

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/190118/0001907

Presided by Sri K.PALAKSHAPPA

Adjudicating Officer

Date: 27th August 2019

Complainant : Rohit Tole and Pragati Tole
No.13, 1st Floor Park Road
Bengaluru- 560051.
Rep. By Sri. Naman Saraswath, Advocate

AND

Opponent : MANTRI WEBCITY 2B
Mantri Developers PVT. LTD,
No.41 Mantry House, Vittal Mallya Road,
Bengaluru - 560001.
Rep. by Sri Veeresh R. Budihal Advocate.

J U D G M E N T

1. Mr. Rohit Tole and Pragati Tole jointly have 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/190118/0001907 The facts of the complaint is as follows:

I had booked a Unit K-1605, on 16th Floor of K Tower at Mantri Webcity Parcel 2B having a super built-up area of 1105 Sq Feet being developed by Mantri Developers Private Limited (Mantri) in lieu of agreed consideration amount. 2. That the Complaint is being filed on being aggrieved of the arbitrariness of Mantri in refusing to refund the amount

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received from me and inordinate/ irregular delay in construction of the project. The flat was originally booked in 18.05.2014. I had paid a sum of Rs. 1,01,000/- to Mantri. Agreement for Construction was executed on 27.05.2014. 3. That the total Sale Consideration of the flat was Rs. 72,02,460.68/- payable in installments as per the schedule of payments. Out of which I have paid a total sum of Rs. 21,94,222/-. 4. As per the Agreement for Construction, possession of the flat was by 31.03.2017. However, the construction and development work in the Project is not being carried out by the Mantri in time bound manner. Mantri was reminded several times though telephonically and through e-mails to inform the date of completion. Mantri has failed to provide possession and any satisfactory construction status. 5. That in the month of August 2018 as there was no to little progress for tower K at the inducement of Mantri made to shift my apartment from K 1605 to J 1807 and subsequently on 02.09.2018 the Complainant signed an application for shifting reflecting this understanding, however no further agreements were executed as that the said J 1807 was being transferred at a higher price as compared to K 1605. 6. Since there was no development of the Project, I informed the Developer about my willingness to exit from the Project and requested to refund the amount which has been paid. However, such requests have yielded no result and Mantri has shown no intent to refund my amount. 7. The developer kept mum and refused to even reply to my e-mails and calls or meet.

Relief Sought from RERA :Refund of Rs. 34,64,016 along with 18% interest.

2. In pursuance of the notice issued by the authority, the parties have appeared. The complaint is filed for refund of the amount. The complainant has sought for refund of his amount with 18% interest. The prayer made by the complainant for grant of interest @ 18% is not correct since Rule 16 prescribes the rate of interest.

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3. Now coming to the refund of the amount and in this regard it was submitted that as the complainant himself is going away from the project as per agreement of sale, he is bound by forfeiture clause which is the main argument of the developer.

4. Advocate representing the developer submits as follows :

- I state that the complainants wished to shift from No. K-1605 in K towers to Flat no. J-1807 situated on the Eighteenth Floor of 'Mantri Webcity'. The complainants and the respondent exchanged numerous e-mail regarding the transfer and shifting of Apartment in J Tower.
- It is evident from the emails exchanged between the Complainants and Respondent that the respondent was always ready and willing to perform its obligations and went out of its way to provide the complainants with any information, request or query sought. The respondent has dutifully responded to the complainants at every instance; and sought to clarify any and all queries that the complainants had at all points of time. Thus, the allegations of the complainants in the complaint that the respondent has failed to provide satisfactory construction status is fallacious; the claims made thereon are unfounded and the allegations levelled against the respondent are false and baseless.
- Subsequently, the Complainants, for no adequate reason whatsoever, informed the respondent about his intention to exit from the project and requested for refund of amount paid. In consequence whereof, the respondents vide email dated 21.11.2018 provided the statement, cancellation form and calculation in lieu of cancellation to the complainants. Copy of the email dated 21.11.2018 is produced as Document no.7. It was denoted therein

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that the cancellation charges would amount to Rs.6,36,645/-. Further, the respondent has also communicated to the complainants that the refund would be processed as per the terms of the agreement for sale and agreement of construction. Thus, clause 4.1 and its sub-clauses would be applicable in the instant case, wherein the respondent is entitled to the forfeiture of:

- a. 10% of the total value of the Agreement of Construction
- b. Burden of tax/duty implication suffered by the respondent;
- c. Loss of profits incurred against re-selling of apartment.

