

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/181215/0001761

PRESIDED BY: Sri K. PALAKSHAPPA

Adjudicating Officer

Date: 02nd APRIL 2019

Complainant : RADHA KRISHNAN. P.
 Flat No. 1106, ELM Block,
 Prestige Sunnyside,
 Kadubeesanahalli,
 Bengaluru -560103.

AND

Opponent : Mantri Castles Pvt Ltd
 Mantri Serenity 4,
 Mantri House, No. 41,
 Vittal Mallya Road,
 Bengaluru - 560001.

J U D G E M E N T

1. The complainant P. Radha Krishnan has filed this complaint under Section 31 of RERA Act against the project "MANTRI SERENTIY 4" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no. CMP/181215/0001761. The facts of the complaint is as follows:

On 21/03/2013 I, Radhakrishnan Pattathil, residing at Flat No 1106, Prestige Sunnyside, ELM Block, Kadubeesanahalli, Bangalore - 560103 had booked a 3 BHK (Bedroom, Hall, Kitchen) flat in the I Block with Flat No I2801 measuring 1835 square feet built up area at

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Mantri Serenity, Doddakallasandra, Kanakapura Road, Bangalore - 560061. Mantri Serenity is a project of residential apartment complex to be constructed by Mantri Castles Pvt Ltd., with Office at Mantri House, No 41, Vittal Mallya Road, Bangalore - 560001 (Mantri Castles Pvt Ltd is a Group Company of M/s. Mantri Developers Pvt. Ltd.) hereinafter called as the Builder The Builder had offered the total cost of the Flat at Rs.1,34,99,979/- (Rupees One Crore Thirty Four Lakh Ninty Nine Thousand, Nine Hundred and Seventy Nine Only). As the project was approved by the ICICI Bank Ltd. I borrowed loan from ICICI Bank by executing a Tripartite Agreement on 26/03/2013 signed by Mantri Castles, ICICI Bank and me. The Construction Agreement and Agreement of Sale were also executed by Mantri Castles on 26/03/2013). On the date of executing the Construction Agreement and Agreement of Sale, The Builder had committed the date of completion of the Flat No I2801 and handover by 31/12/2015. Mantri Castles failed to complete the Project as per the committed date. On 22/06/2017, that is after one and half years of committed date of completion, an email was sent by the builder to me to inform that Mantri Castles could not complete the project as per their committed date and sought time to complete the project and intimated a new date for completion of the Project as 30/07/2019. Details of the Flat Cost and Payments are given below: Total Amount Paid to Mantri Castles Rs.1,23,96,000/- (92% paid in 2013) (Balance 8 % kept aside towards Registration Charges at the time of Registration of the Flat). In effect full amount for the Flat was paid to the Builder at the time of registration itself. I borrowed a Home Loan of Rs.1,00,96,000/- (Rupees One Crore Ninty Six Thousand only) and the Loan was disbursed by ICICI Bank directly to the Builder, Mantri Castles Pvt Ltd. by virtue of the aforesaid Tripartite Agreement. The following are the payments made towards the Flat in 2013. Owner Payments : Total Rs.23,00,000/- (On 21/03/2013 paid Rs.5,00,000/-, On 21/03/2013 paid Rs.11,798/- towards franking charges, On

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12/04/2013 paid Rs.10,00,000/- and On 30/07/2013 paid Rs.8,00,000/-) ICICI Bank Loan Payments : Total Rs.1,00,96,000/- (On 30/03/2013 paid Rs.93,00,000/- and On 13/09/2013 paid Rs.7,96,000/-) Total Rs.1,23,96,000/- (92%) TERMS OF OFFER BY THE BUILDER The project was on EMI payback by Mantri and on 11/10/2014, I received an email from Mantri stating that pre-EMI starts from November 2014 and end would end in October 2017. Delayed pre-EMI payouts. I had to pay interest to the ICICI bank by the 10th of every month. But I received pre-EMI delayed payments from Mantri to the extent of delay of several months, and the last payment was 12 months delayed, that too

Relief Sought from RERA: REFUND OF INVESTED MONEY, EMIs PAID AND INTEREST

2. In pursuance of the notice issued by the authority On 11/01/2019 the parties have appeared. The developer filed objections statement. This complaint was filed by the complainant seeking relief of refund with interest. According to complainant, total amount of consideration. Whereas the complainant has paid 1,23,96,000. In this regard he has borrowed 1,00,96,000/-. This amount totally comes to 92% of the sale consideration. The agreement was signed on 26/03/2013 and date of completion was shown as 31/12/2015. Now the developer has given completion date to this authority as 30/07/2019. Further the developer has not paid EMI regularly. Therefore the complaint being aggrieved by the same has filed this complaint seeking the above said relief. The developer has filed Written Statement which states as follows:

"Para 20: Without prejudice to the above, assuming but not conceding, if at all complainant can claim any amount as compensation, the same would have to be in

accordance with the construction Agreement only, on account of any willful delay in delivery of Apartment, subject to exception carved out in the said construction Agreement. It is submitted that there is no willful delay on the part of the Respondent and the respondent has acted in a bonafide manner and taken all steps necessary in completion of the construction. Hence, there is no willful delay and as a result, the respondent is not liable to refund of invested money. Further this respondent has reimbursed all the pre-emi to the complainant for 55 months i.e., over and above the agreed period of 36 months. At this juncture the complainant cannot seek for refund of the invested money,

