

BEFORE ADJUDICATING OFFICER, RERA  
BENGALURU, KARNATAKA

Presided by: Sri K.PALAKSHAPPA

Adjudicating Officer

Complaint No. CMP/181211/0001745

Date: 06<sup>th</sup> June 2019

Complainant : Mrs. Simantini Varma  
No.109, 11<sup>th</sup> Main, Vasantha Nagar,  
Bengaluru -560052.  
Rep. by Sri H.M Sudheer, Advocate

AND

Opponent : Mantri Manyata Lithos,  
Mantri Technology Constellations Pvt. Ltd.,  
Mantra House, No. 41 Vittal Mallya Road,  
Bengaluru Urban – 560001:  
Rep. by Sri G.V Chandrashekar

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J U D G E M E N T

1. Mrs. Simantini Varma, complainant under complaint no. CMP/181211/0001745 has filed this complaint under Section 31 of RERA Act against the project “Mantri Manyata Lithos” developed by Mantri Technology Constellations Pvt. Ltd., as the complainant is the consumer in the said project. The complaint is as follows:

*“1. The Complainants have entered into following two separate Agreement for Sale of undivided interest in the project by name Mantri Manyata Lithos (said Project), situated at Rachenahalli, K R Puram Hobli, Bangalore South Taluk, Bangalore with the Respondent (Developer) and M/s. Manyata Realty (Owner): a. Agreement for Sale*

*[Signature]*  
06/06/19

*Relief Sought from RERA: Handing over possession, interest and penalty”*

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06/06/19

3. Therefore the point that arises for my consideration is

Whether the complaint filed by the complainant deserves to be allowed or not?.

4. My answer is affirmative for the following

REASONS.

5. The parties have entered into agreement in the year 2014. The complainant has paid sufficient amount to the developer towards purchase of flats. It is submitted that construction agreement was executed on 08/04/2015 with respect to flat no. F-703, and also with respect to flat no. F-704. She has paid Rs. 96,66,749/- towards flat no. F-703 and Rs. 96,78,059/- towards flat no. F-704. The date of possession was agreed by the developer is July 2017. The Advocate representing the complainant submits that he has paid totally a sum of Rs. 1,30,10,888.25/- which includes CLP price and interest paid till August 2016. The total amount payable to the developer is Rs. 1,31,55,355/-. It means the complainant has paid more than 90% amount payable to the developer. The complainant has agreed to purchase under Pre-EMI vs regular CLP plan offered by the developer. The complainant has given the terms and conditions of this scheme which is as under:

*"The Complainants and the Respondent have also entered into a MOU dated 18.7.2015, wherein the said Apartment was allotted to the Complainant under Pre-EMI Scheme. Under the said Scheme the Complainant had paid substantial amount and the balance is supposed to be paid at the time of handing over the possession of the said apartment. As per the terms of the MOU it was agreed that the Respondent would pay the first 33 EMI amount. However, the Respondent has defaulted in paying the EMI*

*Done*  
*06/06/19*

regularly hence the Complainant had to pay huge penalties and undergo mental and physical stress. 6. Vide letters dated 22.06.2017 the Respondent has informed that the timeline for completion and handing over the said Apartments is extended to end of December 2018 as against the earlier committed date of July 2017. This communication came as surprise to the Complainants as there was no proper explanation given for the delay apart from the vague reason of unforeseen circumstances which are beyond our control. 7. From the above documents it is clear that the Respondent has failed to complete the project/apartment as per the commitment given to the Complainant under the Agreement of Construction. Further the Respondent has unilaterally extended the time line to hand over the said Apartment to the Complainant from July 2017 to December 2018 which is contrary to the provisions of RERA Act and Rules."

6. The learned counsel for the complainant submits that the developer has failed to complete the project and therefore is liable to pay the delay compensation. But the developer has taken contention as under:

"When the respondent promoted the pre-EMI scheme, people like complainant approached the respondent persuaded and studied the development scheme, sanctioned plan, approvals and other related documents of MANTRI MANYATA LITHOS project and mooted an idea and came forward to invest in flats in the said project with a sole intention to make lucrative profit by way of reimbursement of pre-EMI from the respondent and part ways leaving the respondent into a loss-making venture. Accordingly, the complainant entered into an Agreement of Sale of undivided share of land and also Agreement of Construction executed by the complainant and it was also agreed by the complainant that he would invest the

*Done*  
06/06/19

amount in the Scheme in respect of unit/ apartment bearing number F703 and F704 (hereinafter referred to as 'flats'), Wing F in the project for a sale consideration of Rs. 1,16,28,355/- (One Crore Sixteen Lakhs Twenty Eight Thousand Three Hundred and Fifty Five Only) for F703 and Rs. 1,16,24,705/- (One Crore Sixteen Lakhs Twenty Four Thousand Seven Hundred and Five Only) for F704, excluding other charges, statutory deposits, Tex/es stamp duty and registration fees and as per the Agreement it was agreed upon that the flat F703 and F704 will be delivered as per the agreement timeline Under the Agreements.

