

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority, Bengaluru
ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K PALAKSHAPPA
Adjudicating Officer
Date: 4th February 2020

<u>Complaint No.</u>	<u>CMP/190624/0002272</u>
Complainant	Immanuel John Nicholas Iyadu Rai G3, Sara Residency, 2 nd Cross Lakshmi Road, Shantinagar Bengaluru-560027 Rep.by: Shri. M.Mohan Kumar Advocate
Opponent	1. MANTRI WEBCITY 3A MANTRI DEVELOPERS PVT. LTD, #41, Mantri House,Vittal Mallya Road, Bengaluru - 560001. Rep.by: Shri. Sunil P Prasad Advocate 2. Sushil Pandurang Mantri 3. Pratik Sushil Mantri Address is above as stated to respondent No.1 (R2 and R3 remained absent)

Devi
04/02/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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J U D G E M E N T

1. Immanuel John Nicholas Iyadurai has filed this complaint under Section 31 of RERA Act against the project "MANTRI WEBCITY 3A" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no. CMP/190624/0002272. The facts of the complaint is as follows:

We have booked our flat in ?Mantri Webcity- P3B? Project on 25.03.2014 for the Apartment No: N-121 in Tower N for a total consideration of Rs.98,05,121.68/- including all taxes and amenities charges. Out of the said Sale Consideration, we have paid a sum of Rs. 23,73,209.85/- . We state that the promoter got arranged for loan from PNBHFL to an extent of Rs. 74,90,000.00/- and out the same a sum of Rs.73,90,000.00/- was disbursed to the builder / Promoter, as such we have totally paid a sum of Rs. 97,63,209.85 /-. As per our Sale Agreement and Construction Agreement with M/s. Mantri Developers Private Ltd., the completion date was fixed on 31/08/2016. We state that we are currently paying EMI to PNBHFL of Rs. 68,181.00 /-. We state that since the Promoter failed to complete the project on time and deliver possession on time, we are suffering financially by paying a loan instalment, without any Income Tax benefit. We further state that had the possession been handed over to us, we would have saved on the rental money of Rs. 31200/- which we are currently paying. We have taken hand loan and arranged for funds to pay the Promoter/builder as initial payment / advance amount. We state that we are entitled to an interest @ 12% per annum for the delayed period for all our money paid to them. We state that we are badly treated by the Promoter causing immense mental pain and agony. We state that the Promoter has indulged in unfair trade practice and enriched themselves at our cost. Due to the delay in completion and handing over of the Apartment, we are put into immense mental pain and agony as such entitled for compensation and damages as per various provisions of RERA Act. We state that due this our savings and earnings on our savings have been completely wiped off, as such the promoters are liable to make good for the said losses. We request to file detailed claim statement and additional documents during the course of hearing. Hence for the brief facts mentioned above we are seeking for following Reliefs :- 1. Direct the Promoter to complete the construction at the earliest and handover the flat along with O.C. 2. Direct the promoter to pay the delayed compensation interest at the rate of 12% per annum on our contribution of the Sale Consideration paid that is Rs. 23,73,209.85/- till handing over of the Apartment. 3. Direct the Promoter to pay a sum of Rs.7,37,151 /- which is pending 12 PRE-EMI instalments and pay future PRE-EMI until possession along with interest on the said non reimbursed Pre-Emi at the rate of 12% per annum from the date of payment of said PRE-EMI. 4. Direct to reimburse the entire rent paid for the delayed period commencing from 31/08/2016 which is Rs. 9,59,503.00 , which we would had saved had the possession being handed over to us as per the agreement. 5. Compensation for the Mental Agony and pain and Damages to an extent of Rs.5,00,000/- 6. Compensation for unfair Trade practice to an Extent of Rs.3,00,000/- 7. Loss of Income Tax benefits because of delay in construction. We are not able to take income tax benefit as construction delay is not allowing to start claiming EMI as per Income Tax Act and Rules 8. Cost of litigation and expense to an Extent of

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Rs.50,000/-. We kindly request RERA to look at our case with compassion and allow our complaint. Regards Immanuel Nicholas lyadurai & Daphne Henrietta

Relief Sought from RERA :Handing of Apt, refund PreEMI & as prayed in facts

2. In pursuance of the notice issued by the authority, the parties have appeared on 21/08/2019. The complaint is filed for delay compensation.
3. In pursuance of the notice issued by this authority, the complainant has appeared through his counsel Sri M.Mohan Kumar and the respondent has appeared through his counsel Sri Sunil P.Prasad.
4. After filing the objections, I have heard the arguments.
5. The point that arise for my consideration is:
 1. Whether the complainant is entitled for the Delay compensation?
If so, what is the order?
 2. My answer to the above points are affirmative for the following

REASONS

6. Sri. Sunil P Prasad advocate representing the developer submits that as per section 18, the allottee to whom the developer has failed to deliver the possession of the flat, plot or building as the case may as agreed failed to deliver or failed to complete the project then only the consumer could claim the relief. In this regard complainant has said that he has entered into agreement with the developer on 01/04/2014 and paid a total amount of Rs.23,73,209.85/-. According to the agreement the developer has agreed to complete the project on or before 31/08/2016. It is his grievance that till today the project is not completed.

Per
04/02/2020

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7. The developer has filed his detailed objections with respect to claim made by the complainant. He admitted the delay in completion of the project, but it is his submission that he was prevented from so many excuses. He has said in his para-19 of the objection statement stating that he has faced problem at the time of excavation, demonitisation of currency, curb on illegal sand mining mafia, strike regarding the Kaveri water dispute etc., I would say that the developer could claim the excuses only if he was prevented from any natural calamity and as such by above reasons given by the developer to excuse his delay cannot be accepted.
8. I would say that the above reasons given by the developer cannot be terms as force majeure and as such the question of giving relief to the developer does not arise. As per Sec.18 the developer was expected to complete the project within the due date as mentioned in the agreement of sale. The contention taken by the developer that he has given a different date to the authority while registering the project could be considered as deadline and as such there is no delay will fall on the ground. The stand taken by the developer that he has given the completion date to authority has not yet completed and therefore the present complaint be treated as premature holds no water. He cannot take shelter under section 4(2)(l)(d) of the Act which is given only to the developer for completion of his project. So far as determination of completion or non completion of a project for the purpose of grant of compensation is concerned the date mentioned in the agreement will have the importance. Therefore, the date given in the agreement 31/08/2016 will have to be taken into consideration.

[Handwritten signature]
08/02/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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9. I would say that Hon'ble Apex court has held in Pioneer case that a consumer shall not be made to wait indefinitely. In this case, though the developer has contended so many things but he has not stated that he has taken the occupancy certificate. Unless there is an occupancy certificate the question of completion does not arise. Therefore, now four years already has been completed from the due date as mentioned in the agreement of sale and till today it is not the case of the developer that he has completed the project by obtaining the occupancy certificate. Therefore, I would say that the developer cannot escape from the liability to pay the delay compensation.
10. 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 26/11/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 21/08/2019. Hence, there is little delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

The Complaint No. CMP/190624/0002272 is allowed.

- a) The developer is hereby directed to pay delay compensation @ 9% p.a on the total amount pay as on September 2016 till 30/04/2017. Further the developer is directed to delay compensation in the form of interest @ 2% above MCLR of SBI on the total amount paid commencing from 01/05/2017 till the possession is delivered by obtaining the occupancy certificate with all amenities.
- b) The developer shall pay Rs.5,000/- as cost of this petition.
Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on
05/02/2020)

(K. PALAKSHAPPA)
Adjudicating Officer

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