Para 21 : it is submitted that inspite of the above bonafide reasons, if the complainant is not ready to retain the apartment and insists for refund, then the complainant has to refund all the pre-emi already reimbursed to the tune of Rs. 46,07,093/- along with interest at the rate of interest of 18% per annum and also the cancellation charges as per agreement for sale and agreement for construction . without prejudice to the contention that there is no willful delay in completion, it is further submitted that the said delay is on account of reasons beyond the control of the respondent and on account of factors which constitute the events of Force Majeure and as such complainant is not entitled to seek refund of invested money, pre EMIs and interest.

Para 22 : however, without prejudice to the above, assuming but not conceding, I state that if at all the complainant is entitled for any compensation, the same can only be as per agreement of construction in case of cancellation/Termination of the agreement, the complainant shall make a written request for the

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cancellation along with the no objection for re- sale of the apartment in the market by the developer/respondent . The respondent shall refund the amount paid by the complainant as per the terms and conditions under the Agreement for sale and Agreement of construction. However, if at all the complainant is entitled for any compensation then it is to be calculated from the date of hand over of possession as per RERA i.e., from 29th Jan 2020. The above statement, in any manner, cannot be considered as admission on our part to agree to make any payment to the complainant but the same has been offered by the respondent to the complainant as a good gesture to maintain a harmonious relationship.

3. I would like to say that the submission made by the Advocate for the developer has no force since there are some documents to prove the relationship with the complainant.

4. In order to attract the customer, the developer uses number of ways by giving advertisement. In the same way the present case stands by attracting the scheme released by the developer for which the complainant has entered in to agreement with the developer. By reading the clauses of the agreement all the terms and conditions are giving the status of complainant as purchaser and respondent as developer. The document called as TERMS AND CONDITIONS wherein the parties have agreed for certain conditions.

I have taken two important conditions which are as under:

- a. The Pre- Emi will be paid to the client on monthly basis on the following month of the last

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month when full payment of the apartment is received.

- b. Mantri developers will bear the pre-emi from the date of realisation of your payment till 36 months from the date of Commencement of Construction of said Block.

5. The above two conditions clearly proves the relationship of Developer and Customer and indirectly proves the case of the complainant. In view of the same I have no any hesitation to say that the argument of the developer has no force. The developer cannot blow hot and cold at the same time. In view of the above discussion his objection losses its importance.

6. I find no good reasons to dismiss the complaint holding that this authority has no jurisdiction. The parties are bound by the agreement and its clauses shall be respected. The contention taken by the developer is also taken in to consideration. The ^{Complainant} developer has given the details of this payment which reads as under:

- a) Statement your of Account and Repayment Schedule attached for your ready referral.
- b) Total loan amount disbursed: Rs. 10,096,000.00
- c) Payment made towards Principal: Rs. 132,891.00
- d) Principal Outstanding: Rs. 9,963,109.00
- e) Outstanding EMIs: Rs. 275,297.00
- f) Total Receivables as on date: Rs. 10,268,315.00
- g) Pre-EMIs paid for the period November 2017 to November 2018: Rs. 898,254.00

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7. The relationship is proved, the payment is proved and the delay is also proved. The complainant has booked the flat No. 12801 on 21/03/2013. He has paid Rs. 1,23,96,000/ in the year 2013 itself which is 92% of the total consideration. He submits that the scheme is EMI scheme where the developer has agreed to pay Pre-EMI starts from November 2014 till October 2017. It is also his case that he had to pay interest to the ICICI bank by the 10th of every month since the developer has paid the EMI with delay. These are the main reasons on the part of the complainant to go away from the project. The contractual obligation between the parties shall be honoured. Any technical issue shall not come in the way while granting the relief.

8. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the Complaint was presented on 15/12/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 11/01/2019. Hence, there is little delay in closing the complaint. With this observation I proceed to pass the order.

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ORDER

1. The Complaint No. CMP/181215/0001761 is allowed.

- a) The developer is hereby directed to return the own contribution amount Rs.23,00,000/- to the complainant with interest @ 9%P.A on the respect to payment made on the respective date prior to 01/05/2017 and also directed to pay the interest @10.75%P.A from 01/05/2017 till the full amount is repaid.
- b) The developer is hereby directed to pay Rs.8,98,254/- which is the amount paid by the complainant towards EMI from November 2017 to December 2018 with interest @10.75%P.A.
- c) The developer is hereby directed to pay Rs.1,32,891/-/- which is the amount paid by the complainant towards principal loan amount in the month of 2017 with interest @10.75%P.A. *Developer.*
- d) The complainant is hereby directed to discharge the bank loan amount with its outstanding EMI with interest if any.
- e) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
- f) The developer is directed to pay Rs. 5,000/- as cost towards this petition.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 02/04/2019)

(K.PALAKSHAPPA)
Adjudicating Officer