

ಕರ್ನಾಟಕರಿಯಲ್ 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

Dated 3rd DAY OF MAY 2024

COMPLAINT No: CMP/221107/0010220

COMPLAINANT..

**RAHAMATULLA DHALAYAT
6th CROSS ROAD, SETTLEMENT
CITY, GADAG
GADAG DISRICT-582102**

(REP BY SRINIVAS V ADVOCATE)

V/s

RESPONDENT....

**M/s MANTRI DEVELOPERS
PRIVATE LIMITED
NO: 41, VITTAL MALLYA ROAD
BENGALURU URBAN-560 001.**

(REP.BY SUNIL P. PRASAD,ADVOCATE)

JUDGEMENT

1. This complaint is filed under section 31 of Real Estate (Regulation and Development) Act, 2016 against the project "**MANTRI WEBCITY2B**" developed by "**M/s MANTRI DEVELOPERS PRIVATE LIMITED**" for the relief of refund of amount paid along with interest, Pre-EMIs paid and directions to the builder to foreclose the loan amount.
2. This project has been registered in RERA vide registration No. PRM/KA/RERA/1251/310/PR/171015/000620.

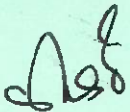


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3. This project is situated at Hennur Main Road, near Southern Asian Bible College, Bengaluru South, Bengaluru urban.
4. **Brief facts of the complaint are as under:** The respondent developer in order to attract customers/home buyers offered a pre-EMI scheme i.e. pre-sanctioned loans in order to purchase the apartment unit/s in their project wherein the promoter assured to discharge the interest on the loan till 31/03/2017 i.e., the promised date of delivery of possession. The complainants had booked an apartment unit bearing No: P-301, situated at 3rd floor, Tower P, in the project "MANTRI WEBCITY 2B" on 15/7/2014 and thereafter entered into an agreement of sale and construction both dated 6/8/2014 for a total sale consideration of Rs.1,08,23,495/- (Rs. One crore eight lakhs twenty three thousand four hundred ninety five). Prior to the sanction of loan, the complainant along with PNBHFL, the financial institute and the respondent developer had a tripartite arrangement wherein it is agreed that the liability of repayment of loan would shift from borrower to the developer subject to the borrower withdrawing from the said project.
5. The complainant herein had paid a sum of Rs.27,05,837/- to the respondent developer in the year 2014 towards his contribution as part payment of sale consideration. Prior to sanction of loan to the complainant, the complainant along with M/s PNB Housing Finance Limited and the respondent-developer entered into a tripartite agreement, wherein the disbursal of loan to the complainant for the purpose of purchase of the apartment unit will be subject to the terms and conditions agreed upon by all the three parties to the tripartite agreement. The PNBHFL had sanctioned a loan to the tune



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of Rs.82,09,102/- on 30/8/2014 to the complainants and the loan amount was disbursed in favour of the respondent-developer as agreed by all three parties. In addition to paying Rs. 27,05,837/- the complainant has paid several pre-EMI amount to the loan account held by PNBHFL as the respondent developer failed to pay the same on their behalf. Altogether, the complainants have paid an amount of Rs.68,09,417/- (Rs. Sixty eight lakhs nine thousand four hundred seventeen only) on various dates as per the memo of calculation dated 2/5/2024 furnished by the complainant. The said apartment unit was booked under Assured returns and pre-EMI/buy back scheme wherein the complainants had to pay 20% of the sale consideration and 80% of the sale consideration was to be paid by bank loan availed only from PNBHFL from which was financial partner of the project. As per said scheme, the builder had to reimburse pre-EMI instalment till completion of the project and handing over of the apartment unit. In case of cancellation, complainants were to be paid twice their 20% contribution as 2X. Accordingly, the complainants have contributed 20%. But the respondent was not punctual in paying pre-EMI. So far the complainant has paid a sum of Rs.41,03,580/-between 18/10/2014 to 10/7/2019 towards pre-EMI instalments. The respondent had reimbursed portion of amount i.e., Rs.19,58,928/- between 19/11/2014 to 19/1/2018.

6. As per the terms of construction agreement dated 6/8/2014, the respondent/builder was required to hand over the possession of the apartment unit to the complainants within 31/8/2016. However, the respondent-developer has neither delivered the possession of the

19/11/2014

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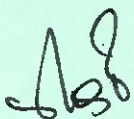
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said unit or paid the Pre-EMI amount as agreed. Hence, the complainant herein on 1/10/2016 issued an email to the respondent expressing their intention to withdraw from the project in consonance with the terms agreed upon in the Pre-EMI Scheme. Though the developer accepted the withdrawal on the same day vide email dated 4/10/2016, in spite of several requests, failed to refund the amount paid along with interest. Therefore, the complainants have approached the Hon'ble High Court of Karnataka challenging the liability of unpaid loan in WP No. 23180/2021 and said petition was clubbed with W.P. No. 17696/2021, which was allowed by granting liberty to the Complainants to challenge the Arbitration award. In view of the same, the complainants have approached this forum for the relief of direction to the respondent to refund the amount paid towards own contribution and pre-EMIs paid to the bank along with interest. Hence, this complaint.

7. After registration of the complaint, in pursuance of notice, the respondent appeared before this Authority through their counsel and filed statement of objections as under:

The respondent has denied all the allegations made against it by the complainants as false. It is contended that the complaint filed by the complainants is not maintainable either in law or on the facts. Further, the respondent sought for dismissal of the complaint mainly on the reason that the complainant is not an allottee under section 2(d) of the Act as he is a "speculative investor" and "co-promoter" desirous of investing his money in the project under Assured return & Pre EMI/Buy Back scheme and never had any



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intention of buying the apartment and taking possession of the same at any point of time.

