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BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/181126/0001669

Date: 14 MARCH 2019

Complainant : SAI PRAMOD G N
#1353, 10th, A Main, 6th Cross,
Bengaluru- 560050.

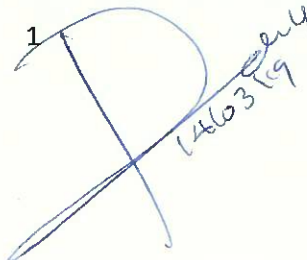
AND

Opponent : MANTRI WEBCITY 3A
MANTRI DEVELOPERS PVT. LTD,
#41, Mantri House, Vittal Mallya Road,
Bengaluru - 560001.

J U D G E M E N T

1. Mr SAI PRAMOD G N 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/181126/0001669. The facts of the complaint is as follows:

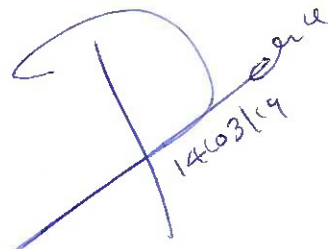
"My Self, Sai Pramod G N and my brother Prashanth G N, hereinafter called the petitioners, invested in Mantri Webcity 3A Project with the intention of buying a home and the investment was on unit X-1501 under buyback Scheme launched by Mantri Developers Private limited hereinafter referred as Developer Developer sold the flat no X-1501 in the project under buyback scheme where 99% of the total cost was released upfront to developers of which 24% was from the petitioners own contribution and the rest 75% was funded from loan No: 00196660005360

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taken from PNBHFL(Punjab National Bank Housing Finance Limited). Even though the payment was done towards the apartment there was not enough progress on the ground for 15 months and hence the petitioners decided to take back money as part of the buyback agreement they had with developer. As per the agreement here are a few points. The Pre-EMI will be paid to the client on monthly basis. Developers assure return of 100% on the own contribution made by the unit purchaser at end of August 2016. The petitioners communicated to developers in Jan 2016 that they are not interested in retaining the unit X-1501 and requested the developer to honor the buyback agreement.

Relief Sought from RERA: MDPL to honor buyback and compensation for delay A”

2. In pursuance of the notice issued by the authority, the parties appeared on 14/12/2018. The complaint is filed for refund. The complainant has said at the time of argument that he has paid Rs. 23,19,274/- from his pocket and the developer has raised the loan in the name of complainant of Rs. 73,21,948/- 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.
5. I would like to say that the submission made by the Advocate for the developer has no force since the document filed by the developer himself proves the same.

The complainant had paid through loan from PNBHFE (Punjab National Bank Housing Finance Limited) and the said bank has disbursed a sum of Rs. 73,21,948/- (Seventy Three Lakhs Twenty One Thousand Nine Hundred Forty Nine) A sum of Rs. 67,884/- (Rupees Sixty Seven Thousand Eight Hundred Eighty Four Only) was to be paid as monthly EMI towards the loan amount borrowed by the complainant to the Punjab National Bank Housing Finance Limited.

As per the said Pre-EMI scheme, the Complainant has opined to exit the project and receive return on his investment, thereby making him an investor and the Act would thus not apply to him. It is submitted that the liability to pay the Pre EMI and the Buy Back is purely a contractual matter and would not fall under the purview of this Hon'ble Authority and thereafter the Respondent has reimbursed a total sum of Rs. 45,00,000/- to the Complainant towards his own contribution and assured return as per MOU as per below mentioned details.

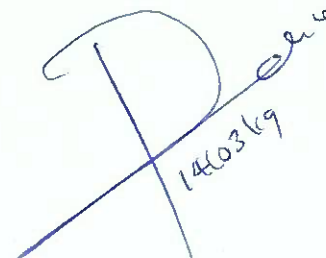
6. In order to attract the customer, the developer uses number of ways by giving advertisement. In the same way the present case stands by attracting the scheme released by the developer for which the complainant has entered in to agreement with the developer. By reading the clauses of the agreement 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 August 2017.*
- b. Mantri developers will assure return of 100% on the own contribution made by the unit purchasers at the end of August 2017.*

7. 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.

8. 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.

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9. It is the case of a complainant that he has made payment of Rs. 23,19,214/- as his personal contribution which is 20% of the total consideration amount. The bank has released a sum of Rs. 73,21,948/- in the form of home loan which is 80% of the sale consideration.
 10. 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 2 x amounts.
 11. The learned Counsel for the developer has submitted that the complainant himself is defaulter and his amount has already been refunded. In this regard the developer has said in para No. 16 which reads as under:

SECTION 18 of the Real Estate Regulation and Development Act, 2016 clearly mentions that if the promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the agreement then only the allottees can claim under the Act for compensation. Here the said complainant is not asking/ seeking for possession of an apartment but has invested his amount for a scheme which will yield him substantial amount in return. From the day of his investment, the Complainant never bother about the completion of the apartment instead of was awaiting his returns for the investment. The purpose is only for the same amount either adjusted or claimed by the Complainant.

12. In view of the stand taken by the developer now as to know about the payment of Rs. 45,00,000/- in this regard I had made further enquiry with the parties. They had filed the memo of calculation which reads under.

The under signed counsel appearing on behalf of the respondent humbly prayed that this Hon'ble Authority be pleased to permit the Respondent to file calculation in addition to the objections for the kind perusal of this Hon'ble Authority in the interest of justice and equity.

13. 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 14/12/2018. Hence, there is little delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

The Complaint No. CMP/181126/0001669 is allowed.

- a) The developer is hereby directed to return the own contribution amount Rs.41,04,365/- to the complainant together with the interest of 10.75%p.a with effect from April 2019 till the release of entire amount.
- b) 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.
- c) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
- d) 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 14/03/2019)

(K. PALAKSHAPPA)
Adjudicating Officer