

**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**

**Complaint No. CMP/181128/0001683**

**Date: 22<sup>nd</sup> March 2019**

Complainant : SURESH A U  
1981, Floor, 4<sup>th</sup> C Main Road  
3<sup>rd</sup> Block 3<sup>rd</sup> Stage, Basveshvarnagar,  
Bengaluru- 560076

AND

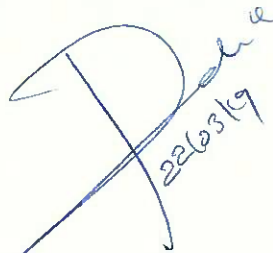
Opponent : MANTRI WEBCITY 2A  
MANTRI DEVELOPERS PVT. LTD,  
No.41 Mantr House,Vittal Mallya Road,  
Bengaluru - 560001.

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**J U D G E M E N T**

1. Mr SURESH A U has filed this complaint under Section 31 of RERA Act against the project "MANTRI WEBCITY 2A" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no. CMP/181128/0001683. The facts of the complaint is as follows:

*"1. Pre- EMI scheme was launched by MDPL (Mantri Developers Pvt Ltd) for Webcity Project in 2014 as per terms below: a. Buyer to pay 20% of the cost and remaining 80% amount as loan, was arranged by MDPL to be taken ONLY through Punjab National Bank Housing Finance Ltd. b. MDPL had assured return of 100% of the own contribution made by the buyer by March 2017 end in case buyer was not interested in retaining the Apartment & give it as Buy Back with a 6 month Prior Notice. c. The Buyer to pay EMI to PNBHFL & in turn , Mantri would Pay back Buyer on monthly basis & MDPL to bear ALL Pre-EMI*



& all other charges. 2. Accordingly , 20 % of the payment was paid by me on 16th August 2014 amounting to Rs. 16,47,692 & was Alloted Apartment G 307 3. PNBHFL sanctioned & Disbursed AT ONCE the full amount of Rs. 62,32,000 on August 27, 2014 by which MDPL received Rs. 78,79,692 in advance EVEN BEFORE starting any construction of the apartment.

Relief Sought from RERA: Rs 1,20,04,698”

2. In pursuance of the notice issued by the authority, the parties appeared on 14/12/2018. The complaint is filed for refund of the amount. The complainant has sought for refund of his amount with agreed 2X amount. The complainant has said at the time of argument that he has paid Rs. 16,47,692/- from his pocket and the developer has raised the loan in the name of complainant of Rs. 61,73,497/- for which he has filed this complaint.
3. 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 be as agreed failed to deliver or failed to complete the project then only the consumer could claim the relief. But in this case the complainant is seeking the double amount by asking the developer to purchase his flat means the complainant becomes the seller and developer becomes the purchaser.
4. In view of the same it is his argument that Section 18 cannot be invoked to seek this kind of relief. He also read the Section 12 & 71 before me and submits that there is no violation of either Section 12 or 14. When that being the case the complainant cannot file this complaint before the Adjudicating Officer. He also submits that the claim made by the complainant is out of jurisdiction of this authority and he requested the Authority to direct the complaint to go to civil court.

*Del*  
*22/03/19*

5. I would like to say that the submission made by the Advocate for the developer has no force since his own objection statement accepts the relationship.

6. In para No. 14 of objection statement which reads as under:

*The complainant had paid through from PNBHFL (Punjab National Bank Housing Finance Limited) and the said bank has distribute a sum of Rs. 61,73,497/- (Rupees Sixty One Lakhs Seventy Three Thousand Four Hundred and Ninety Seven Only). A sum of Rs. 53,232/- (Rupees Fifty Three Thousand Two Hundred and Thirty two Only) was to be paid as monthly EMI towards the loan amount borrowed by the complainant to Punjab National Bank Housing Finance Limited.*

From this para the payment made by the complainant is admitted.

7. Further the developer has also contended in para No.32 as under:

*The Complainant has entered in to Assured return/Buy-back Scheme, and therefore the complainant is clearly an investor and not an end use consumer. Be that as it may, it is pertinent to note here that the Complainant in her complaint has only sought for relief as against the Pre-EMI and buy back scheme. This establishes that the Complainant never intended to be a final consumer always wanted to be an investor and get the benefit as per the scheme. Hence, the complainant being an investor and has no jurisdiction to approach this Hon'ble Authority and seek for any relief/s against the Respondent herein. This clearly establishes the oblique motive of the Complainant to harass the Respondent and get the Respondent to the terms.*

*22/03/19*

8. I would say that 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. Mantri developers will bear the Pre- Emi till March 2017.*
- b. Mantri developers will assure return of 100% on the own contribution made by the unit purchasers at the end of March 2017.*

9. 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.

10. 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.

11. It is the case of a complainant that he has made payment as under:

*Done*  
*22/3/17*



1. Own Contribution for Apartment G307 - Rs 16,47,692  
2. 2X Returns by Mar 2017- Rs 16,47,692 3. Interest on 1 & 2 for delay from Apr 17 @ 18% - Rs 10,38,046 (Rs 3295384\*18% ) / 12 \*21 4. Pending Pre EMI (From Feb 2017 to Nov 18) - Rs 10,94,500 5. Interest on delayed Pre EMI s - Rs 3,44, 768 (1094500 \* 18%) = 197010 / 12 months \*21) Total Refundable Amount to me - Rs 57,72,698 PNBHFL Loan amount - Rs 62,32,000 + any other charges Total Due from MDPL - Rs. 1,20, 04,698 B) Home Loan Pre closure charges or any other Bank charges to be paid by MDPL C) Further Interest for any further delay till final day of Payment.

But the complainant cannot claim the interest at the rate of 18% since he is governed by Rule 16.

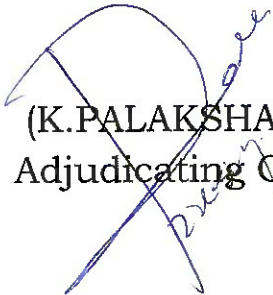
12. AS per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the Complaint was presented on 28/11/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 14/12/2018. Hence, there is some delay in closing the complaint. With this observation I proceed to pass the order.

*D. J. Datta*  
*22/12/18*

### ORDER

1. The Complaint No. CMP/181128/0001683 is allowed.

- a) The developer is hereby directed to return the own contribution amount Rs.16,47,692/-to the complainant with interest @ 10.75% from today.
- b) The developer is hereby directed to return the 2X amount to the complainant.
- c) The developer is hereby directed to discharge the loan raised in the name of the complainant with all its EMI and interest if any.
- d) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
- e) 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 22/03/2019)

  
(K.PALAKSHAPPA)  
Adjudicating Office