

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 163 OF 2020

1. SHIVAKUMAR KRISHNAMURTHY & ORS.Complainant(s)

Versus

1. M/S. MANTRI ESTATE MANAGEMENT PVT. LTD. &Opp.Party(s)
ORS.

THROUGH MR. SUSHIL MANTRI AND SNEHAL
MANTRI, CMD, # 41, VITAL MALLYA ROAD,BANGLORE-
560001

2. PROPCARE REAL ESTATE MANAGEMENT PVT. LTD.

THROUGH: MRS SNEHAL MANTRI, REGD OFFICE :
MANTRI HOUSE, # 41, VITTAL MALLYA ROAD,
BENGALURE-560001

3. M/S KISHAN HOUSE BUIILDERS ASSOCIATION

REGD OFFICE : MANTRI HOUSE, # 41, VITTAL MALLYA
ROAD, BENGALURE-560001

4. M/S ABHISHEK DEVELOPERS

REGD OFFICE : MANTRI HOUSE, # 41, VITTAL MALLYA
ROAD, BENGALURE-560001

5. MANTRI DEVELOPERS PVT. LTD.

CHAIRMAN AND MANAGING DIRECTOR REGD OFFICE
: MANTRI HOUSE, # 41, VITTAL MALLYA ROAD,
BENGALURE-560001

6. MANTRI RESIDENCY APARTMENT OWNERS

THROUGH: SECRETARY ADDRESS: MANTRI
RESIDENCY, BANNERGHATA ROAD,BANGLORE-560076

7. PROPCARE REAL ESTATE MANAGEMENT PVT. LTD.

through its Mrs. Snehal Mantri, R/o 41, VITTAL MALLYA
ROAD,
BENGALURU - 560001

8. M/S KISHAN HOUSE BUILDERS ASSOCIATION

through its Mr. Sushil Mantri and Mrs. Snehal Mantri, GPA
Holder R/o 41, VITTAL MALLYA ROAD,
BENGALURU - 560001

9. M/S ABHISHEK DEVELOERS

TRHOUGH ITS - MR. SUSHIL MANTRI AND MRS
SNEHAL MANTRI - AUTHOREISED SIGNATORY, R/o
MANTRI HOUSE, 41, VITTAL MALLYA ROAD,
BENGALURU - 560001

10. MANTRI DEVELOPERS PVT. LTD.

THROUGH ITS MR. SUSHIL MANTRI - CHAIRMAN AND
MANAGING DIRECTOR, R/o MANTRI HOUSE, 41,
VITTAL MALLYA ROAD,
BENGALURU - 560001

11. MANTRI RESIDENCY APARTMENT OWNER
WELFARE ASSOCIATION

THROUGH ITS SECRETARY, ADDRESS - MANTRI
RESIDENCY, BBANNERGHATA RAOD,

BENGALURU - 560001

BEFORE:

HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER

HON'BLE MR. BINOY KUMAR, MEMBER

For the Complainant : Mr. Chandrachur Bhattacharyya, Advocate
with Mr. Manoj Kumar Dubey, Advocate

For the Opp.Party : Mr. Sukumar Pattjoshi, Sr. Advocate
with Mr. Shekhar G. Devasa, Advocate
and Mr. Manish Tiwari, Advocate

Dated : 31 Jan 2022

ORDER

Binoy Kumar, Member

1. The Present Consumer Complaint has been filed under Section 12 (1) (C) read with Section 13 (6) and Section 21 of the Consumer Protection Act, 1986 (For short "the Act") read with Order 1 Rule 8 of the Civil Procedure, 1908 against M/s Mantri Estate Management Private Limited and others (hereinafter referred to as Opposite Parties) for refund of the "refundable lumpsum maintenance deposit" amounting to Rs.7,12,86,650/- collected from 337 flat owners who are owners of the respective flats in a Project of the Opposite Parties called the "Mantri Residency" in Bengaluru.
 2. The brief facts of the case are that the Complainants are the owners of respective residential flats in the Project developed by the Opposite Parties called "Mantri Residency" in Bengaluru. On completion of the construction, the Opposite Party collected a lumpsum refundable maintenance deposit @ Rs.90/- per square feet (sft.) of the super built up area from each of the flat buyers.
 3. The Complainants averred that the Opposite Parties have also been collecting a non-refundable deposit @ 0.61 per sft. from each of the flat owners. The Complainants averred that from time to time with each maintenance agreement starting from 2004, the refundable maintenance deposit was transferred to the agencies of the Opposite Parties. In the fourth addendum Agreement dated 4.06.2016, the transfer of this deposit was made from M/s Mantri State Management Private Limited to M/s Propcare Private Limited Company.
- The Complainants averred that the Complaint is filed under representative capacity as all the Complainants have sameness of interest and common grievance regarding refund of the refundable maintenance deposit.
4. The maintenance contract with M/s Propcare Private Limited was done for a period of three years w.e.f. 1.4.2016 till 31.3.2019. It was squarely agreed that once the agreement is terminated or on expiry of the agreement, the refundable amount would be refunded to the complainants.
 5. The Complainants averred that the maintenance agreement with M/s Propcare was terminated in February, 2017 based on the decision taken by the General Body in its Meeting in February, 2017. A temporary agreement was entered with M/s Propcare to continue the maintenance contract from 01.04.2017 till 31.08.2017. Thereafter the maintenance agency handed over the facility to the Mantri Residency Apartment Owners Welfare Association. In spite of many reminders and persuasion by the Complainants for the return of the deposit, the Opposite Parties failed to refund the amount and, therefore, guilty of restrictive trade policy under Section 2 (nnn) (b) of the Act. The Complainants filed an email from M/s Propcare dated 20.09.2017 as evidence, which confirmed return of the deposit within one year and an interest of 12% on quarterly basis.

