

**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 30<sup>TH</sup> JANUARY 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/200802/0006292**

**COMPLAINANT...**

**MR.H.N. GORAKSHANATH  
29, ISIRI, 3<sup>RD</sup> FLOOR  
CANARA BANK COLONY  
8<sup>TH</sup> CROSS, CHANDRA LAYOUT  
BANGALORE-560072.**

**(IN PERSON)**

**V/S**

**RESPONDENT.....**

**1. MAXWORTH REALTY INDIA LTD  
NO.22/1, RAILWAY PARALLEL ROAD  
NEHRU NAGAR, NEAR SHIVANANDA CIRCLE  
BANGALORE-560020.**

**2. MAXWORTH REALTY INDIA LTD  
12/2, KMP HOUSE  
YAMUNA BAI ROAD  
MADHAVNAGAR  
BANGALORE-560001.**

**(BY MRS.B.P. SHOBHA & MRS.SHILPA RANI,  
ADVOCATES)**

**\* \* \* \* \***

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

*Handwritten signature*

# 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

## **Brief facts of the complaint are as under:-**

2. The complainant had initially booked for a plot in the project of the respondent near Doddaballapur Road in April 2011. As the project got delayed, the executive of the respondent company asked him to go for a flat in Maxworth City Project near Yelahanka. As the complainant was looking for an house of his own, he agreed and booked an apartment in the project of the respondent. The complainant submits that as this project too did not take off he requested the respondent for refund of the booking amount. The respondent convinced the complainant to shift the booking to Max Madhura project, as such, the complainant agreed and shifted the booking amount to a flat in the above project and entered into an agreement of sale and construction agreement on 22/02/2017. The complainant also entered into Tripartite agreement with the respondent and ABHFL for sanction of housing loan on 25/2/2017 and has paid an amount of Rs.33,62,700/- (Rupees Thirty Three Lakh Sixty Two Thousand Seven Hundred only) including housing loan from Aditya Birla Housing Finance Limited being the entire amount towards the flat on various dates to the respondent. The respondent was supposed to handover the apartment to the complainant by 22/08/2018 including grace period of two months. The respondent was supposed to pay PEMLs till the handover of the possession of the flat to the complainant. The respondent has failed to PEMLs as agreed. Despite entire amount has been paid to the respondent, the respondent has failed to handover the possession of the apartment even after four years and thus failed to abide by the terms and conditions of the agreement dated 22/02/2017. Due to this enormous delay, the complainant has been put to financial burden. The complainant submits that the respondent in January 2020 demanded payment of Rs.5.00 Lakh for registration, which the complainant refused to pay and informed the respondent through an email dated 18/1/2020 for registration or refund the entire amount. The

*Handwritten signature*

# 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

respondent is not responding to any sort of communication. As there is delay in the delivery of the apartment, the complainant seeks to exit from the project and has approached this Authority for refund of entire amount paid to the respondent with interest. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel. But it has not contested the matter either by filing statement of objections or producing documents on its behalf.
4. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, Construction Agreement, Booking Form, correspondence with respondent, Payment receipts and memo of calculation as on 30/09/2022.
5. Heard arguments of both sides.
6. **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?
7. **My answer to the above points are as under:-**
  1. In the Affirmative.
  2. As per final order for the following

### REASONS

8. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement of sale and construction agreement on 22/02/2017 to handover the possession of the apartment to the complainant by 22/08/2018 including two months grace period, the builder has not completed the project as per agreement and has delayed the

# 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

project, and thus failed to handover the unit in favour of the complainant till date. The respondent has also failed to PEMIs as agreed. The enormous delay in completing and handing over the flat has caused more financial burden on the complainant. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 22/02/2017. There seems to be no possibility of completing the project or handing over the possession in near future.

9. 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.

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

11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has already paid entire sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of the apartment and not paying PEMIs as agreed, certainly entitles the complainant herein for refund with interest. The complainant has filed his memo of calculation as on 30/09/2022 claiming an amount of Rs.52,47,412/- as refund with interest. Despite opportunities were given, the respondent have not filed their memo of calculation. A thorough verification of the documentary evidence submitted by the complainant reveals that his claim is genuine. Having

*RP*

# 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

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 30/09/2022.

12. 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	NO OF DAYS TILL	INTEREST @9%
1	18-04-2011	30,000	2204	30-04-2017	16,303
2	17-12-2012	2,00,000	1595	30-04-2017	78,657
3	11-02-2014	1,50,000	1174	30-04-2017	43,421
4	08-12-2014	1,00,000	864	30-04-2017	21,304
5	10-02-2015	1,00,000	810	30-04-2017	19,972
6	02-09-2016	1,00,000	240	30-04-2017	5,917
7	22-09-2016	3,00,000	220	30-04-2017	16,273
8	27-02-2017	1,44,000	62	30-04-2017	2,201
9	17-03-2017	14,56,000	44	30-04-2017	15,796
10				TOTAL INTEREST ( 11 )	2,19,844

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	25,80,000	1978	30-09-2022	8.15	10.15 as on 01-05-2017	14,19,120
2	31-07-2019	1,00,000	1157	30-09-2022	8.6	10.6 as on 10-07-2019	33,600
3	01-08-2019	1,00,000	1156	30-09-2022	8.6	10.6 as on 10-07-2019	33,571
4	17-08-2019	1,00,000	1140	30-09-2022	8.45	10.45 as on 10-08-2019	32,638

*Handwritten signature*



# 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

5	13-09-2019	1,00,000	1113	30-09-2022	8.35	10.35 as on 10-09-2019	31,560
6	17-10-2019	1,45,000	1079	30-09-2022	8.25	10.25 as on 10-10-2019	43,935
7	29-10-2019	1,00,000	1067	30-09-2022	8.25	10.25 as on 10-10-2019	29,963
8	13-11-2019	1,37,700	1052	30-09-2022	8.2	10.2 as on 10-11-2019	40,481
9	TOTAL AMOUNT	33,62,700				TOTAL INTEREST ( I2 )	16,64,868

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 ) AS ON 30-09-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
33,62,700	18,84,712	0	52,47,412

13. Accordingly the point raised above is answered in the Affirmative.
14. **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/200802/0006292** is hereby allowed. Respondent is directed to pay a sum of **Rs.52,47,412/- (Rupees Fifty Two Lakh Forty Seven Thousand Four Hundred and Twelve only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 18/04/2011 to 30/4/2017 and at MCLR + 2% from 01/05/2017 till 30/09/2022. The interest due from 01/10/2022 up to the date of final payment

*Handwritten signature*


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

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 the costs.

  
(Neelmani N Raju)  
Member, K-RERA

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY