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BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/181016/0001457

Date: 27th FEBRUARY 2019

Complainant : RAGHUNANDAN BANGALORE
CHIKKARAMAIAH, #48,
Udayanagar, 1st cross,
Chikkalasandra Bengaluru- 560061

AND

Opponent : MANTRI WEBCITY 2B
MANTRI DEVELOPERS PVT. LTD,
Mantri House #41,
Vittal Mallya Road,
Bengaluru - 560001.

J U D G E M E N T

1. Mr. Raghunandan Bangalore Chikkaramaiah has filed this complaint under Section 31 of RERA Act against the project "MANTRI WEBCITY 2B" developed by M/s MANTRI DEVELOPERS PVT. LTD, bearing Complaint no. CMP/181016/0001457. The facts of the complaint is as follows:

"My Self Raghunandan BC has invested in Mantri Webcity Project at Hennur Road, Bangalore in the intention to having home and the investment was done on Apartment K-706 in Mantri Webcity 2b project under buyback Scheme launched by Mantri Developers Private limited hereinafter referred as Developer (which term, wherever the context

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requires or admits shall mean and include its successors-in-interest, permitted agents and assigns) of the one Part. Developer Sold the flat no K-706 in Mantri Webcity 2b Project under a buyback scheme where the entire 100% of the total cost was upfront released to the developers of which 20% was from my own contribution and the rest 80% was funded from housing loan No: 6660005429 taken from PNBHFL(Punjab National Bank Housing Finance Limited). Even after the 100% payment was done towards the apartment in Sep'14, there was very little progress on the ground for 3 years and hence decided to take back the money as part of the buyback agreement I had with the developer.

Relief Sought from RERA : Payment to be done as per the latest calculations"

2. In pursuance of the notice issued by the authority, the parties have appeared on 18/12/2018. 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. 12,54,620/- from his pocket and the developer has raised the loan in the name of complainant of Rs. 48,53,300/- for which he has filed this complaint.
3. Sri. G. V. Chandrashekar 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.

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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. Further the developer has contended in his written statements admitting the transaction which reads as under:

13. The complainant had paid through loan from PBBHFL (Punjab National Bank Housing Finance Limited) and the said bank has disbursed a sum of Rs.48,53,300/- (Rupees Eight Lakhs Fifty Three Thousand and Three Hundred Only. A sum of Rs.43,373/- (Rupees Forty Three Thousand Hundred and Seventy Three Only) was to be paid as monthly EMI towards the loan amount borrowed by the Complainant to Punjab National Bank Housing Finance Limited.

18. I state that the Buy-Back scheme or the Pre-EMI scheme entered between the Complainant and the Respondent is a contract in itself, where the rights and obligations of the parties are involved. Such being the case, the issue raised by the complainant has to be looked into by competent Civil Court having the jurisdiction. Hence, on this ground alone the complaint deserves to be dismissed since this Hon'ble Authority does not have jurisdiction to entertain this complaint. The complainant is seeking specific performance of an understanding/contract

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where under complainant is the seller and respondent is the buyer, under these circumstances the complainant cannot invoke the provisions of RERA and hence RERA has no jurisdiction. The RERA act does not contemplate the adjudication of obligations when the builder is a buyer, which is the circumstance in this case.

5. 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.

6. 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.

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7. 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.
 8. It is the case of a complainant that he has made payment of Rs.12,54,620/- as his personal contribution which is 20% of the total consideration amount. The bank has released a sum of Rs. 48,53,300/- in the form of home loan which is 80% of the sale consideration. By this way it is the case of the complainant that he has paid a sum of Rs.61,07,920/- towards purchase of flat bearing number kJ 706. This is admitted fact also.
 9. Admittedly it is a buy back scheme. As per the terms of Pre EMI the developer has agreed to return 100% of the amount paid by the complainant. Further in this scheme the developer has agreed to pay 2x amount.
 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 16/10/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 18/12/2018. Hence, there is little delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

1. The Complaint No. CMP/181016/0001457 is allowed.
- The developer is hereby directed to return the own contribution amount Rs.12,54,620/- to the complainant within 30 days from today. If not it will carry interest @ 10.75%P.A from 31st day.
 - The developer is hereby directed to return the 2X amount of Rs.12,54,620/- to the complainant.
 - The developer is hereby directed to discharge the loan raised in the name of the complainant with all its EMI and interest if any.
 - The developer is hereby directed to hand over the necessary documents to the complainant in case he has paid GST to the Government to enable the complainant to take back that amount.
 - The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
 - 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 27/02/2019)


(K.PALAKSHAPPA)
Adjudicating Officer