It has further been stipulated under the agreements that after adjusting/deducting the abovementioned charges, out of the amounts received from the re-sale of the property to a new purchaser, the respondent shall refund the balance amount to the purchaser, if any, without any interest, subsequent to entering into an agreement with respect to the property with such new purchaser. It is thus stated that the complainants are entitled to the refund of amount as per Clause 4.1 the agreement for sale and agreement for construction, and the amount claimed in the instant complaint is a gross exaggeration of accredited amount due to the aforementioned Agreements and has always been ready and willing to perform its part of the obligations contained in the agreements for shifted unit.

5. Against this stand taken by the developer, the complainant has said in his written argument which reads as follows:
 - It is submitted that when the complainants approached the respondent with the intension of

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withdrawing from the project due to inordinate delay on the part of respondent in handing over the possession of the apartment and sought for the refund of the amount which has already been paid to the respondent, the respondent started giving evasive excuses and finally when the respondent was left with no other option, the respondent only with an intent to keep the money of the complainants in the said project despite of there being sever delay and respondent failing to provide any timeline for the possession, persuaded the complainants to apply for shifting the apartment J-1807 to the complainants. The respondent while offering the said shifting had assured the complainants that the construction of Tower J is at an advance stage and the complainants would be handed over the possession of the apartment in a time bound manner.

It is submitted that the application for shifting was executed by the complainants on 2.9.2018. It is pertinent to mention that as per the terms and condition no.7 of the said application for shifting it is mentioned that the application for shifting is tentative and shall be binding on the company only on execution of the agreement for sale within 30 days from date of the application. The said condition is reproduced as under:

"The applicant acknowledges that this application is tentative and shall be binding on the company only on execution of the agreement for sale within 30 days from this date. The company reserves the



right to cancel the allotment after 30 days and cancellation charges will apply"

It is pertinent to mention here that the complainants through their e-mail dated 27.10.2018 had asked the respondent seeking the status of the transfer application and bank NOC. The said e-mail same has been produced at page 67 of the objections filed by the respondent. it is clear from the said e-mail that the complainants were never informed about the status of the transfer application and that the said e-mail was sent after 30 days from the date of the application for shifting, makes the said application non-binding as the same has to be read in accordance with clause 7 of the application for transfer.

6. In support of his contention the complainant relied upon a decision of the Apex court in Hansa v Gandhi vs- Deep Shankar Roy and others@2013(12) SCC 776 which reads as under:

The letter of intent cannot be said to be an agreement to sell for the simple reason that according to the contents of the letter of intent, only upon payment of the entire purchase price, the Developer and the plaintiffs were to enter into an agreement with regard to sale of the flats. This fact clearly denotes that no agreement to sell had been entered into between the plaintiffs and the Developer and in absence of such agreements, in our opinion, there cannot be any right in favour of the plaintiffs with regard to specific performance of any contract. Thus, in our opinion, the High Court did not commit any error while coming to the conclusion that there was nonbinding contract or agreement in existence between the plaintiffs and the Developer and therefore, the trial court could not have decreed the suit for specific performance.

