

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH-4

PRESIDED BY SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT No: CMP/ 220823/0009931

Dated 30th DAY OF APRIL 2024

COMPLAINANT..

SHARATH KUMAR
MAHAJAN
H.NO: 6-88/6/7C, ARYA
NAGAR, BORGAON
NIZAMABAD
TELENGANA-503230

(REP BY S.VENKATESHWARA
PRASAD, MLC ASSOCIATES)

V/s

RESPONDENTS....

1. MANTRI TECHNOLOGY
CONSTELLATIONS PRIVATE
LIMITED
MANTRI HOUSE, #41
VITTAL MALLYA ROAD
BENGALURU URBAN-560001

(REP BY SUNIL PRASAD
SRINIVAS R)

2. MANYATA INFRASTRUCTURE
DEVELOPMENT PRIVATE
LIMITED & MANYATA REALTY
9/1, 2ND FLOOR, CLASSIC
COURT, RICHMOND ROAD
BENGALURU URBAN-560025

(ABSENT)

3. INDIA BULLS HOUSING
FINANCE LIMITED
M-62 & 63, FIRST FLOOR
CONNAUGHT PLACE
NEW DELHI-110001

(ABSENT)

1/2

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PROJECT NAME

MANTRI MANYATA ENERGIA

PROJECT REGISTRATION NO:

**PRM/KA/RERA/1251/309/
PR/171014/000439**

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project “ **MANTRI MANYATA ENERGIA** ” developed by “ **MANTRI TECHNOLOGY CONSTELLATIONS PRIVATE LIMITED**” for the relief of completion of the project, possession and interest on delay period. During the proceedings, the complainant has moved an application dated 2/4/2024 by amending his prayer as refund of amount paid along with interest which came to be allowed.
2. This project is situated at Rachenahalli, Bengaluru East, Bengaluru North, Bengaluru Urban.
3. The gist of the complaint is that the complainant has booked a flat bearing no. J-1706 in J-Wing in the project known as ‘ **MANTRI MANYATA ENERGIA**’ and entered into agreements for sale and construction agreement both dated 3/6/2016 for a total sale consideration of Rs.92,96,596/- (Rs. Ninety two lakhs ninety six thousand five hundred ninety six only). The complainant has paid an amount of Rs.1,00,000/- on 17/4/2016, Rs.6,88,039/- on 27/5/2016, Rs.1,000/- on 3/8/2016, Rs.1,40,621/- on 9/8/2016. Further, as per the demand of the respondent no.1, the complainant has paid an amount of Rs.1,140/- on 25/8/2016, Rs.23,01,259/- as Pre-EMI, Rs.4,04,176/- EMI till June 2022 and an amount of Rs.46,48,298/- has been directly disbursed by 3rd respondent i.e.

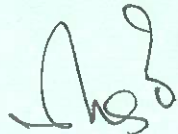


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India Bulls Housing Finance Limited. Altogether, the complainant has paid an amount of Rs.82,84,533/- (Rs. Eighty two lakhs eighty four thousand five hundred thirty three only) to the respondent no.1 which has been duly acknowledged by him. The complainant has also entered into an tripartite agreement with respondent no.1 and the India Bulls Housing Finance Limited on 1/10/2016. The respondent was required to hand over the possession of the said flat to the complainant within 31/12/2018 with a grace period of 12 months i.e by 31/12/2019. It is contended that the builder just erected columns/pillars and put up RCC. Except this, nothing has carried out to complete the project. Accordingly, the builder has planned to cheat the complainant from inception and breached the trust and also not performed their part of the contract. The respondent no.2 is a land owner and that vicarious liability also caste upon the stalling of the project. The respondent no.3 is India Bulls Housing Finance Limited(IHFL) has not followed the RBI and NBC guidelines, since the IHFL has disbursed the loan amount for the stalled project by colluding with the builder. Therefore, it is the duty of the IHFL to collect the loan amount from the builder and not from him. In fact, IHFL is liable to pay back the repayment made by the complainant i.e. since from June 2018 to June 2022. Further, the builder was required to pay back advance amount of Rs.9,29,660 along with interest. The 3rd respondent IHFL is required to refund the 48 months EMI paid by him. Therefore, the complainant has approached this forum seeking for the relief of direction to the respondent no.1 to refund the amount paid along with interest.



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4. After registration of the complaint, in pursuance of the notice, the respondent no.1 did appear before this Authority during the hearing held on 28/3/2023 and filed vakalat. Subsequently, he did not appear before this Authority during the hearings held on 29/9/2023, 6/11/2023, 20/11/2023, 4/12/2023, 8/1/2024, 22/01/2024 and finally on 5/2/2024 and has been continuously remained absent on all the aforesaid dates of hearings. Though he did appear before this Authority he has not participated in the proceedings by filing statement of objections, producing documents etc. Whereas, the respondent no.2 and 3 have been continuously remained absent on all the aforesaid dates of hearings.
5. Heard arguments of the complainant.
6. In support of his claim, the complainant has produced documents such as (1) Power of Attorney of Sharath Mahajan in favour of S.L. Manjunath Gowda (2) receipts issued by 1st respondent on 17/4/2016 for one lakh (3) letter dated 24/4/2016 about confirmation of allotment of flat No.J-1706 (4) MOU proposal dated 2/10/2016 and agreed to complete the project (5) receipts issued by Mantri dated 17/4/2016, 27/5/2016, 3/8/2016 and 9/8/2016 (6) permission to mortgage letter dated 26/8/2016 (7) tripartite agreement dated 1/10/2016 (8) demand letter 28/9/2016 (9) agreements of sale and construction both dated 3/6/2016 (10) agreement of sale of undivided share of land dated 3/6/2016 (11) demand letter cum loan details dated 19/7/2022 issued by 3rd respondent India Bulls Housing Finance Limited.
7. On the other hand, in support of defence, the respondent no.1 has not produced any documents.



