

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 23rd SEPTEMBER 2022

COMPLAINT NO.: CMP/UR/200312/0004071

COMPLAINANT.....

SUGUNA PRABHU

No.7, 6TH A Cross,
Bhoopsandra New Extension,
Bengaluru-560094.

**(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 two plots (No.286 and 287 measuring 30' x 40') in the project of respondent in May 2012 by paying Rs.1,00,000/- being advance amount out of the sale consideration amount of Rs.8,40,000/-. Though the complainant had approached the respondent several times in this regard, the respondent neither developed the layout nor executed the Sale Deed in favour of

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the complainant in respect of the above said plots 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 delay was caused for the reasons beyond their control and that they offered an alternate site to the complainant which has been refused. The respondent admits that the project was not started and not registered under RERA Act since it has not started till now. The pre-requisite terms and condition agreed by both the parties as per booking form is that the purchaser has to pay full consideration amount, where as he has paid only Rs.1,00,000/- out 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 is as under:

Clause 10: ***"in case of any disputes, differences either as to the right, duties and liabilities of the parties or as to the entitlement of the parties, the same shall be referred to the arbitration of a sole arbitrator to be appointed by M/s Maxworth Realty India Limited and the jurisdiction will be Bangalore in case of the disputes"***.

It is further contended that as per agreed terms and conditions of the booking form "Clause 12: ***cancellation without a valid reason 15% of booking amount will be deducted towards service and transport charges***". The

MLW

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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. The respondent has not produced any documents on his behalf.

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.1,63,555/- to the complainant on or before within six months from 20/11/2020 failing which the complainant is at liberty to file Execution Petition against the respondent for recovery of the amount due to him. Accordingly, the respondent paid a sum of Rs.27,000/- vide cheque dated 24/12/2020 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

REASONS

My answer to point No.1:- Admittedly, the complainant has paid Rs.1,00,000/- for booking of two plots in the project of respondent in May 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



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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 the complainant, it is obvious that the respondent has not refunded the booking amount to the complainant as agreed. It is relevant to note that a Joint Memo was filed by both the parties on 20/11/2020 wherein the respondent had agreed to refund the entire principal amount along with interest i.e.Rs.1,63,555/- to the complainant on or before 20/11/2020. The complainant has filed memo of calculation as on 18/7/2022 claiming a refund with interest of Rs.1,97,502/-. Later neither the respondent nor his counsel appeared before the Authority to contest the case. Having regard to all these aspects this Authority concludes that the complainant is entitled for refund of booking amount with interest.

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.

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	1,00,000	1807	44,556
2			TOTAL INTEREST (11)	44,556

(Handwritten signature)

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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	1,00,000	1904	18-07-2022	8.15	10.15 as on 01- 05-2017	52,946
2	TOTAL AMOUNT	1,00,000				TOTAL INTEREST (I2)	52,946


Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 18-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,00,000	97,502	0	1,97,502

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

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/200312/0004071** is hereby allowed. Respondent is directed to pay a sum of Rs.1,97,502/- (Rupees One Lakh Ninety Seven Thousand Five Hundred and Two 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

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