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7. The above principle says that in order to exercise the forfeiture clause the Developer must have a proper document. In view of the same I would like to say that the stand taken by the developer that he will refund the amount as claimed by the complainant subject to forfeiture clause. Of course as per the agreement in case the consumer wants to go away from the project then there is a clause for forfeiture. But very important aspect is that option of exit from the project in the absence of the any default on the part of the developer then only the question of exercise of right of forfeiture does arise. Admittedly the agreement was executed on 27/5/2014. The total consideration amount was Rs.59,24,450/- and out of it the complainants have paid Rs.21,94,222/- as per annexure C2. At page No. 91 it is mentioned that in the year 2014 itself the complainants have paid more than 15 lakhs to the developer. Just because the complainants have not paid the rest of the sale consideration is not the correct ground to say that the complainants are defaulters because the developer was expected to complete the project in the month of March 2017 but even till today the project is not completed. In the month of January the complainants have paid more than Rs.6,00,000/- with a hope that the project will be completed in the month of March 2017. The developer might have given the date of completion to this RERA authority is different from the date mentioned in the agreement. But the same is not having any effect on the role of the complainant. Hence, I hold that there is no fault on the part of the complainants in going away from the project. In addition to it; the amount paid in the year 2014 has been utilised by the developer. The Developer who has received the amount and used the same towards the development of the Project can't now exercise the clauses of the Agreement just because the Complainant is demanding for Refund of the amount. As per Section 18 of RERA Act gives a Proviso to Consumer to demand for refund of the amount in case the Developer fails to complete the Project within

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the time as agreed by him. Moreover the complainant has rightly given a decision in supporting his contention. The observation made by the Hon'ble Apex court is exactly applicable to the case on hand. In view of the same there is nothing to say that the developer is going to lose and hence, the complainant deserved to be allowed.

8. However the Complainant has given a table for the amount paid by him to the Developer which reads as under;

Sl. No.	Particulars	Amount spent
1	Payments made to the Respondent	21,94,222/-
2	Loan processing charges	16,854/-
3	Interest payment to Axis Bank for the year 2014-15	2,08,812/-
4	Pre-EMI interest for the year 2015-16 paid to Axis Bank	1,01,915/-
5	Interest payment to Axis Bank for the year 2016-17	1,01,138/-
6	Pre EMI Interest to ICICI Bank for the year 2017-18	5,543/-
7	Interest paid to ICICI Bank for the year 2017-18	83,308/-
8	Interest payment to ICICI Bank for the year 2018-19 (provisional)	55,884/-
9	Premium paid towards property insurance	1,56,340/-
10	Legal expenses	75,000/-

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9. From the above table it comes to Rs.29,99,016/- but the Complainant has sought for Rs. 34,64,016/- with interest at 18% p.a, but I would say that interest at 18% is not permissible since Rule 16 prescribes the rate of interest and also he is not entitled for Rs.34,64,016/-
10. In fact the interest and other expenses cannot be given and hence the prayer of the Complainant cannot be entertained. Accordingly the Developer shall pay Rs.29,99,016/- to the Complainant and also pay interest @ of 2% above the SBI marginal lending rate of interest on the principal amount from the date of this order.
11. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. This complaint is filed on 18/01/2019. In this case the parties and the developer were present on 14/02/2019 and the parties took sufficient time to file objections and rejoinder. Hence, the complaint is being disposed of with little delay. Hence , I proceed to pass the following order;

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ORDER

The complaint No. CMP/190118/0001907 is allowed by directing the developer to pay Rs21,94,222/- to the complainant with interest @9% p.a on the respective amount paid on respective date prior to 30/4/2017 and interest @2% p.a above the SBI marginal lending rate of interest commencing from 1/5/2017 till the realization of full amount.

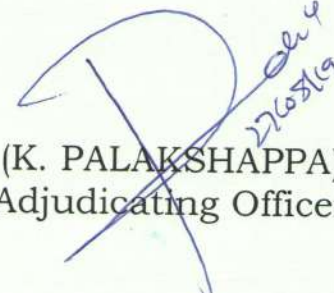
Further the Developer is also directed to return an amount of Rs. 8,04,794/- paid by the complainant towards interest and other expenses.

The complainant is here by directed to execute the deed of cancellation of agreement after entire amount is realised.

The developer is also directed to pay Rs. 5000/- as cost to the Complainant.

Intimate the parties regarding this order.

(This Order is Typed, Verified, Corrected and pronounced on 27/08/2019)


(K. PALAKSHAPPA)
Adjudicating Officer