

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

PRESIDED BY MRS. NEELMANI N RAJU, HON'BLE MEMBER

Dated 2ND JANUARY 2023

COMPLAINT NO: CMP/180107/0000380

COMPLAINANT.....

M.V. NAGARAJA

No.18, 2nd Cross,
Lakshamma Layout,
Ramamurthy Nagar Main Road
Dodda Banaswwadi
Bengaluru-560043.

(In Person))

V/S

RESPONDENT.....

Maxworth Realty India Ltd.

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

(Ex-Parte)

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

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project
“**MAX ORCHIDS III**” developed by M/s Maxworth Realty India Limited for
the relief of refund with interest.

(Signature)

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Brief facts of the complaint are as under:-

2. The complainant on going through an advertisement issued by M/s Maxworth Realty India Limited had booked a plot (No.560 measuring 30' x 40') in the project of respondent in February 2013 by paying Rs.50,000/- being advance amount out of the sale consideration amount of Rs.7,20,000/-. The respondent had promised to register the plot within six months while booking the plot. The complainant paid Rs.1,00,000/- to the respondent on 2/1/2015 and requested the respondent to execute registration of the sale deed. The complainant also came to know about the state of affairs of the respondent company and requested the respondent for refund of the amount paid by him. Though the respondent company promised to refund the amount by 3/12/2017, they never kept the promise, due to which the complainant approached National Consumer Forum, New Delhi where the complainant was advised to approach this Authority. The respondent has failed to abide by the terms and conditions of the booking form and refund the amount to the complainant. Hence, this complaint.
3. 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:
4. 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 dated 21/2/2013 is that the purchaser has to pay 30% of the sale consideration amount, where as he has paid only Rs.50,000/- which is 5.5% of the total consideration amount. But till today

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the complainant has not paid 30% of the total consideration amount and that his demand for execution of registration of sale deed is meaningless. Extract of the terms and conditions of booking form dated 21/02/2013 is as under:

Clause 13: ***"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"***.

5. It is further contended that as per agreed terms and conditions of the booking form dated 21/2/2013 "Clause 12: ***cancellation without a valid reason 15% of booking amount will be deducted towards service and transport charges***". The complainant had failed to perform his obligation and hence prayed to dismiss the complaint.
6. Despite several notices and summons sent at his given address, the respondent failed to appear before the Authority and continued to remain absent from the hearings. Finally paper publication was issued in local Kannada daily newspaper "HOSA DIGANTHA" on 26/11/2022 for the appearance of the respondent. In spite of paper publication, the respondent did not appear before the Authority and hence, has been placed as **ex-parte**.
7. This matter was heard on 11/10/2022, 10/11/2022, 17/11/2022 and 13/12/2022. The case was finally posted for orders on 13/12/2022.
8. In support of his claim, the complainant has uploaded in all 2 documents such as copy of booking form, Payment receipts issued by the respondent, paper publication dated 26/11/2022 in Kannada newspaper "Hosa Digantha" and memo of calculation for refund with interest as on

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11/11/2022. On the other hand, the respondent has produced copy of booking form dated 21/2/2013.

9. Heard arguments from the complainant side.

10. On the above averments, the following points would arise for our consideration:

1. Whether the complainant is entitled to the relief claimed?

2. What order?

11. Our findings on the above points are as under:

1. In the Affirmative

2. As per final order for the following:

FINDINGS

12. Our findings on Point No.1:

From the materials placed on record, it is apparent that in spite of accepting booking advance towards the sale of a plot to the complainant, the respondent has failed to handover the plot to the complainant till date. The respondent has also failed to appear before the Authority for the hearings. Hence the respondent has failed to abide by the terms and conditions in the booking form. There seems to be no possibility of handing over the possession of the plot to the complainant in near future.

13. 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, flat, building as the case may be with interest at

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such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

14. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

15. From the averments of the complaint and the terms and conditions in the booking form, it is obvious that the complainant has paid a substantial sale consideration amount to the respondent. Though the respondent vide his receipt dated 21/2/2013 and copy of the ledger account issued by the respondent has acknowledged the receipt of the amount from the complainant, the respondent has failed to keep up his promise. Having accepted the said amount and failure to keep up promise to hand over possession of the plot to the complainant, certainly entitles the complainant herein for refund with interest. The complainant has submitted his memo of calculation as on 11/11/2022 claiming refund with interest for Rs.2,73,956/-. Despite several opportunities given to the respondent and notice was published in the local Kannada daily newspaper on 26/11/2022 for his personal appearance, the respondent failed to appear before the Authority and file their memo of calculation. This conduct of the respondent clearly goes to show that he has taken the complainant for a ride and deprived him of owning his own flat. The documentary evidence furnished by the complainant reveals that his claim is genuine. The Authority upholds the refund amount claimed by the complainant vide his memo of calculation as on 11/11/2022.

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

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Interest Calculation Till 30/04/2017 (Before RERA)					
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	28-02-2013	50,000	1522	30-04-2017	18,764
2	02-01-2015	1,00,000	849	30-04-2017	20,934
3				TOTAL INTEREST (I1)	39,698

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	1,50,000	2020	11-11-2022	8.15	10.15 as on 01-05-2017	84,258
2	TOTAL AMOUNT	1,50,000				TOTAL INTEREST (I2)	84,258

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 11-11-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,50,000	1,23,956	0	2,73,956

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

18. 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/180107/0000380** is hereby allowed.

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Respondent is directed to pay a sum of Rs.2,73,956/- (Rupees Two Lakh Seventy Three Thousand Nine Hundred and Fifty Six only) **towards refund with interest** calculated at 9% from 28/02/2013 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 11/11/2022 to the complainant within 60 days from the date of this order. The interest due from 12/11/2022 up to the date of final payment will be calculated likewise and paid to the complainant. 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.


(Neelmani N Raju)
Member, KRERA

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