

**BEFORE ADJUDICATING OFFICER, RERA**  
**BENGALURU, KARNATAKA**

**Complaint No. CMP/190123/0001937**

**Presided by Sri K Palakshappa,**  
**Adjudicating Officer**

**Date: 5<sup>th</sup> JULY 2019**

Complainant : David John Jebasingh  
No. 101, Shivani Residency, Bazar Street,  
Viveknagaer, Opposite to infant Jesus  
Chruch, Bangalore- 560047  
Rep. by Sri H.M. Sudheer, Advocate

AND

Opponent : Mantri Manyata Lithos  
Mantri Technology Constellations Pvt.  
Ltd., No. 41, Vittal Mallya Road  
Mantri House, Bengaluru- 560001-Rep.  
by Sri G.V.Chandrashekhar, Advocate.

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**"J U D G E M E N T"**

1. Mr. David John Jebasingh, Complainant filed complaint bearing complaint no. CMP/190123/0001937 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:

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"Simultaneously the Complainant also entered into an Sale Agreement to purchase undivided share and Agreement of Construction (undated) executed on 18.08.2015 with the Respondent to get the apartment No. C-1201 constructed in the Mantri Manyata Lithos. As per clause 6.1 of the Agreement of Construction, the respondent is supposed to construct for the said apartment and handover the possession of the same as per Annexure B1. Annexure B1 to the Agreement of Construction which is a tabular sheet indicates that the date of possession is 31.10.2017. 2. Pursuant to the execution of the aforementioned Agreements the Complainant has been regularly making the payments towards Sale consideration. The total sale consideration to be paid by the Complainant is Rs. 99,41,800/- and till date a sum of Rs. 82,15,527 has been paid to the Respondent. Statement of account as on 07.09.2018 issued by the Respondent also confirms that a sum of Rs. 82,15,527/- and this amount was paid within a span of 30 days in the months of July and August 2015. The balance payment has to be made at the time of handing over the possession of the said apartment. 3. The Complainant and the Respondent have entered into a MOU (undated) executed on 18.08.2015 wherein the said Apartment was allotted to the Complainant under Pre-EMI Scheme. 4. Vide letter dated 22.06.2017 the Respondent has informed that the timeline for completion and handing over the said Apartment is extended to end of December 2018 as against the earlier committed date of October 2017. This communication came as surprise to the Complainant as there was no proper explanation given for the delay apart from the vague reason of unforeseen circumstances which are beyond our control. 5. Representative of Respondent by name Ms. Divyashree wrote several emails to the Complainant requesting the Complainant to get the Sale Deed of the said Apartment registered and also demanded the balance sale

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amount. 6. 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 October 2017 to December 2018 which is contrary to the provisions of RERA Act and Rules. Initially I was hoping that the said Apartment will be handed over before December 2018, but now as per the email dated 9.1.2019, the Respondents representative has informed that the Occupancy Certificate is expected in the month of April 2019. I had filed a complaint before RERA for early handing over and interest for delay. Due to my commitments and other obligations I am not in a position to wait any further and hence I have withdrawn the earlier complaint and filing this fresh complaint seeking cancellation of the Agreements and entire refund of the amount paid till date together with interest and compensation.

*Relief Sought from RERA : Cancellation of Agreement  
Entire Refund & interest"*

2. In pursuance of the notice issued by this authority, Shri H.M. Sudheer Advocate filed Vakalath on behalf of the complainant. Anup shah Law firm undertook to file vakalath on behalf of the developer. Later the developer has filed Objection for which the complainant filed his reply.
3. The complainant has entered into Agreement with the respondent in respect of flat no. C-1201 wherein it was agreed to handover the possession on or before 31<sup>st</sup> October 2017. The complainant till date had been paid Rs. 82,15,527/- towards sale consideration. It is alleged by the complainant that the developer 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 October 2017 to December

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2018 which is contrary to the provisions of RERA Act and Rules. Because of the delay in handing over the said apartment before the scheduled date, the complainant has to pay additional amount towards stamp duty and registration fee since the Government has increased the guideline value and the same should be borne by the respondent.

