

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 V

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 22nd January 2025

COMPLAINT NO: CMP/221201/0010417

COMPLAINANT...

**1. Rishi Kant Jha
No. H-11, Palm Heights,
Sunny Enclave,
Sector 125, SAS Nagar,
Sas Nagar-140301.
STATE: PUNJAB.**

(Mr. Sreeprasad, Advocate)

Vs

RESPONDENT.....

**M/s Mantri Developers Pvt. Ltd.,
Mantri House, No. 41,
Vittal Malya Road,
Bangalore-560001.**

(M/s Vedachela Associates, Advocates)

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JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Mantri Webcity 3C" developed by M/s. Mantri Developers Pvt.Ltd., for the relief of refund with interest and compensation for the trauma undergone.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/310/PR/171015/000550 valid till 30-

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06-2020 and it has got covid extension till 30-03-2021 and got approval u/s 7 till 30-03-2022.

3. This project is situated at, Hennur Main Road, Near Southern Asian Bible College, Bangalore South, Bengaluru Urban.

Brief facts of the complaint are as under:-

4. The complainant had booked a flat bearing No. R-401 situated in Tower-R, 4th floor of the project "Mantri Webcity" of respondent in the year 2017 under 10:90 scheme. The respondent was supposed to complete the project and handover the possession of his flat in December 2019. However, the respondent had failed to complete the project as agreed. Recently, one of the representatives of respondent namely Mr. Syed contacted and informed him that he has to pay the entire amount by 30-11-2022 or they will forfeit the booking amount as well and they are sending a demand note with amount and details which are different than what was initially agreed not even considering the scheme benefits. When he enquired about the amenities and facilities, they started saying that it will be ready any day. Hence, his 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 complainant had appeared before the Authority through his counsel and filed documents. The

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respondent has appeared before the Authority through his counsel and filed statement of objections as under.

6. The respondent has denied the each and every allegation made against him by the complainant as false. He contends that he has formulated a scheme for the construction of a residential apartment. According to this scheme a person interested in acquiring residential apartment in the said project is required to join the scheme formulated by this respondent and purchase and undivided right, title and interest in the project land proportionate to the saleable area of the apartment and the complainant has paid Rs. 12,00,000/- () towards advance amount for purchase of the said flat. After verifying entire documents and the said scheme the complainant had booked the said flat. Since the term 'consumer' is not defined under the RERA Act reference shall have to be made to Clause(zr) Section 2 of the Act. The definition of term consumer the purport of the same has to be derived from the consumer protection Act 1996 to define the scope of RERA Act. Hence, this complaint is not maintainable and prays to dismiss the complaint.

7. In support of his claim, the complainant had produced documents such as copies of agreements of sale, construction agreement and tripartite agreement, payment receipts and memo of calculation as on 17-10-2024.

8. The respondent had produced a termination letter of the said flat bearing No. R-401.

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9. This matter is heard on 03-08-2023, 23-11-2023, 21-02-2024, 18-06-2024, 09-09-2024 & 08-10-2024.

10. **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?

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

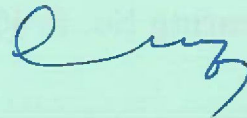
1. Partly Affirmative.
2. As per final order for the following.

REASONS

12. **My answer to Point No.1:-** The complainant had approached this forum seeking relief of refund along with interest on the grounds that the respondent had not completed the project as agreed i.e., in December 2019 and that respondent was insisting him to pay the entire sale consideration by 30-11-2022 or they are going to forfeit the booking amount.

13. Same is resisted by the respondent on the grounds that the complainant had booked the flat bearing no. R-401 in Tower-R, 4th floor of Mantri Webcity Project under the scheme formulated by the respondent. Therefore, the complainant is not a consumer and he is a investor.

14. Undisputedly, the complainant has booked the said flat by paying the advance amount of Rs.12,00,000/- (Rupees Twelve Lakhs only) to the respondent which is evident from the agreement of sale dated 16-05-2017. Further, it is apparent



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from the copies of emails exchanged between the parties that on 29-11-2022 the complainant sent a mail to the respondent saying that in the last five years he didn't get any response from the respondent and on going through the mail they had not mentioned anything about 10:90 scheme which was shared with him in the initial days which states that cost of registration will be borne by the respondent and that the specifications and amenities as committed by the time of initial discussions are not yet ready. On 24-11-2022 again the complainant sent a mail to the respondent stating that he had been waiting for over 5 years and requested to know what was the date committed to handover at the time when they entered into the agreement and to understand the time that had elapsed from such agreed date. On the same day the respondent replied stating that with reference to their booking of the aforesaid flat and agreement of sale and construction agreement both date 28-06-2017 they would like to inform him that despites continues follow-ups the complainant had failed to pay balance amount as agreed which is long overdue and the amount due is Rs.1,09,32,880/-(Rupees One Crore Nine Lakhs Thirty Two Thousand Eight Hundred and Eighty only) and requested to pay the said balance on or before 31-11-2022 failing with they shall be constrained to terminate their booking amount.

15. The agreement of sale is a key instrument which binds the parties in a contractual relation to be enforceable in accordance

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with law, it is quite necessary that it shall be free from any ambiguity and vagueness.

16. 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.

17. Further, 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,

"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

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possession of an apartment etc., in accordance with sale agreement.

20. From the averments of the complaint and the copies of agreements between the parties, it is obvious that the complainant had already paid part sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of the apartment certainly entitles the complainant herein for refund along with interest. The complainant had filed his memo of calculation as on 17-01-2025 claiming an amount of Rs.22,34,185/-(Rupees Twenty Two Lakhs Thirty Four Thousand and One Hundred and Eighty Five only) as refund along with interest. Despite opportunities being given to all respondents, he had not filed their memo of calculation.

21. A thorough verification of the documentary evidence submitted by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide his memo of calculation as on 07-01-2025.

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

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 18- 04-2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)

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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 letter 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."

18. 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 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

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12,54,558	9,79,627	0	22,34,185
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23. The prayer of the complainant with regard to compensation on the trauma undergone is not coming under the purviews of this Authority. Hence, same cannot be considered is here.

24. Accordingly the point raised above is answered partly Affirmative.

25. **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

- i. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.**CMP/221201/0010417** is hereby allowed. Respondent is directed to pay a sum of Rs.22,34,185/- (Rupees Twenty Two Lakhs Thirty Four Thousand and One Hundred and Eighty Five only) towards refund with interest, calculated at MCLR + 2% from 01-05-2017 till 07-01-2025 to the complainant within 60 days from the date of this order.
- ii. The interest due from 08-01-2025 up to the date of final payment will be calculated likewise and paid to the complainant.
- iii. The complainant is hereby directed to cooperate with the respondent for cancellation of agreement of sale dated 06-06-2017 on receipt of entire amount as directed to be refunded by the respondent.

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- iv. The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.

No order as to costs.

(G R REDDY)
Member, K-RERA

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