8. Further, as a collateral for the investment made by the complainants in the project, the respondent and complainants have entered into agreements termed or named as Agreement of sale of undivided interest and agreement for construction. It is further contended that the complainants are not an end user or consumer, hence RERA act is not applicable to them. The complainants have not claimed any right under the terms of any other contracts such as agreements of sale and construction agreement but only on the buy back scheme or Pre-EMI scheme entered between the respondent and the complainants which is an independent contract in itself. As such, the issue raised by the complainants to be looked up by the courts having competent jurisdiction. In support of the said contention the respondent has reiterated the findings of the Hon'ble Karnataka Appellate Tribunal in RERA Appeal No. 70/2018.
9. In support of his claim, the complainant has produced documents such (1) welcome letter dated 15/7/2014 (2) cost break up and demand note (3) Pre-EMI scheme (4) copies of agreements of sale and construction both dated 6/8/2014 (5) payment receipts (6) withdrawal email dated 1/10/2016 (7) confirmation email from respondent to complainants (8) surrender form (9) loan account statement (10) memo of calculation
10. The respondent in support of his defence has not produced any documents.



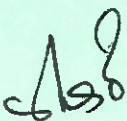
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11. Heard arguments of both the parties. The written arguments submitted by the complainants is taken note of by this Authority.
12. This matter was heard on 12/7/2023, 17/8/2023, 31/8/2023, 21/9/2023. 5/10/2023 and on 4/11/2023.
13. On the above averments, the following points would arise for my consideration.
 1. Whether the complainants are entitled for the relief claimed?
 2. What order?
14. Findings on the above points are as under:
 1. In the Affirmative
 2. As per final order for the following findings:

FINDINGS

15. **Findings on point no.1** From the materials available on record, it is apparent that in spite of entering into an agreement of sale and construction agreement having received a substantial sale consideration from the complainants, the respondent has neither completed the project, handed over the possession of the apartment unit no. P-301 situated at 3rd floor, Tower-P in the project "MANTRI WEBCITY 2B" within the promised date i.e. 31/8/2016 nor refunded the amount with interest as agreed. The respondent has also failed to pay Pre-EMIs to the PNBHFL bank as agreed. There seems to be no possibility of completing the project or handing over the possession of the apartment in the near future.



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15. Looking to the averments of agreement, parties herein have entered into agreements of sale and construction both dated 6/8/2014. The agreements of sale & construction and tripartite agreement 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 agreements of sale and construction dated 6/8/2014, the respondent was supposed to handover the possession of the said apartment unit to the complainants within 31/8/2016. However, the respondent had not completed the project and handed over the possession of the said apartment unit to the complainants till date.

16. At this juncture, my attention is drawn towards the decision of the Hon'ble Supreme Court of India 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 accounts 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 reasons, 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.

17. 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:



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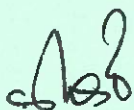
"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee 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.

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

18. 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.

19. 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.

20. From the averments made in the complaint and the copies of the agreements between the parties, it is obvious that the complainants have paid the substantial sale consideration to the respondent towards



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purchase of the said apartment unit. Having accepted the said amount and failure to keep up promise to handover possession even after a lapse of more than 6 years and not paying Pre-EMI to the bank as agreed, certainly entitles the complainant for refund of entire amount with interest.

21. The complainants have filed their memo of calculation as on 2/5/2024 claiming a refund of Rs.1,00,16,869/- (Rs. One crore sixteen thousand eight hundred sixty nine only) including interest. The respondent has not resisted the said memo of calculation filed by the complainants and he has not submitted his memo of calculation in spite of providing sufficient opportunity. On verification of the memo of calculation filed by the complainants reveals that their claim is genuine.

22. Having regard to all these aspects as mentioned above, this Authority concludes that the complainants are entitled for refund with interest as claimed vide memo of calculation dated 2/5/2024

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

Memo Calculation submitted by the complainant as on 2/5/2024

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 2/5/2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
68,09,417	51,66,380	19,58,928	1,00,16,869

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

Date of agreement of sale	6/8/2014
Date of construction agreement	6/8/2014

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Sale consideration	Rs.1.08.23.495/- (Rs. One crore eight lakhs twenty three thousand four hundred ninety five only)
Amount paid	Rs.68,09,417/- (Rs. Sixty eight lakhs nine thousand four hundred seventeen only)
Promised date of possession as per agreement of sale	31/8/2016
Date of occupancy certificate	Nil
Whether the possession has been handed over with date	Not yet
Prayer	Refund of amount paid along with interest.

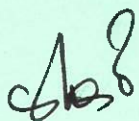
Accordingly, the points raised above is answered in the Affirmative.

26. 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/221107/0010220 is hereby allowed as under:

1. The respondent is hereby directed to pay a sum of Rs.1,00,16,869/- (Rs. One crore sixteen thousand eight hundred sixty nine only) towards refund with interest to the complainants within 60 days from the date of this order calculated at the 9% from 6/7/2014 till 30/4/2017. Further, he is directed to pay interest at the rate of SBI MCLR + 2% from 1/5/2017 till 2/5/2024.



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2. The interest due from 3/5/2024 shall be calculated likewise and paid to the complainants till the date of realization.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the order.

No order as to costs.


(H.C. Kishore Chandra)
Chairman
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