

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 6

Dated 25TH JULY 2022

COMPLAINT NO.: CMP/UR/190906/0004083

COMPLAINANT.....

RAMESH S NAYAK

No.1, Amruth Diagnostic Centre,
Near Water Tank,
Jakkur Main Road,
Amruthahalli,
Bengaluru-560092.

(By Advocates Sri.C. Lokesh and
Sri.G.A. Shreenivasa)

V/S

RESPONDENT.....

Maxworth Realty India Ltd.

KMP House,
No.12/2, Yamuna Bai Road,
Madhavnagar,
Bengaluru – 560001.

(By Sri.Subramani K.V. & Associates
Advocates)

J U D G E M E N T

This complaint is filed under section 31 of the RERA Act against the project
“MAX MARVEL III” for the relief of refund with interest and compensation for
mental agony.

Brief facts of the complaint are as under:-

The complainant had booked a plot (No.310 measuring 30' x 40') in the
project of respondent in November 2012 by paying Rs.50,000/- being advance
amount out of the sale consideration amount of Rs.5,88,000/-. Though the



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complainant had approached the respondent several times in this regard, the respondent neither developed the layout nor executed the Sale Deed in favour of the complainant in respect of the above said plot as promised and pleaded its inability to allot the site to the complainant and sought time to refund the booking amount paid by the complainant. The Respondent has not refunded their booking amount till date inspite of repeated requests and notice served for refund of the amount. Hence, this complaint.

After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and has contested the matter by filing statement of objections as under:

The respondent has denied each and every allegation made against it by the complainant as false. It contends that the complainant has paid only Rs.1,00,000/- as advance amount i.e. 8.50% of total consideration amount of Rs.5,88,000/-. The pre-requisite condition for execution assignment agreement is a minimum payment of 30% of the total consideration amount. But till today the complainant has not paid 30% of the total consideration amount. Extract of the terms and conditions of booking form dated 28/11/2012 is as under:

Clause 10: ***"Sale agreement will be executed only on 30% payment of the total consideration"***.

The respondent has entered into Sale Agreement dated 25/8/2011 with one U.V. Krishnamurthy, the land owner of the property for development of the residential layout. Further said U.V. Krishnamurthy in the meantime entered into another agreement and restrained the respondent to enter the property for continuing his residential layout for development work. Therefore, the respondent has filed a case against said U.V. Krishnamurthy in O.S.No.294/2013 before Bangalore Rural Court which was dismissed for non-prosecution. Thereafter, the respondent has filed appeal to Hon'ble Senior Civil Judge, Devanahalli in

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Misc.No.43/2017 and the case is pending. The respondent has filed appeal in Hon'ble High Court of Karnataka against U.V.Krishnamurthy in Criminal Petition No.952/2020 which is pending. Further, the respondent submits that the project was dropped much prior to the RERA Act coming into force. The complainant had failed to perform his obligation and hence prayed to dismiss the complaint.

In support of his claim, the complainant has uploaded in all 2 documents such as copies of Legal Notice sent to the respondent and RPAD with acknowledgement. On the other hand, the respondent has produced in all 3 documents such as copies of booking form dated 28/11/2012, true copies of order sheet in OS No.294/2013 and order sheet in PCR No.271/2016.

During the proceedings, a Joint Memo was filed by both Complainant and Respondent on 20/11/2020 wherein the Respondent agreed to refund the entire principal amount along with interest i.e. Rs.81,777/- to the complainant on or before within six months from 20/11/2020 and in case of failure to refund the amount as agreed, the complainant is at liberty to file Execution Petition against the respondent for recovery of the amount due to the complainant. Accordingly, the respondent paid a sum of Rs.14,000/- vide cheque dated 02/12/2020 to the complainant towards part payment of the amount.

Heard arguments.

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?

My answer to the above points are as under:-

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

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REASONS

My answer to point No.1:- Admittedly, the complainant has paid Rs.50,000/- for booking a plot in the project of respondent in November 2012. Thereafter, the complainant came to know that the respondent neither developed the layout nor executed the Sale Deed of the above said plot as promised, and pleaded its inability to allot the site to the complainant and sought time to refund the booking amount paid by the complainant. Therefore, the complainant has requested the builder to refund his amount along with interest and petition costs.

From the averments of the complaint and documents furnished by both the parties, it is obvious that the respondent has not refunded the booking amount to the complainant as agreed. It is relevant to note that in spite of filing a Joint Memo by both the parties on 20/11/2020 wherein the respondent had agreed to refund the entire principle amount along with interest i.e.Rs.81,777/- to the complainant on or before within six months from 20/11/2020, he paid only Rs.14,000/- to the complainant on 02/12/2020. Thereafter, he has failed to pay the remaining amount as agreed in the said Joint Memo. Further, after filing statement of objection and joint memo dated 20/11/2020, the respondent did not turn up before the Authority to put up his grievances. Having regard to all these aspects this Authority concludes that the complainant is entitled for refund of booking amount.

Further, the complainant has sought for compensation for mental agony which does not come under the jurisdiction of this Authority and hence, same cannot be considered.

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

Interest Calculation Till 30/04/2017 (Before RERA)				
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS TILL 30/04/2017	INTEREST @9%
1	19-05-2012	50,000	1807	22,278
			TOTAL INTEREST (I1)	22,278

Interest Calculation From 01/05/2017 (After RERA)							
S.NO	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	50,000	1299	20-11-2020	8.15	10.15 as on 01-05-2017	18,061
						TOTAL INTEREST (I2)	18,061

REFUND INTEREST CALCULATION

S. NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	50,000	20-11-2020	14,000	36,000	53	12-01-2021	7.3	9.3 as on 10-11-2020	486
2	36,000	12-01-2021	14,000	22,000	552	18-07-2022	7.3	9.3 as on 10-01-2021	3,094
								TOTAL INTEREST (I3)	3,580

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 18-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
50,000	43,919	28,000	65,919

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

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My answer to point No.2:- In view of the above discussion, 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/UR/190906/0004083** is hereby allowed. Respondent is directed to pay a sum of Rs.65,919/- (Rupees Sixty Five Thousand Nine Hundred and Nineteen only) plus Rs.5,000/- as petition cost to the complainant within 60 days from the date of this order. Failing which, the complainant is at liberty to enforce this order in accordance with law.


(Neelmani N Raju)
Member-2, KRERA