4. At the time of argument the counsel for the complainant has drawn my attention towards the stand taken by the developer in his Written Objection. Wherein he referred the judgment passed by Mumbai High Court in NeelKamal Realtors Suburban Pvt. Ltd., and another Vs. Union of India and others.
5. The said judgment referred by him to state that the present complaint is pre mature as the new completion date given to RERA is 1<sup>st</sup> July 2019 which is accepted by the statutory body. But I would like to say that this aspect has already been decided in many cases by saying that the date mentioned in the agreement is the criteria to decide the date of completion of the project. Therefore, the stand taken by the developer cannot be accepted.
6. In this regard the learned counsel for complainant has given list of citation covering the defense taken by the respondent which I have referred in the end of this judgment.
7. The developer has given some reasons for non-completion of the project in stipulated period. He says as

*"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 reasons such as*

- a. Firstly, there is no availability of sand due to strike by sand suppliers and lorry drivers;
- b. Secondly, the Hon'ble High Court of Karnataka had imposed restriction on the working hours of construction by the builders. Subsequently, the pace at which construction work should have proceeded

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declined further adding to delay in handling over possession of the apartment.

- c. The formulated plan of construction was delayed and also for force and other reasons such as non - availability of raw materials, work force and other Force majeure events which are beyond the control of the respondent. As per the construction agreement, it is specifically mentioned and agreed upon that the date of delivery of possession with regard to apartment is subject to payment of all dues by complainant and issuance of the occupancy certificate.

The completion of project named MANTRI MANYATA LITHOS is burdened due to nonpayment of installments on time by other purchasers in the project.

I state that, while the construction work was under progress, during November 2016, our country faced demonetization, due to which there was major financial crises. The respondent was also affected financially and faced various issues to continue with the construction work in a smooth manner. As stated supra and coupled with the fact that the respondent's project was a big one, laborers were large in number. Laborers at the construction site were to be paid their daily wages for their work. Since the laborers did not possess bank accounts, the respondent could not deposit/transfer the money to their respective accounts."

8. The developer calls those reasons as Force Majeure. But I am not going to accept these reasons because the developer has collected the amount from the complainant since 2012. As per the agreement due date was ~~July~~ <sup>October</sup> 2017. In the course of argument it was

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*Amendment is made in para no. 8  
dt 05/07/17  
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submitted that in the month of July 2019 project will be ready. Now we are in the month of 1st week of July 2019 but it is not submission of the developer that they are going to complete the project and they have obtained the Occupancy certificate. The person who is being paid step by step since 2017 has waited for long 5 years. The Developer who was accepted to complete the project in the month of July 2017 failed to comply with the same. Therefore there is provision under S.18 either go with project or go away from the project. In this case the complainant go out from the project and hence he sought for refund of amount.

The learned council for the complainant has said that the developer uses to impose interest on the consumer in case of delayed payment same may be applied to the complainant. While taking refund in this connection he has submitted as under:

*The Hon'ble Supreme Court of India vide its judgement dated 2/4/1019 in Civil Appeal N. 12238/2018 (Pioneer Urban Land and Infrastructure Ltd. Vs Govindan Raghavan and another) has upheald the order of the National Consumer Dispute Redreosal Commision. The National Commission had observed that, the Agreement between the builder and purchaser are wholly one sided, unfair and not binding on the flat purchaser. The builder was also directed to refund the entire amount along with interest at 10.75% p.a fixed in accordance with the Haryana Real Estate Rules 2017. It also observed that, the agreement between the builder and the purchaser entitles the builder to charge interest 18%p.a on account of any delay in payments of installments from the purchaser whereas in case of any delay from the builder to deliver possession of the apartment the*

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*purchaser has to wait for a period of 12 months after the end of the grace period before serving a termination notice of 90 days on the builder and the builder is liable to pay interest only 9% p.a. the Hon'ble Supreme Court has observed that the agreement between the builder and the purchaser were wholly one sided and unfair to the purchaser. Further the hon'ble supreme court also reaffirmed the interest charged by the National Consumer Dispute Redressal Commission at 18.7% S.I.p.a fixed in accordance with the Haryana Real Estate (Regulation & Development) Rules 2017.*

9. But I am not agreeing with the complainant because Rule 16 has not prescribed the rate of interest. I would like to say as per S18 when the Developer fails to comply with the completion on or before date given in agreement. It is the choice of the complainant to go out from the project.
10. 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 was filed on 22/01/2019. As per SOP, 60 days shall be computed from the date of appearance of the parties. In this case the parties were present on 19/03/2019. Hence there is a little delay in closing this complaint.

*Day*  
*05/02/19*



## ORDER

The Complaint filed by the complainant bearing No. CMP/190123/0001937 is allowed.

The developer is hereby directed to pay Rs 11,61,910/- together with interest @9% p.a. on the respective payment made on respective date till 30/4/2017 and to pay interest @10.75 p.a till the recovery of the above said amount.

Further he is directed to discharge bank loan amount along with EMI and interest and any incidental charges, if any interest paid by the complaint towards loan.

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

The complaint shall execute cancellation of agreement of sale after realisation of entire amount.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 05/07/2019).

  
K. Palakshappa  
Adjudicating Officer