6. Accordingly, the Complainants have filed their Complaint and prayed for directing the Opposite Parties (1 to 5) to refund to the Complainants and other flat owners the refundable maintenance deposit collected from each of the flat owners @ Rs.90 per sq.f. alongwith 12% interest. Further, they have prayed that in the alternative, the Opposite Party No.1 to 5 be directed to transfer the maintenance deposit collected

from the flat buyers to Opposite Party No.6 (Association) alongwith 12% interest. It has also been prayed that the Opposite Party should pay to each of the Complainant flat buyers a sum of Rs.10 lakh each on account of mental harassment.

7. The Opposite Parties in the written version have averred that the Complainants are not Consumers; that the Complainants do not have sameness of interest and, therefore cannot be heard under Section 12 (1) (c) of the Consumer Protection Act, 1986 (For short "an Act"); that the terms and conditions of the allotment have to be adhered to, that the flats in question have been handed over possession in 2004 in view of the Agreement of sale and agreement for construction in the year 2002 and thus the Contract stood concluded between the Complainants and OP No.3 to 5; that there is no cause of action as on the date of filing of the Complaint; that the 117 Complainants form 20.4 % of the total 337 flat owners whereas the requirement as per Clause 11 of the Addendum Agreement of 2006 was 67% of the total number of flat owners to agree to terminate the contract; that after taking possession the Complainants are not Consumers as these were taken by the Complainants without any pre conditions; that the terms of contracts are binding and liability of the parties has to be limited in terms of the contract; that Clause No.11 of the Agreement has not been complied with.

8. In the written version, the Opposite Parties admit that the Opposite Party No.2 has agreed to refund the said amount and the same was agreed to by the Complainants.

9. Heard the learned counsel for both sides and perused the material on record.

10. The Learned Counsel for the Opposite Parties argued that there is no deficiency of service and the Complaint suffers on grounds of limitation. This was countered by the learned Counsel for the Complainants. Both Counsels submitted case laws in support of their arguments. It is a fact that on receipt of the occupation certificate dated 13.11.2003 for the project in question from Bangalore Development Authority, the developer handed over the possession to the Complainants from time to time. Earlier in 2002, agreement of Construction was signed, which had the provision for payment of lumpsum refundable maintenance deposit to be paid at the terms of taking possession (Clause 3.4). A maintenance Agreement was signed between the Complainants Mantri Residency Apartment Owners' Association and M/s Mantri Estate Management Private Limited (MEMPL) executed on 10.04.2004. As per Clause 1 of the maintenance agreement entered between the Complainant and MEMPL, refundable maintenance deposit @ Rs.90 per sft. of the super built up area of Apartment was charged and was to be kept as refundable maintenance advance by the developer who consequently shall provide the maintenance facility to the complex as provided. Further in Clause 2, it was mentioned that this refundable amount will be interest free. The duration of this Contract was till December, 2006 and the Parties were at liberty to renew the contract before the expiry of this Agreement. In Clause 6 it has been mentioned that the developer/estate manager/on expiry of the agreement or upon earlier termination subject to Clause 10 shall refund only the amount as mentioned in Clause 1 herein above paid as interest free maintenance free deposit. As per Clause 11 the First Party or the Confirming Party (Complainants) may terminate this agreement on expiry of 3 years or any date thereafter by giving six months notice in writing to the other Party (Maintenance Agency). For the confirming Party to terminate this agreement, it is necessary that 67% members should vote in favour of termination of this Agreement in the General Body meeting of the Association.

11. The Agreement for maintenance was renewed from time to time. The last renewal agreement (fourth addendum) was between M/s Propcare and the Complainant which was valid for three years up to 31.03.2019. In this agreement, it was clearly mentioned that the refundable maintenance deposit will be returned on the expiry of the agreement or on termination as per provisions of the Agreement. On 31.08.2017, M/s Propcare handed over the Mantri Residency Assets to the President Mantri Residency Apartment Owners Welfare Association for further maintenance based on the decision of the association to terminate and take over the maintenance.

12. The issue for consideration is simple. The grievances of the Complainants are getting back the refundable deposit lying with the Opposite Parties No.1 to 5. Returning this amount has not been contested by the Opposite Parties. So, this amount has to be returned by the Opposite Parties No.1 to 5 in the circumstances of the case and the matter to be decided whether the delay in return of this refundable deposit will carry any delay compensation by way of simple interest.

13. In view of the submissions made by the Parties, we are of the considered view that the Complainants are not only entitled for the refund of their refundable deposit amount but also a fair and reasonable compensation for the delay in paying back this amount.

14. In view of the foregoing discussion above, we direct the Opposite Parties (OP No.1 to 5) to refund the refundable lumpsum maintenance deposit to the Complainants within a period of six weeks from this Order alongwith delay compensation @ 6 % from the date of 01.09.2017 till realization. Any delay beyond this will attract an interest of 9% per annum.

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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BINOY KUMAR
MEMBER