

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 5

Present

SHRI. G.R. REDDY HON'BLE MEMBER

Dated 06TH JUNE 2024

COMPLAINT NO: CMP/00285/2023

COMPLAINANTS.. 1. Devdas Pandurang Shetti

2. Seema Devdas Shetti

No. 231/13, Road 15,

Jawahar Nagar,

Goregaon,

Mumbai-400062.

STATE: Maharashtra.

(Mr. Srinivas V, Advocate)

Vs

RESPONDENTS..

1. M/s Mantri Developers Pvt. Ltd.,

Mantri House, No.41,

Vittal Mallya Road,

Bengaluru-560001.

(Mr. Srinivas R, Advocate)

2. Mr. B.S.N Hari

No.1, Gutte Anjaneya Temple

Street, Wilson Garden,

Bengaluru-560027.

3. Mr. Javed Haroon

No.1, Gutte Anjaneya Temple

Street, Wilson Garden,

Bengaluru-560027.

4. Mr. Naseer Humayun

No.1, Gutte Anjaneya Temple

Street, Wilson Garden,

Bengaluru-560027.

5. Mr. Chimanlal Talreja

No. 45, Nanjappa Road,

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**Shanthi Nagar,
Bangalore-560027.**

6. **M/s Navakarnataka Properties & Holdings Pvt Ltd.,
No.696, 21st Cross,
2nd Sector H.S.R Layout,
Bangalore-560087.**
7. **Mr. Lokesh
Nagareshwara Nagenahalli Village,
K.R Puram Hobli,
Bangalore East Taluk,
Bangalore-560027.**
8. **Smt. K.Nandini
Nagareshwara Nagenahalli Village,
K.R Puram Hobli,
Bangalore East Taluk,
Bangalore-560027.**
9. **Mr. Manjunath
Nagareshwara Nagenahalli Village,
K.R Puram Hobli,
Bangalore East Taluk,
Bangalore-560027.**
10. **Mr. S. Somashekar
Kothanur Village,
K.R Puram Hobli,
Bangalore East Taluk,
Bangalore-560027.**
11. **Smt. Poala Ravishankar
Gutte Anjaneya Temple Street,
Hosur Road, Wilson Garden,
Bengaluru-560027.**
12. **Ms. Almitra H Patel
No.50, Kothanur Village,
K.R Puram Hobli, Bangalore East
Taluk, Bangalore-560077.**

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13. **Smt. B.S. Leelavathi,
Gutte Anjaneya Temple Street,
Wilson Garden, Bengaluru-
560027.**
14. **Smt. Louisa Rodrigues
Gutte Anjaneya Temple Street,
Wilson Garden,
Bengaluru-560027.**
15. **Mr. D. Ravishankar
No.1, ik Gutte Anjaneya Temple
Street, Wilson Garden,
Bengaluru-560027**

* * * * *

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Mantri Webcity 2A" developed by **M/s. Mantri Developers Pvt Ltd.**, for the relief of refund along with interest, pre-emi as agreed and clear the loan outstanding amount.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/310/PR/171015/000608 valid till 28-02-2020.
3. This project is situated at, Hennur Main Road, Near Southern Asian Bible College, Bengaluru South Bengaluru urban.

Brief facts of the complaint are as under:-

4. The complainants had booked a flat bearing No. F-1505 in the project of the respondent namely 'Mantri Webcity 2' and entered into an agreement of sale on 12-04-2014. They had entered

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into pre-emi scheme i.e., 20:80 in the total sale consideration. Accordingly, they had paid Rs.17,78,851/-(Rupees Seventeen Lakhs Seventy Eight Thousand only) as their 20% contribution of sale consideration and 80% of Rs.64,86,447/-(Rupees Sixty Four Lakhs Eighty Six Thousand Four Hundred and Forty Seven only) was availed as bank loan. The respondents were supposed to handover the possession along with the common amenities of the said flat to the complainants on or before 31-03-2017. The respondent neither delivered the said flat to the complainants nor refunded their amount. After some discussion, the respondent had agreed to give alternative flat instead of the said flat from the other project namely "Mantri Manyata Energia". The respondent had made separate agreements of sale and construction with the flat bearing no.C-1501 and they had agreed to handover the new flat by 31-12-2018 but the respondents had reneged the terms of the agreements and they had failed to do the same. The respondents have failed to deliver the flat and the complainant seeking relief of refund their entire sale consideration, pre-emi paid by the complainants along with 2x as promised under the pre-emi scheme along with interest and direction to clear loan outstanding amount. Hence this complaint.