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8. On the above averments, the following points would arise for my consideration:-

1. Whether the complainant is entitled for the relief claimed?
2. What order?

10. **Findings on the above points are as under:-**

1. In the Affirmative.
2. As per final order for the following:

FINDINGS

11. Findings on point No.1:- The complainant has approached this forum seeking for the relief of refund of amount paid along with interest. The grounds urged are that the complainant has booked an apartment unit J-1706, situated on the 17th floor, in the project "Mantri Manyata Energia" of the respondent-promoter for a total sale consideration of Rs. 92,96,596 /-(Rs. Ninety two lakhs ninety six thousand five hundred ninety six only). The builder was required to handover the said apartment unit to the complainant within 31/12/2018 with a grace period of 12 months i.e. by 31/12/2019. The builder has miserably failed to handover possession within the stipulated timeline.

12. Looking to the averments of agreement, parties herein have entered into an agreement of sale and construction agreement both dated 3/6/2016. The agreement of sale is key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale dated 3/6/2016, the respondent was supposed to handover the possession of the said flat to the complainants within 31st December 2018 with a grace



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period of 12 months i.e. by 31/12/2019. But the respondent had not completed and handed over the possession of the said flat to the complainant till date.

13. As per the decision of the judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)..... The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

14. Further, in the decision of the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No(s) 6745-6749 of 2021 (arising out of SLP (Civil) No(s) 3711-3715 of 2021 between M/s Newtech Promoters and Developers Private Limited Versus State of UP & others, it is held as under:

"Section-18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project of his business as a developer either on account of suspension or revocation



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of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund or the amount with interest at such rate as may be prescribed in this behalf

The said principle is aptly applicable to the present case on hand.

15. As per Section 18 of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

16. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment /plot in accordance with sale agreement.

17. From the averments made in the complaint, it is obvious that the complainant has paid the substantial sale consideration and is entitled to get his amount paid along with interest as per the memo of calculation submitted by the complainant on 18/4/2024. The complainant has claimed an amount of Rs.1,47,84,583/- (Rs. One crore forty seven lakhs eighty four thousand five hundred eighty three only) as refund with interest. The Promoter-respondent has not submitted any memo of calculation in spite of several opportunities given to him.

18. Therefore it is incumbent upon the respondent to pay interest on delay period to the complainants which is determined as below:

Memo Calculation submitted by the complainant as on 18/4/2024



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PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 18/4/2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
82,84,533	65,00,050	0	1,47,83,583

19. Having regards to all these aspects, the complainant is entitled for refund of amount paid along with interest.

20. Sum and substance of the case is as under:

Date of agreement of sale	3/6/2016
Date of construction agreement	3/6/2016
Sale consideration	Rs.92,96,596 (Rs. Ninety two lakhs ninety six thousand five hundred ninety six only)
Amount paid	Rs.82,74,533/- (Rs. Fifty seven lakhs thirty eight thousand three hundred fifty nine only)
Promised date of possession as per agreement of sale	Within 31/12/2018 with a grace period of 12 months i.e. by 31/12/2019
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Interest on delay period

21. Despite notices served upon the respondent no.1, he did not appear before this Authority during the hearings and remained absent. Subsequently, the respondent no.1 has not put forth his defence before this Authority and has not taken any interest to file statement of objections, producing documents if any on his defence. In the absence of any resistance by the respondents and considering the claim of the



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complainant which is corroborated with the documentary evidence, there is no option left to this Authority except to accept the claim of the Complainants. Accordingly, the point raised above is answered in the Affirmative.

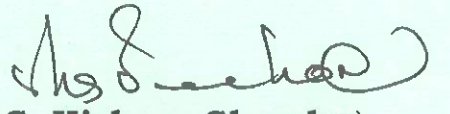
22. Findings on point no.2. In view of the above discussion, I conclude that, this complaint deserves to be allowed. Accordingly, I proceed to pass the following:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: CMP/220823/0009931 is hereby allowed as under:

1. The respondent no.1 is hereby directed to pay a sum of Rs.1,47,84,583/- (Rs. One crore forty seven lakhs eighty four thousand five hundred eighty three only) towards refund with interest to the complainant within 60 days from the date of this order calculated at the rate 9% from 3/6/2016 till 30/4/2017. Further, he is directed to pay interest calculated at the rate of SBI MCLR +2% from 1/5/2017 till 18/4/2024.
2. The interest due from 19/4/2024 shall be calculated likewise and paid to the complainant till the date of entire realization.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the same.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
K-RERA

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Carla S. de