvious that the complainants have paid the substantial sale consideration and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the complainants. The complainants have claimed an amount of Rs.52,71,072/-. The respondent-promoter has not submitted any memo of calculation on his behalf.

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

Memo Calculation submitted by the complainant as on 17/1/2023

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 17/01/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
33,11,772	19,59,300	0	52,71,072

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

24. Findings to point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I 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/201112/0007052** is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs. **52,71,072/-** (Rupees Fifty two lakhs seventy one thousand seventy two only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the rate of 9% from 29/09/2015 to 30.4.2017. Further, at the rate SBI MCLR + 2% from 1.5.2017 till the date of realization.
2. 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.




(H.C. Kishore Chandra)

Chairman
K-RERA

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(Signature)

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