As per the pre-EMI Scheme the complainant like complainant were required to contribute or pay 20% of the sale consideration as their own contribution and the remaining amount of 80% were to be paid by availing housing loans from bank/s and to pay the same to the respondent. For which the respondent was required to reimburse to the complainant the monthly pre-EMI paid by the complainant to the bank, which is called as pre-EMI, up to the agreed period as agreed under the pre-EMI scheme MOU.

The complainant has paid through loan from Punjab National bank housing finance Ltd (PNBHFL) and the said bank has disbursed a sum of Rs.79,04,549/- (Rupees Seventy Nine Lakhs Four Thousand Five Hundred and Forty Nine Only) to each of the apartment number F703 and 704 respectively. A sum of Rs.57,731/- to each of the apartment number F703 and F704 respectively (Rupees Fifty Seven Thousand Seven Hundred and Thirty One Only) was to be paid by the complainant as monthly pre-EMI towards the loan amount borrowed by the complainant to PNBHFL to each of the apartment numbers F703 and F704 respectively.

*I state that as per the Pre-EMI Scheme the respondent was to reimburse the Pre-EMI to the Complainant for 33 months. The Respondent has reimbursed the Pre-EMI amount for 33 months to the complainant, amounting to Rs. 20,90,64/- towards Flat no.F-703 and Rs.20,85,289/- towards Flat No. F-704. This Respondent has reimbursed to the complain till date in the form of Pre-EMIs approximately 20% of the total cost of the Flat."*

7. In addition to it the developer has given reason for delay in Para no. 17:

*"It is hereby submitted that the schedule flat could not be delivered on the date as mentioned in the said Construction Agreement due to various reason such as*

- a. Firstly, there was no availability of sand due to strike*
- b sand suppliers and lorry drivers;*
- b. Secondly, the Hon'ble High Court of Karnataka had imposed restrictions on the working hours of construction by the builders. Subsequently, the pace at which construction work should have proceeded declined further adding to delay in handing over possession of the apartments.*
- c. The formulated plan of construction was delayed and also for other reasons such as non-availability of raw materials work force and other Force Majeure events which are beyond the control respondent. As preconstruction Agreement, it is specifically mentioned and agreed up on that the date of delivery of possession with regard to apartment is subjected to payment of all dues by complainant and issuance of the occupancy certificate."*

8. But I am not going to accept his argument because it is already settled that the date mentioned in the agreement is the date of completion of the project. Therefore, the argument cannot be accepted. The complainant has produced a mail stating that the deadline for completion of project would be December 2018 in the place of July 2017, but now in RERA, it is given as July 2019. It further means the delay is accepted. When that being the case the developer shall pay the Delay compensation as per RERA.

9. The learned counsel for the complainants has given citations among them many judgments produced by him are passed by the adjudicating officer. They have been referred by the counsel to say that the date of completion mentioned in the agreement is the date to be considered. There is no quarrel on these aspects. The counsel for the complainant also has referred consumer court decision to say that rate of interest be awarded at the rate of 18 % P.A. But it is not acceptable since RERA Rule 16 prescribes the rate of interest and as such I have discussed in my judgment to that effect. With this observation I proceed to pass following order.

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 filed on 11/12/2018. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties appeared on 11/01/2019. Hence, there is some delay in closing this complaint. With this observation I proceed to pass following order.

*D. Singh*  
06/01/19

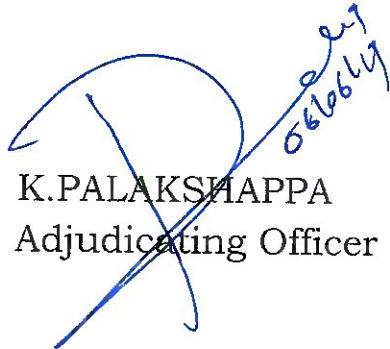
## **ORDER**

The complaints no. CMP/181211/0001745 is allowed.

1. Directing the developer to pay delay compensation at the rate of 10.75% on the total amount paid on flat no. 703 and 704 each commencing from August 2017 till the possession is delivered.
2. Further the developer is directed to pay Rs. 5,000/- as cost to each complainant.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 06/06/2019)

  
K.PALAKSHAPPA  
Adjudicating Officer