5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainants had appeared before the Authority and filed agreements of sale and construction,

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tripartite agreement, memo of calculation, allotment letter and payment receipts. The advocate for respondent no.1 had appeared before this Authority and respondents no.2 to 15 haven't appeared before this Authority. Hence, the respondents no.2 to 15 were placed as ex-parte. Though the respondent no.1 had appeared before this Authority, he has not filed statement of objection and not produced any documents on his behalf.

6. In support of their claim, the complainants have produced their documents such as agreements of sale and construction, tripartite agreement, allotment letter, payment receipts and memo of calculation dated 17-10-2023.

7. This matter is heard on 03-08-2023 & 23-11-2023.

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

1. Whether the complainants are entitled for the relief claimed?
2. What order?

9. **My answer to the above points are as under:-**

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

REASONS

10. **My answer to Point No.1:-** From the materials available on record, it is apparent that in spite of entering into agreements of sale and construction having received a substantial sale consideration from the complainants, the respondents have not handed over the possession of the flat nor refunded the amount

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with interest till date. The complainants had tried to contact with respondents to handover the possession, but there is no response from their end. The complainants had decided to come out from this project and they sent an email to the respondent of withdrawal on 16-07-2022. However, the respondents have not taken any action either to respond to the said mail or do the needful as agreed under the Tripartite Agreement and pre-emi scheme.

11. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in appeal No.6750-57/2021, M/S Newtech Promoters v/s The State Of Uttar Pradesh 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 by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf.

12. In the judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

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“ 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 case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment.”

13. As per section 18(1) 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

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interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

14. 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 etc., in accordance with sale agreement.

15. From the averments of the complaint and the copies of the allotment letter and agreements between the parties, it is obvious that the complainants have paid the booking amount to the respondent towards the purchase of said flat.

16. The complainants had filed their memo of calculation as on 17-10-2023 claiming a refund of Rs.34,15,139/-(Rupees Thirty Four Lakhs Fifteen Thousand One Hundred and Thirty Nine only) including interest. The office of the Authority has perceived that there is some mistake in the said memo of calculation and the fresh link was sent to the complainants to file memo of calculation as per the receipt. The complainants had filed fresh memo of calculation on 12-04-2024. The respondents have not resisted the said memo of calculation filed by the complainants and they have not submitted their memo of calculation inspite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainants reveals that their claim is genuine.

17. In response to the notice, the respondent no.1 has appeared before the Authority, however, he has not taken any interest to participate in the proceedings and to resist the claim of complainants. Hence, the claim of complainants remained

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unchallenged and undisputed their claim is corroborated with cogent materials. Hence, there is no option left to this Authority, except to accept the claim of complainants.

18. Having regard to all these aspects as mentioned above, this Authority concludes that the complainants are entitled for refund with interest as claimed vide their memo of calculation dated 12-04-2024.

19. Therefore, it is incumbent upon the respondents to refund the amount with interest which is determined as under:

Interest Calculation Till 30-04-2017(Before RERA)					
S. N O	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @X+2%
1	07-04-2014	100,000	1119	30-04-2017	27,591
2	30-05-2014	1,599,013	1066	30-04-2017	420,299
3	30-05-2014	79,838	1066	30-04-2017	19,313
4	TOTAL AMOUNT	1,778,851		Total Interest (11)	4.67.203

Interest Calculation from 01/05/2017 (After RERA)							
S. N O	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	17,75,954	2538	12-04-2024	8.15	10.15 as on 01-05-2017	12,53,419
2	TOTAL AMOUNT	17,75,954				TOTAL INTEREST (12)	12,53,419

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 21-07-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
17,75,954	17,20,622	0	3,415,139

20. Accordingly the point raised above is answered in the Affirmative.

21. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, 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/00285/2023** is hereby allowed as under.

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/00285/2023** is hereby allowed. The Respondents are hereby directed to pay a sum of **Rs.34,96,579/- (Rupees Thirty Four Lakhs Ninety Six Thousand Five Hundred and Seventy Nine only)** towards refund with interest to the complainants within 60 days from the date of this order, at MCLR + 2% from 01-05-2017 till 23-04-2024.

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2. The interest due from 24-04-2024 up to the date of final payment will be calculated likewise and paid to the complainant.

3. Further, the respondents are directed to clear the loan amount whatever is due from the complainants to their loan account No. 00196660004765.

4. The complainants are hereby directed to cooperate with the respondents for cancellation of agreement of sale and construction agreement dated 12-04-2014 on receipt of entire amount as directed to be refunded by the respondent.

5. The complainants are at liberty to initiate action in accordance with law, if the respondents fail to comply with this order.

No order as to the costs.


(G R REDDY)
Member, K-RERA

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