

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by:- Sri. K.PALAKSHAPPA

Adjudicating Officer.

Complaint No. CMP/180910/0001252

Date: 01st JUNE 2019

Complainant : MUDIT SAXENA
#308, C Block, Saroj Symphony
Apartments, Nagondanahalli,
Whitefield, Bangalore - 560066.

AND

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

J U D G E M E N T

1. Mudit Saxena, 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/180910/0001252. The facts of the complaint is as follows:

April, 2014 - I signed a deal with Mantri Developers under their buyback scheme with assured 2X returns in 3 years where I booked a unit no H-1103 in tower H, Parcel 2A, Webcity project priced at Rs. 6,712,791. This was recorded in an MOU signed by both the parties.
2. April, 2014 - I paid a down payment of Rs. 1,342,558 + 49,486 = 1,392,044 to Mantri developers and they agreed to pay double of Rs. 1,342,558 which is Rs. 2,685,116 with all monthly bank EMIs as pre-EMIs back if I surrendered my unit 6 months or earlier counting back

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from March 2017. 3. April, 2014 - Monthly interest on the additional down payment of Rs 49,486 was to be paid by Mantri as well on monthly basis at floating market interest rate. 4. April, 2014 - As per payment plan, home loan facility was made available from PNBHFL amounting Rs. 5,196,516 with conditional agreement that bank would charge monthly EMIs only for interest part till 2X amount is paid by Mantri to me. This monthly interest amount would be paid by Mantri to bank through my bank account i.e. I pay EMI to bank and Mantri pays monthly EMI to me regularly. Complete loan amount was disbursed to Mantri by PNBHFL. 5. August, 2016 - I officially informed Mantri developers that I would like to surrender my unit and opt for the assured 2X returns. Mantri acknowledged and replied that I would be paid as per MOU in March 2017. 6 March, 2017 - Mantri developers requested for an extension of a year where they would close my Loan and pay 2X assured returns in March 2018. They agreed to pay the prorata interest to me for the delay at 12% interest on 2,685,116. An updated MOU was signed which is submitted with the case documents. It covers the payment details. 7. After paying EMIs for a year and half Mantri started defaulting on EMIs and paid me irregularly. The back log of EMIs increased and till March 31st 2018 I had paid 47 EMIs to PNBHFL since May 2014. Mantri had only paid me 34 out of those 47 till then. They have stopped paying me monthly EMIs now violating the agreement we had. 8. March 2018 - Mantri Developers violated the updated MOU and didn't pay me assured 2X returns neither did they close the bank loan. I could no longer pay to the bank hence the bank ECS started bouncing. However, Mantri communicated they would pay the charges and penalties from EMI bounce. Email communication attached. I get legal threats from the bank for non payment which is Mantri's fault. 9. Sept 2018 - Mantri Developers refused to pay me double returns and delayed interest. Their alibi is the poor market condition with no buyers etc. However, as per MOU agreement they are legally supposed to pay me my assured returns with delayed interest and close my home loan irrespective of the market conditions.

Relief Sought from RERA : Deposit+2X + interest=Rs.3,062,754 + EMIs+interest

2. As per Sec 18 of RERA Act if the consumer wants to go out of the project his amount may be returned with interest. On behalf of the Developer at the time of argument it is said that the Complainant is demanding double the

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amount means he is an investor but not the allottee. Therefore the counsel for the Developer submits that the Complainant may be directed to approach the civil court. But I am not going to accept his argument because the mail sent by the Developer on 28/03/2017 which reads as under:

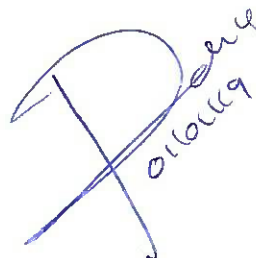
This has reference to your buyback closure is in March 2017, we would like to appraise you that due to the current market situation, there would be a delay in the closure of the buyback & we would be closing the buyback in March 2018 which was due in March 2017. We would request you for an extension till March 2018 basis below mentioned points:

- 1. We would request for an extension till March 2018 as committed 100% assured return will be paid to you in March 2018.*
- 2. We will continue to reimburse the Pre Emi till March 2018.*
- 3. Your loan will be closed in March 2018.*
- 4. We will also pay an ROI towards the assured amount.*
- 5. Request your confirmation on the extension till March 2018.*
- 6. Attached are the calculations for your reference.*
- 7. These calculations are for your reference, the final calculations will be shared post confirmation.*
- 8. Request your support to please help us and let us know how do we take this forward.*

3. From the above correspondence it is clear that the submission made before me on behalf of the developer is an afterthought. The above mail is proving the relationship of Developer and allottee. Hence I find no good reason is accepting the arguments submitted on behalf of Developer.

Done
Following

4. Learned counsel for the developer has vehemently submitted that the complainant cannot file his complaint and cannot seek any kind of relief here. The counsel for the developer has read the Section 18 and 71 of the Act and submits that the complainant is not an allottee in the eye of law and as such he cannot seek the relief of compensation or refund of the amount. The gist of the argument of the developer is that the complainant is seeking double the amount for which he has invested on the flat.
5. 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. 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 & 14 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 this 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.
6. I would like to say that the submission made by the Advocate for the developer has no force since I have already referred the mails sent by the developer to the complainant wherein he has admitted the relationship with the complainant.



7. 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 number 3 is a 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. The apartment cost mentioned is all inclusive including registration charges currently applicable. However the same and other statutory charges are indicative only, and any subsequent change in Government policy will be applicable to all at actual.

b. On cancellation of booking, Pre EMI, bank charges and all other charges applicable will be recovered from the buyer as per sale and construction agreement.

8. 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.

9. 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.

Done
01/01/19

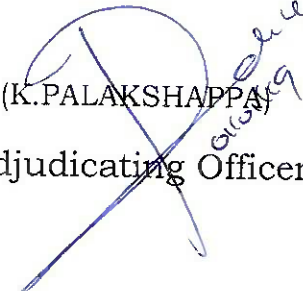
10. AS per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. In this case the Complaint was presented on 10/09/2018. As per the SOP, 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 28/09/2018. After filing objections and hearing the parties, the case is reserved for orders. Hence, there is some delay in closing the complaint. With this observation I proceed to pass the order.

ORDER

- a) The Complaint No. **CMP/180910/0001252** is allowed.
- b) The developer is hereby directed to return the own contribution amount Rs.13,92,044/- to the complainant within 30 days from today. If not it will carry interest @ 10.25% from 31st day.
- c) The developer is hereby directed to return the 2X amount of Rs.13,42,558/- to the complainant.
- d) The developer is hereby directed to discharge the loan raised in the name of the complainant with all its EMI and interest if any.
- e) 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.
- f) The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.

Intimate the parties regarding this order.

(Typed as per dictation Corrected, Verified and pronounced on 01/01/2019)


(K.PALAKSHAPPA)
Adjudicating Officer